# United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7210
www.co.blm.gov


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In Reply Refer To:
3120 (CO-922)

CERTIFIED MAIL – Return Receipt Requested

Decision

Ms. Wendy Park
Staff Attorney
Center for Biological Diversity
1212 Broadway #800
Oakland, California 94612

November 12, 2015, Competitive Oil & Gas Lease Sale
Protest of One Hundred Twenty-One Parcels Denied

All Protested Parcels Will be Offered for Sale

The protest period for the November 12, 2015, Competitive Oil and Gas Lease Sale began August 14, 2015 and closed at 4:00 p.m. MT on September 14, 2015. On September 14, 2015, this office received a protest from Center for Biological Diversity regarding all one hundred twenty-one (121) parcels to be offered in the November 2015 lease sale.

The Bureau of Land Management (BLM) received nominations for the November 2015 lease sale until November 12, 2014. The parcels considered for the November 2015 lease sale include federal fluid mineral estate located in the Arapaho-Roosevelt National Forest's Pawnee National Grassland (PNG) and the BLM Colorado's Royal Gorge Field Office (RGFO). The United States Forest Service (USFS) manages the surface estate of the PNG parcels. The BLM administers the mineral estate of all of the parcels. After preliminary adjudication of the nominated parcels by the BLM Colorado State Office, the parcels were reviewed by the RGFO, including an interdisciplinary review, field visits to nominated parcels (where appropriate), review of conformance with the Resource Management Plan (RMP) decisions for the planning area and preparation of a Documentation of National Environmental Policy Act (NEPA) Adequacy (DNA) for the PNG parcels and an Environmental Assessment (EA) for the RGFO parcels.

The Lease Sale Notice for the November 2015 lease sale provided notice that one hundred twenty-one (121) parcels containing 89,534.300 acres of federal lands in the State of Colorado

would be offered for oil and gas leasing. The Lease Sale Notice and the review versions of the NEPA documents were released on August 14, 2015, initiating a 30-day protest period.

The BLM has reviewed your protest arguments in their entirety; the substantive arguments are summarized or quoted in bold, with BLM responses following.

**A. The Lease Sale Should be Suspended Until the BLM Has Had the Opportunity to Consider a No-Leasing-No-Fracking Alternative in its Update of the Eastern Colorado Resource Management Plan.**

The United States Forest Service Record of Decision and the Final Environmental Impact Statement for the PNG Oil and Gas Leasing Analysis (PNG FEIS), February 2015, analyzes hydraulic fracturing relative to affected resources. Although the current Royal Gorge and Northeast Resource Management Plans (RMPs) do not address hydraulic fracturing, their alternatives relative to oil and gas, do not preclude the use of such technologies. Any new technology that might be introduced in the future would likewise not be addressed in the Eastern Colorado RMP. In addition the no-leasing alternative was analyzed in both the Lease EA and the PNG FEIS allowing that option to be weighed against the reasonably foreseeable impacts of development. The PNG FEIS concluded that no leasing can lead to more surface disturbance and increased numbers of wells and pads.

> "The FEIS concludes that No Leasing results in the greatest total surface disturbance, wells and well pads of all the alternatives. This is because the No Leasing creates inefficiencies in the drilling plan. Due to the checker-board land pattern, the No Leasing alternative results in shorter horizontal wells and an increase in the number of wells, well pads, pipeline, and roads to avoid the federal mineral acreage and still develop the interspersed fee mineral acreage.
>
> Because it is somewhat counterintuitive why making federal mineral estate unavailable for leasing results in more oil and gas infrastructure than leasing, an analysis comparing development was completed. The analysis projects how oil and gas development will occur—with and without federal leasing—on four townships on the PNG. The analysis includes townships on both the east and west portions of the PNG. Based on the analysis, surface disturbance increases between 10 % to 50 %when comparing the No Leasing Alternative to the NSO Alternative."(PNG FEIS, 2015)

The Hydrology/Water Quality section of the EA discusses potential impacts to natural resources, as compared with the no-action alternative, and explains the regulations associated with hydraulic fracturing, which are designed and implemented to protect natural resources and the human environment.

Resources such as water are protected during hydraulic fracturing activities per 43 C.F.R. 3162.3-1, in which the well is approved only after appropriate environmental and technical reviews by the authorized officer (AO) of the BLM, at the APD stage, which is a site-specific process. A thorough review of submitted materials for each individual well by the BLM resource specialists is completed. The geologist performs independent review utilizing Colorado Division of Water Resources data, Colorado Geological Survey maps and publications, and Colorado Oil & Gas Conservation Commission records to generate a geological report. The

geologist identifies usable ground water and mineral-bearing zones that require protection. The petroleum engineer reviews the casing and cementing portions of the drilling plan to ensure the protection of those zones identified by the geologic report. Conditions of approval to protect usable water zones are attached to the APD as necessary. These technologies and their potential impacts to resources can be analyzed through the NEPA process at the leasing and development stages.

The State of Colorado also regulates hydraulic fracturing under its regulations: http://cogcc.state.co.us/reg.html#/rules.

At the leasing stage, it is not known how many potential wells may be hydraulically fractured, and what the water usage requirements may be for those wells. Water usage for hydraulic fracturing of oil and gas wells is more accurately considered at the APD stage.

Cumulative effects of oil and gas development are analyzed in the EA and include the potential effects all known oil and gas development on both private and federal minerals as well as any other known actions that might cause an impact to the human or natural environment.

**B. BLM's Proposed Finding of No Significant Impact and Determination of NEPA Adequacy are Arbitrary and Capricious.**

The RGFO prepared a DNA, DOI-BLM-CO-F020-2015-0061-DNA, to confirm the sufficiency of the analysis of the impacts of leasing the parcels in the PNG and to formally adopt the USFS Record of Decision and the Final Environmental Impact Statement for the PNG Oil and Gas Leasing Analysis (PNG FEIS), February 2015. The BLM participated in the preparation of the PNG FEIS as a cooperating agency in accordance with Title 40 C.F.R. Part 1501.6. The PNG FEIS addresses oil and gas leasing on certain lands in the PNG that are legally open to leasing. The DNA confirms that the PNG FEIS adequately analyzed the proposed action of leasing the PNG parcels. The signed DNA adopts the PNG FEIS, as provided in 40 C.F.R. 1506.3(a):

An agency may adopt a Federal draft or final EIS or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under [the NEPA implementing] regulations.

An EA, DOI-BLM-CO-F020-2015-0021-EA, was prepared by the RGFO to evaluate the impacts of leasing the parcels in the RGFO planning area in the November 2015 lease sale to determine whether the proposed action would have any additional significant impacts not previously analyzed in an Environmental Impact Statement. The RGFO carefully reviewed each nominated parcel to determine if it can be successfully managed under existing land use planning decisions.

The EA analyzed, considered and disclosed the potential effects of raptors, ferruginous hawk, mountain plover and mule deer from leasing the proposed BLM surface and private surface parcels proposed in the November 2015 lease sale in section 3.4.2.7.

The EA and DNA analyzed, considered and disclosed the potential effects on ferruginous hawks and other raptors. The EA included three stipulations relevant to ferruginous hawks and other raptors: CO-03, CO-18 and RG-05. Stipulations CO-03, CO-18 and RG-05 for the BLM surface and split estate included in the EA are from the 1986 Record of Decision for Northeast Resource Management Plan, the 1991 Record of Decision Northeast Resource Management Plan

Amendment (for the 1991 Colorado Oil and Gas Leasing and Development), and the 1996 Record of Decision and Approved Resource Management Plan for Royal Gorge Resource Area. The one-eighth mile spatial buffer described in stipulation CO-3 for ferruginous hawk nests and other raptor species is direction from these planning documents for the RGFO. The BLM follows the direction provided in these management plan decision documents for oil and gas leasing in the northeastern portion of the planning area. The reproductive status of raptors is a constantly changing situation and there will always be unknown factors in that context. Analyses of the impacts to raptors for BLM surface and split estate parcels proposed for lease, including impacts to raptor reproduction, were based on the best science and information currently available to the BLM. The BLM disclosed its assessment of the effectiveness of the stipulations in the EA. The stipulations applied to the parcels adequately protect against impacts to raptors allowing BLM to reach a Finding of No Significant Impact.

The EA disclosed the effects to mule deer, winter habitat and the use of winter range as the result of the proposed leases based on the best science and information currently available to the agency. The EA included two stipulations relevant to mule deer: CO-09 and RG-08, which protect mule deer while on their winter range. The BLM disclosed its assessment of the effectiveness of the stipulations in the EA. The EA also disclosed the effects to mountain plover based on the best science and information currently available to the BLM. The stipulations applied to the parcels adequately protect against impacts to mule deer and mountain plover allowing the BLM to reach a Finding of No Significant Impact.

The DNA determined that the analysis completed by the Pawnee National Grasslands on National Forest System surface adequately addressed the BLM regulatory and legal requirements for wildlife and special status species. The BLM cannot determine, based on the information available at the time of leasing, whether any of the proposed leases would be developed, when they would be developed, what methods or technologies would be used at the time of development, or the size of those developments; it therefore cannot reasonably propose mitigation measures at this time. The BLM will conduct a site-specific analysis if and when an Application for Permit to Drill (development) is proposed on a lease. A Condition of Approval may be incorporated, if warranted by data analyzed during site specific NEPA and federal law based on the status of the species, sites and best available science.

The USFS does not have the authority to determine mitigation measures on other federal land administered by other agencies or on privately owned lands. The public comment period for the PNG FEIS started on September 5, 2014, and ended on October 20, 2014. Comments provided during that timeframe were considered by the USFS and the BLM at that time. The BLM will confer with USFS regarding any proposed development on PNG and neighboring public lands to ensure a similar review and analysis of best available science.

## DECISION

The decision to offer the one hundred twenty-one (121) parcels was made in accordance with the BLM policy and regulations. For the reasons described above, your protest of the sale of these parcels is denied.

This decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 C.F.R., Part 4 and Form 1842-1 (enclosed). If an appeal is taken, your notice of appeal must be filed in this office (at the above

address) within 30 days from your receipt of this decision. The person appealing the decision has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision, to the IBLA, and to the appropriate Office of the Solicitor (see 43 C.F.R. 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;

2. The likelihood of the protestor's success on the merits;

3. The likelihood of immediate and irreparable harm if the stay is not granted; and

4. Whether the public interest favors granting the stay.

If you have any questions regarding this response, contact Barbara Sterling, Natural Resource Specialist at (303) 239-3642.

Lonny R. Bagley
Deputy State Director
Division of Energy, Lands and Minerals

Enclosure:
1 – "Information on Taking Appeals to the Interior Board of Land Appeals" (2 pp)

cc: Field Manager, RGFO

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

# INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

**1. NOTICE OF APPEAL**..... A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

**2. WHERE TO FILE**

NOTICE OF APPEAL..... Bureau of Land Management, Colorado State Office
Division of Energy, Lands, and Minerals (CO-920)
2850 Youngfield Street, Lakewood, Colorado 80215

WITH COPY TO SOLICITOR... U.S. Department of the Interior, Regional Solicitor, Rocky Mountain Region
755 Parfet Street, Suite 151, Lakewood, Colorado 80215

**3. STATEMENT OF REASONS** Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

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**4. ADVERSE PARTIES**..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

**5. PROOF OF SERVICE**..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

**6. REQUEST FOR STAY**..... Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

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Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

**43 CFR SUBPART 1821--GENERAL INFORMATION**

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office --------- Alaska
Arizona State Office --------- Arizona
California State Office ------- California
Colorado State Office -------- Colorado
Eastern States Office --------- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ---------- Idaho
Montana State Office --------- Montana, North Dakota and South Dakota
Nevada State Office ---------- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ---------- Oregon and Washington
Utah State Office ---------- Utah
Wyoming State Office -------- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

Form 1842-1
(September 2006)

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Oregon State Office ---------- Oregon and Washington
Utah State Office ---------- Utah
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