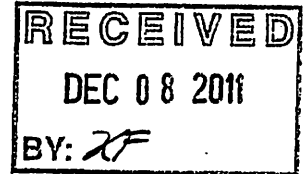


**BIODIVERSITY CONSERVATION ALLIANCE
ROCKY MOUNTAIN WILD**

December 8, 2011



VIA FAX 307-775-6203

Don Simpson, State Director
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82003

**RE: PROTEST OF CERTAIN PARCELS TO BE OFFERED AT
BLM'S FEBRUARY 2012 COMPETITIVE OIL & GAS LEASE SALE**

Dear Mr. Simpson:

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, Biodiversity Conservation Alliance and Natural Resources Defense Council protest certain parcels being offered at the Bureau of Land Management's (BLM) February 2012 competitive oil and gas lease sale.

The parcels under protest are numbered WY-1202-279, 280, 281, 304, 305, 310, 322, 329, 342, 360, and 462 in the original lease sale EA and its appendices. This protest is based on concerns over leasing lands within key sage grouse habitats and designated Core Areas. All lease parcel numbers described in this protest are numbered in this protest according to the original numbers published in the Draft EA and its unsigned FONSI. See <http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/2012/febr.html>. BLM has apparently re-numbered these lease parcels in its Competitive Lease Sale Notice. See <http://www.blm.gov/pgdata/etc/medialib/blm/wy/programs/energy/og/leasing/2012.Par.94318.File.dat/02list.pdf>. This renumbering is unnecessarily confusing to the public and is bound to wreak havoc on lease protests through no fault of the protestors, and we urge BLM to maintain consistent numbering of lease parcels throughout the entire process in the future; there is no problem with presenting lease parcels for auction with non-sequential numbering. The Core Area parcels are likely to be included in the BLM's RMP amendment process and/or parallel RMP revision processes. Given that these plan revision processes are underway, BLM should defer these parcels so that it does not foreclose on alternatives that could be considered in these pending NEPA processes.

We appreciate the fact that the BLM has begun to implement the Interior leasing reforms. We are pleased to have had the opportunity to comment on the EA prior to the lease sale. However, some of our concerns remain insufficiently addressed by the NEPA documents thus far, and so we are protesting certain parcels to be offered at the November 2011 lease auction.



This Protest incorporates by reference all Exhibits provided to BLM with the protest of the October 2008 lease sale by Biodiversity Conservation Alliance, et al. As BLM is already in possession of these documents, we have not attached them hereto. We are willing to provide electronic copies of any exhibits upon request for BLM's ease of use.

I. THE PARTIES

Biodiversity Conservation Alliance (BCA) is a non-profit conservation group with hundreds of members in Wyoming and other states. BCA is dedicated to protecting Wyoming's wildlife and wild places, particularly on public lands. BCA's members live in all of the Field Office areas where lease parcels would be offered in the November 2011 lease sale. Members of BCA utilize land and water resources within and near these areas, and particularly the Kinney Rim units, for hiking, camping, recreational, scientific study, photography, and aesthetic uses. BCA and its members are actively involved in BLM oil and gas activities in this region and participate in all National Environmental Policy Act (NEPA) stages of BLM oil and gas projects by submitting comments and attending public meetings. BCA has a long record of advocating for environmentally sound oil and gas development in Wyoming and throughout the West. As a consequence, BCA and its members would be adversely affected by the sale of the lease parcels being protested here and they have an interest in this matter.

Rocky Mountain Wild is dedicated to conserving and recovering native and naturally functioning ecosystems in the Greater Southern Rockies and Plains. Its members value the clean water, fresh air, healthy communities, sources of food and medicine, and recreational opportunities provided by native biological diversity. RMW passionately believes that all species and their natural communities have the right to exist and thrive. Rocky Mountain Wild uses the best available science to forward its mission through participation in policy, administrative processes, legal action, public outreach and organizing, and education.

II. THE ISSUES

AT RISK: WILDLIFE, OPEN SPACES, AND CLEAN AIR AND WATER

Oil and gas activities on the public lands at issue herein are quickly escalating. BLM is approving record numbers of large oil and gas development projects in Wyoming. The lands at issue here are mostly federal lands managed by BLM. Many of these lands provide critical habitat for a number of species, ranging from sage grouse, to mule deer, to severely imperiled species, such as fish species in the Green/Colorado River Basin and Platte River Basin, and sage grouse on the sagebrush country. Many of the BLM lands at issue serve as quiet, serene places of natural beauty and solitude, and as such, they provide excellent recreational opportunities for hiking, birding, wildlife viewing, hunting, fishing, backpacking, and enjoyment of open spaces.

The explosion of oil and gas development on these lands threatens all of the above resources, for which BLM has a mandatory duty to protect for "multiple use." Oil and gas

development has and will lead to fragmented habitat and surface disturbances through well pad construction, oil and gas well rigs, increased vehicular traffic, miles of roads, pipelines and power lines, and noise from generators and compressor stations. All of these associated activities serve to disrupt habitat, destroy nesting and brooding grounds, and disturb wildlife. These activities can significantly impact elk, mule deer, pronghorn antelope, and sage grouse, as well as many other species that live there. Many of these lands serve as crucial winter range and parturition areas for elk, pronghorn antelope and mule deer, as well as critical breeding and nesting habitat near sage grouse leks. Many rare species find some of their last secure refuges on these lands.

Protestors realize, of course, that a lease itself does not necessarily create immediate disturbances, but as BLM well knows, if a lease is not subject to a "No Surface Occupancy" (NSO) stipulation, the lessee receives contractually-enforceable surface use rights. 43 C.F.R. § 3101.1-2. In other words, once a lease is sold, the cat is out of the bag, putting sensitive resources which have yet to be properly considered through site-specific NEPA analysis at risk of significant and potentially unacceptable harm. Because it represents an irretrievable and irreversible commitment of resources, the leasing stage is extremely critical. We are deeply concerned that the BLM has exploited the leasing stage by disparaging it as little more than a paper transaction when, in reality, it is an important, legally consequential event that commits lands to a particular use.

II. BLM NEEDS TO DEFER CERTAIN PARCELS WITH KEY SAGE GROUSE HABITAT OR AT MINIMUM ATTACH MORE PROTECTIVE STIPULATIONS

We protest Parcels 279, 280, 281, 304, 305, 310, 342, and 360, because these parcels are within Core Area yet not recommended for deferral due to an absence of suitable sage grouse habitat. Although this decision is consistent with BLM's Wyoming Office sage grouse policy, it ignored the biological reality that oil and gas impacts outside sage grouse suitable habitat can have a negative impact on sage grouse inside suitable habitat, if wells and roads are sited close enough to the edge of the suitable habitat. Studies have shown that the majority of hens nest within 3 miles of a lek, and that a 5.3-mile buffer would encompass almost all nesting birds in some cases. The most scientifically supportable metric for NSO buffers would be 2 miles from the lek to protect breeding birds (after Holloran 2005, finding impacts from post-drilling production extend 1.9 miles from the wellsite) with an additional Timing Limitation Stipulation going out 3 miles from a lek,⁴ with the understanding that the impacts of drilling and production activity would extend into the NSO buffer area from wells arrayed along its edge.

We protest Parcel 462 because it is within Core Area and yet was not recommended for deferral due to an absence of 11 square miles of unleased sage grouse habitat. The Newcastle Field Office, in Appendix D from the Lease Notice, recommended deferral of 7 parcels with the same criteria (except they are in Connectivity Habitat, rather than Core Area as with Parcel 462), a decision that we support. It is unclear whether these parcels were actually deferred from the lease sale because BLM changed the lease parcel numbering between the Lease EA and the Lease Notice, rendering it difficult to track the ultimate fate of parcels evaluated in the Lease EA.

We protest Parcels 322 and 329, because these parcels are within Core Area, within suitable habitat, in an area at least 11 square miles of unleased habitat, yet were not recommended for deferral in accordance with state office instruction memoranda. This appears to be an oversight by BLM, as all other parcels in the lease sale with these criteria from all Field Offices appear to be deferred from the lease auction. The requirement of 11 square miles of habitat breaks down as a biologically appropriate conservation strategy in cases where land and minerals ownership is fragmented. BLM's current policy assumes that private or state lands are already or will become leased, and thus it is appropriate to lease interspersed BLM parcels. However, we expect BLM to show leadership on the issue of sage grouse conservation, and set a stronger example for neighboring landowners. BLM's current policy

Wyoming sage-grouse populations are some of the largest left in the nation and were relatively stable until the last decade, when sage-grouse populations experienced major declines range-wide. The Wyoming Game and Fish Department reported that since 1952, there has been a 20% decline in the overall Wyoming sage-grouse population, with some fragmented populations declining more than 80%;¹ one of WGFD's biologists reported a 40% statewide decline over a recent 20-years period.² These declines are attributable at least in part to habitat loss due to mining and energy development and associated roads, and to habitat fragmentation due to roads and well fields. Oil and gas development poses perhaps the greatest threat to sage-grouse viability in the region. The area within 2 to 3 miles of a sage-grouse lek is crucial to both the breeding activities and nesting success of local sage-grouse populations. In a study near Pinedale, sage-grouse from disturbed leks where gas development occurred within 3 km of the lek site showed lower nesting rates (and hence lower reproduction), traveled farther to nest, and selected greater shrub cover than grouse from undisturbed leks.³ According to this study, impacts of oil and gas development to sage-grouse include (1) direct habitat loss from new construction, (2) increased human activity and pumping noise causing displacement, (3) increased legal and illegal harvest, (4) direct mortality associated with reserve pits, and (5) lowered water tables resulting in herbaceous vegetation loss. These impacts have not been thoroughly evaluated with full NEPA analysis.

Because leks sites are used traditionally year after year and represent selection for optimal breeding and nesting habitat, it is crucially important to protect the area surrounding lek sites from impacts. In his University of Wyoming dissertation on the impacts of oil and gas development on sage grouse, Matthew Holloran stated, "current development stipulations are inadequate to maintain greater sage-grouse breeding populations in natural gas fields."⁴ The area within 2 or 3 miles of a sage-grouse lek is crucial to both the breeding activities and nesting success of local sage-grouse populations. Dr. Clait Braun, the world's most eminent expert on

¹ WGFD. 2000. Minutes of the Sage-Grouse Conservation Plan meeting, June 21, 2000, Casper, WY. Cheyenne: Wyoming Game and Fish Department. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 32.

² Christiansen, T. 2000. Sage-grouse in Wyoming: What happened to all the sage-grouse? Wyoming Wildlife News 9(5), Cheyenne: Wyoming Game and Fish Department. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 33.

³ Lyon, A.G. 2000. The potential effects of natural gas development on sage-grouse (*Centrocercus urophasianus*) near Pinedale, Wyoming. M.S. Thesis, Univ. of Wyoming, 121 pp. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 34.

⁴ M. Holloran, Dec. 2005. Greater Sage-Grouse Population Response to Natural Gas Field Development in Western Wyoming, at 57. This study is attached to the BCA June 2008 Lease Protest as Exhibit 35.

sage-grouse, has recommended NSO buffers of 3 miles from lek sites, based on the uncertainty of protecting sage-grouse nesting habitat with smaller buffers.⁵ Thus, the prohibition of surface disturbance within 3 miles of a sage-grouse lek is the absolute minimum starting point for sage-grouse conservation.

Other important findings on the negative impacts of oil and gas operations on sage-grouse and their implications for the species are contained in three studies recently accepted for publication.⁶ Sage-grouse mitigation measures have been demonstrated to be ineffective at maintaining this species at pre-development levels in the face of oil and gas development by Holloran (2005) and Naugle et al. (2006). Naugle found an 85% decline of sage-grouse populations in the Powder River Basin of northeastern Wyoming since the onset of coalbed methane development there. BLM has repeatedly failed to provide any analysis, through field experiments or literature reviews, examining the effectiveness of the standard quarter-mile buffers where disturbance would be "avoided." There is substantial new information in recent studies to warrant supplemental NEPA analysis of the impacts of oil and gas development to sage-grouse. It is incumbent upon BLM to consider the most recent scientific evidence regarding the status of this species and to develop mitigation measures which will ensure the species is not moved toward listing under the Endangered Species Act. It is clear from the scientific evidence that the current protections are inadequate and are contributing to the further decline of the bird's populations. This information constitutes significant new information that requires amendment of the Resource Management Plans before additional oil and gas leasing can move forward.

The restrictions contained in IM No. WY-2010-012 come nowhere close to offering sufficient on-the-ground protection to sage-grouse leks. Within Core Areas, the IM allows surface disturbing activity and surface occupancy just six tenths (0.6) of a mile from "occupied or undetermined" leks,⁷ a far cry from the science-based 3-mile buffer recommended by field biologists. We understand that males use shrubs <1 km (0.6 mi) from a lek for foraging, loafing, and shelter.⁸ In Wyoming, State and BLM policies have in the past erroneously use this as a basis for an 0.6-mile No Surface Occupancy buffer around leks. However, there is no science to indicate that preventing wells within 0.6 mile of a lek will eliminate negative population impacts on sage grouse. In fact, the 1.9-mile buffer is the minimum amount found to be needed to avoid

⁵ C. Braun. May 2006. A Blueprint for Sage-grouse Conservation and Recovery. Grouse, Inc. This study is available online at <http://www.voiceforthewild.org/SageGrouseStudies/Braunblueprint2006.pdf>.

⁶ Doherty, K.E., D.E. Naugle, B.L. Walker, and J.M. Graham. Greater sage-grouse winter habitat selection and energy development. *Journal of Wildlife Management*: In Press. Attached to the BCA June 2008 Lease Protest as Exhibit 37.

Walker, B.L., D.E. Naugle, and K.E. Doherty. Greater sage-grouse population response to energy development and habitat loss. *Journal of Wildlife Management*: In Press. Attached to the BCA June 2008 Lease Protest as Exhibit 38.

Walker, B.L., D.E. Naugle, K.E. Doherty, and T.E. Cornish. 2007. West Nile virus and greater sage-grouse: estimating infection rate in a wild bird population. *Avian Diseases* 51: In Press. Attached to the BCA June 2008 Lease Protest as Exhibit 39.

⁷ Instruction Memorandum No. WY-2010-012, available at <http://www.blm.gov/pgdata/etc/medialib/blm/wy/resources/efoia/IMs/2010.Par.61358.File.dat/wy2010-012.pdf>.

⁸ Rothenmaier, D. 1979. Sage-grouse reproductive ecology: breeding season movements, strutting ground attendance and site characteristics, and nesting. M.S. Thesis, Univ. Wyoming, Laramie; Autenrioth, R.E. 1981. Sage-grouse management in Idaho. *Id. Dept. Fish and Game Wildl. Bull.* 9.; Emmons, S. R. and C. E. Braun. 1984. Lek attendance of male sage-grouse. *J. Wildl. Manage.* 48:1023-1028.

negative impacts to breeding grouse by Holloran (2005), and indeed, to protect the nesting hens that site their nests within 5 miles of a lek, an even larger buffer may be needed. Even less protective, restrictions outside Core Areas allow surface disturbing activities and surface occupancy as close as one quarter (0.25) of a mile from leks.⁹ BLM has too great an abundance of data to the contrary to continue with scientifically unsound stipulations as used in IM WY-2010-012 and the current Notice of Competitive Oil and Gas Lease Sale. This is especially clear in light of the U.S. Fish and Wildlife Service's recent finding that listing the greater sage-grouse as endangered or threatened under the Endangered Species Act is warranted, but precluded by other priorities. If the BLM and other federal agencies intend to keep the sage-grouse from accelerating beyond other listing priorities, more protective measures, in adherence with the scientific recommendations of Holloran, Braun, and others, must be undertaken now. In the interim, deferral of leasing is the appropriate course of action.

BLM has the scientific information needed to recognize that any use of these parcels will result in further population declines, propelling the sage-grouse ahead of other "priorities" on the ESA "candidate list." Again, it is in all interested parties favor (conservation groups, potential lessees, BLM and other federal agencies) for BLM to determine specific "modifications" prior to issuing leases, such as NSO restrictions. If the BLM fails to do so through site-specific environmental review before the APD stage, the agency will violate the "jeopardy" prohibition in the Endangered Species Act and will not adhere to the directive of Secretary Salazar and the Department of Interior's announced leasing reforms.

III. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, BCA requests that the protested parcels not be offered for sale at the November 2011 competitive oil and gas lease sale. If BLM declines to withdraw the protested parcels, then we request that at the minimum, full NEPA analysis be conducted parcel-by-parcel on the impacts of oil and gas development on wilderness characteristics *before* the leasing stage, and that *adequate* protective stipulations be placed on the leases before the lease sale in order to provide protection for wildlife, air quality, water quality, and other special resources.

Respectfully submitted,



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Signing on behalf of

⁹ *Id.*

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