



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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In Reply Refer To:  
3100 (921 Gamper)  
May 2016 Protests

### **CERTIFIED – RETURN RECEIPT REQUESTED**

Michael Saul  
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Jeremy Nichols  
WildEarth Guardians  
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Denver, CO 80205

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Wyoming Outdoor Council  
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Lander, WY 82520-2848

### **DECISION**

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### **MAY 3, 2016 OIL AND GAS LEASE SALE PROTEST OF 30 PARCELS PROTEST DENIED IN PART PROTEST DISMISSED IN PART**

### **ALL PROTESTED PARCELS WILL BE OFFERED**

Between the dates of February 3, 2016 and March 4, 2016, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received three protests to the offering of parcels at the BLM Wyoming May 3, 2016, competitive oil and gas lease sale (CLS) from several parties. WildEarth Guardians (WEG), Center for Biological Diversity (CBD), and Wyoming Outdoor Council (WOC) are the protesting parties. The protests include all 30 final lease sale parcels listed within the CLS.

Physicians for Social Responsibility (PSR) is a party to the protest submitted by WEG although, no return address for provided for PSR. If a protester did not submit written comments to the BLM, during the 30-day leasing Environmental Assessment (EA) comment period, or otherwise could not demonstrate standing, the BLM would deny any protest subsequently filed by that protester. The record shows that WOC, WEG and CBD submitted written comments to the BLM High Desert District (HDD) office during the May 2016, competitive lease sale EA comment period. However, PSR did not provide any comments or otherwise participate in the 30-day public comment period. Therefore, the issues raised by PSR as part of the WEG protest

is subject to summary dismissal and will not be addressed further in this protest decision.

The WEG includes in their protest, arguments against offering certain parcels associated with the February 2, 2016 the CLS which was previously cancelled due to adverse weather conditions. These parcels will be sold at the May 3, 2016 the CLS instead. However, the February 2016 the CLS had a formal protest period which ended January 19, 2016<sup>1</sup>. The protest submitted by the WEG against parcels being offered at the February sale was decided on March 14, 2016; as such, all arguments submitted by the WEG in their May 2016 protest are denied.

## BACKGROUND

The BLM received nominations for the May 2016 the CLS from March 23, 2015 to June 26, 2015. The May 2016 the CLS includes Federal fluid mineral estate located in the BLM Wyoming's High Desert District (HDD) and involves all four Field Offices including Pinedale, Rawlins, Rock Springs, and Kemmerer. After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the Field Offices and District Offices, including interdisciplinary review, field visits to nominated parcels (where appropriate), review of conformance with the Resource Management Plan (RMP) decisions for each planning area, and preparation of an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.

During the BLM's preliminary review of these parcels, the WSO independently screened each of the parcels for consistency with Wyoming (WY) Instruction Memorandum (IM) No. 2012-019, Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands Including the Federal Mineral Estate (WY IM No. 2012-019), checked conformance with the Resource Management Plan (RMP) for each planning area,<sup>2</sup> coordinated with the State of Wyoming Governor's Office and the Wyoming Game and Fish Department (WGFD), evaluated recent changes to National and State the BLM policies, and considered ongoing efforts by the BLM in Wyoming to revise or amend the RMPs for planning areas subject to this sale, including the BLM's ongoing planning efforts related to the management of Greater Sage-Grouse habitat on public lands.

After preliminary review at the WSO, those parcels that could be offered consistent with

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<sup>1</sup> Publication of the Feb 2016 Sale Notice was postponed from the date it was originally anticipated to be posted. This was due to further review of the sale parcels caused by the September 21, 2015 the BLM decisions resulting from the statewide RMP revisions and amendments. After the further review was completed, on December 17, 2015 the WSO issued Information Notice (#1) which deferred 35 additional parcels located in the Lander Field Office, "consistent with the BLM's sage grouse conservation plans and strategy, which direct the BLM to prioritize oil and gas leasing and development in a manner that minimizes resource conflicts in order to protect important habitat and reduce development time and costs." As a result of this further review, the posting date of the Sale Notice was also delayed; correspondingly, the required 30-day protest period that is initiated by posting of the Sale Notice was delayed. Due to these changes, the 30-day protest period ended on January 19, 2016, just two weeks prior to the scheduled sale. The WSO did not originally anticipate resolving the protests prior to the date of the sale, but the February 2, 2016 sale ended up being postponed as a result of a snowstorm. The WSO has since resolved all protests of the February 2, 2016 CLS.

<sup>2</sup> See the BLM's Land Use Planning Handbook at page 42: "After the RMP is approved, any authorizations and management actions approved... must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP." See also 43 CFR 1610.5-3.



WY IM No. 2012-019 were provided to the HDD Office and associated Field Offices to begin the interdisciplinary review, including field visits to nominated parcels (where appropriate), confirm conformance with the RMP for each planning area<sup>3</sup>, and prepare an EA documenting the NEPA compliance. The preliminary parcel list including the results of the WY IM No. 2012-019 review results, were provided to the WGFD for review, and split estate land owners were notified per Washington Office IM No. 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews. Continued use of WY IM No. 2012-019 was superseded following the signing of the Record of Decision and Approved Resource Management Plan Amendments for the Rocky Mountain Region, including the Greater Sage Grouse sub-regions (ARMPA) on September 21, 2015, the WSO deferred at the discretion of the State Director all portions of all parcels that were within Priority Habitat Management Areas (PHMAs) identified in the ARMPAs. See the EA, version 2, pages 1-2. The EA (WY-040-EA15-130), along with the draft and unsigned Finding of No Significant Impact (FONSI)<sup>4</sup> were released on November 2, 2015, for a 30-day public review period, as required by Washington Office IM No. 2010-117. The EA tiered to the existing field office/resource area the RMPs, as amended (2015) and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR 1502.20:<sup>5</sup>

*Agencies are encouraged to tier to their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review... the subsequent ...environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.*

Compliance with all applicable laws and regulations were considered in the drafting of the current RMP EIS' and associated Record of Decisions. For leasing and development of fluid minerals, these include, but are not limited to: the NEPA, the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act, the National Historic Preservation Act, the 2005 Energy Policy Act, the Mineral Leasing Act, and the regulations at 43 CFR §3100 and 3160.

The NEPA guides the environmental analysis process. Generally, the scope of an analysis relates to the purpose and need for the proposed action. The BLM WY May 2016 Lease Sale EA described its purpose and need as (HDD EA v.2 at page 3):

*The BLM's purpose for offering parcels and subsequent issuance of leases in the May 2016 lease sale is to provide for exploration and development of additional oil and gas resources to help meet the nation's need for energy sources, while protecting other resource values in accordance with guiding laws, regulations, and Land Use Planning decisions. Wyoming is a major source of natural gas for heating and electrical energy production in the United States. The offering for sale and subsequent issuance of oil and*

<sup>3</sup> A Record of Decision amending nine Resource Management Plans in Wyoming was signed on September 21, 2015. This amendment is entitled Wyoming Greater Sage Grouse Land Use Plan Amendment (ARMP).

<sup>4</sup> See the BLM's NEPA Handbook H-1790-1 at page 76. Though the BLM has elected to release a draft, unsigned FONSI for public review in this instance, the BLM is not asserting that any of the criteria in 40 CFR 1501.4(e)(2) are met.

<sup>5</sup> See also the BLM's NEPA Handbook H-1790-1 at pages 27-28.

*gas leases is needed to meet the requirements of the MLA, the FLPMA, and the minerals management objectives in the Kemmerer, Pinedale, Rawlins, and Green River Resource Management Plans (RMP). Oil and gas leasing provides the opportunity to expand existing areas of production and to locate previously undiscovered oil and gas resources to help meet the public's energy demands.*

*Decisions to be made based on this analysis include which parcels would be offered for lease, which parcels would be deferred, which parcels are not available for leasing, and what stipulations will be placed on the parcels that would be offered for lease at the May 2016 lease sale.*

The EA considered two alternatives in detail:

- The No Action alternative (Alternative A) which considered not offering any of the nominated parcels available for lease.
- The Proposed Action alternative (Alternative B) which included offering 50 parcels (whole or in part).

Following public comments response, the State Director deferred the offering of preliminary parcels 1605-021 and 1605-022 pending additional environmental analysis. Only those lands remaining outside of the PHMA were included in the Final Sale Notice.

Based on all of the above described deferrals, approximately 27,070.43 acres are proposed to be offered at the May 2016 CLS. All parcels proposed for offering have been determined to be available for lease as they have been designated for multiple-use management, subject to the stipulations identified in the Rawlins Record of Decision (ROD) and Approved RMP, dated Dec. 24, 2008, at 2-22, Map 2-38 (Oil and Gas Classifications), Green River (Rock Springs) ROD and RMP, dated Aug. 8, 1996 at 12, 89 (Map 13(No Lease Areas)). On September 21, 2015, the BLM issued a ROD for the Greater Sage Grouse Land Use Plan Amendment (ARMPA) for the Casper, Green River, Kemmerer, Newcastle, Pinedale, and Rawlins RMPs<sup>6</sup>, at Appendix A, page 114, Map 2-2: Wyoming Fluid Minerals (Oil and Gas). The EA and draft FONSI prepared for the May 2016 CLS tiers to these decisions and incorporates by reference specific information in the GSG ARMPA and a Hydraulic Fracturing White Paper contained in Appendix D of the EA.

The HDD EA considered two additional alternatives but eliminated them from detailed analysis: (1) offer all nominated parcels with a No Surface Occupancy stipulation (NSO) and (2) defer all remaining parcels that contain or are within sage grouse core area(s). These alternatives were dismissed from further review because they: (1) would not be in conformance with the applicable RMPs; (2) were within the range of alternatives analyzed; and (3) would not meet the purpose and need as identified in the HDD EA.

Through the analysis in the EA, the HDD also determined whether the proposed parcels were

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<sup>6</sup> The ROD covers several planning areas and is entitled the :Rocky Mountain Region Greater Sage-Grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming, and the Approved Resource Management Plans (RMPs) for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland. The parcels in this sale are subject to the Approved RMP Amendment for Casper, Rawlins, Rock Springs, Pinedale, Newcastle, and Kemmerer Field Offices signed September 21, 2015.



appropriate for leasing. In doing so, the BLM reviewed the parcels for the presence of various resource values and conflicts, including the presence of wilderness characteristics and receipt of Citizen Proposed Wilderness Areas that have not yet been reviewed for new information (at Appendix C).

Consistent with previous protest decisions, if a protester did not submit written comments to the BLM during the 30-day leasing EA comment period, or otherwise could not demonstrate standing, the BLM would deny any protest subsequently filed by that protester. The record shows that WildEarth Guardians, the Center for Biological Diversity<sup>7</sup> and the Wyoming Outdoor Council all submitted written comments to the BLM High Desert District (HDD) office during the May 2016 CLS EA comment period.

## ISSUES—WYOMING OUTDOOR COUNCIL

- a. **The WOC protests the leasing of parcels 1605-011 through 016.**
  - a. **Parcel -011 should not be leased for two reasons: 1) leasing and subsequent development of this parcel will adversely impact the wilderness qualities of this WSA, which will violate the non-impairment standard the BLM must use to manage the WSA and its values; and 2) the BLM has yet to complete the site-specific analysis for the Desolation Road Unit, including an assessment of impacts to the wilderness qualities of the adjacent WSA if this development were to occur.**

### The BLM Response

The WOC correctly cites the BLM Manual 6330 which says that the BLM will “protect the wilderness characteristics of all WSAs in the same or better condition than they were on October 21, 1976 until Congress determines whether or not they should be designated as wilderness.” The WOC however misconstrues this to mean that activities outside of the WSA boundary are to be managed to not impair qualities within the WSA itself. This interpretation of the BLM’s Manual 6330 is incorrect. The non-impairment standard arises from activities that are authorized within the WSA boundary. For actions outside of the WSA, the ruling the RMP decisions are in full force and effect. In the case of parcel -011, these lands are available for oil and gas leasing and development subject to the stipulations attached to the parcel at the time of issuance.

The Field Office has adequately evaluated whether these lands should be offered for sale through the analysis contained within the Green River RMP which specifically evaluated whether allowance of oil and gas in the Adobe Town fringe areas was appropriate through the analysis contained in the RMP draft EIS. The RMP decision allows oil and gas development subject to two separate Controlled Surface Use stipulations (one for protection of the Monument Valley and one for Visual Resource Management 1 or II standards). If the parcel is ultimately sold and development proposed, appropriate NEPA analysis will be prepared to determine whether the development proposal complies with the lease stipulations. If adequate mitigation is not identified in a development EA as it relates to the Monument Valley CSU, a Finding of

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<sup>7</sup> Comment responses are contained in Appendix E to the EA. However, responses to CBD were not included in the record; this has subsequently been corrected. The response to CBD did not require any additional edits to the EA, or additional deferrals.

No Significant Impact could not be issued and an Environmental Impact Statement would have to be prepared, or the proposal would be denied. If the proposal cannot comply with the VRM II standard, the proposal would be denied.

The WOC has not identified any NEPA deficiency or other regulatory oversight which would prevent the BLM from offering these lands for sale and this protest point is denied.



- b. We believe the stipulations attached to these parcels (1605-012,013,014,015,016) are inadequate for the protection of the wildlife, recreational, wilderness character, and visual resources they are designated to protect. Moreover, we expect, and will advocate that, the Rock Springs RMP update stipulations applied to this important landscape [Kinney Rim] when it is revised. Until that time, further leasing (with leases that, with inadequate stipulations, will be valid for a decade) is in appropriate and ill-advised.**

Parcel -014 is located in both the Rawlins and the Rock Springs Field Offices, and is subject to both the Rawlins and Green River RMPs (1997).

Parcels -012, -013, -015 and -016<sup>8</sup> are located in the Rock Springs Field Office and are subject to the Green River RMP (1997).

The Green River RMP has designated the area encompassing these parcels as:

*The area is open to: 1) consideration for mineral leasing, exploration, and development provided mitigation can be applied to retain the resource values...*

The subject parcels include various stipulations including those for the protection of raptors, big game crucial winter range, and sage grouse. The WOC has not identified any stipulations that should have been applied to the subject parcels that were not (as required by the RS RMP) and the WOC has not identified any shortcomings in the lease sale EA, nor have they identified new information that the BLM has not previously considered.

The BLM may offer parcels for lease and issue new leases while an RMP is being revised, so long as the leasing decision conforms to the existing RMP (*see Sierra Club Legal Defense Fund, Inc.*, 124 IBLA 130, 140 (1992)).

The RSFO has reviewed the parcels against the currently drafted RMP revision alternatives, and has found no conflicts that would prevent the offering these parcels at this time. Given the location of the protested parcels (outside of PHMA and adjacent to numerous existing oil and gas leases with active wells) (See Map 1, attached), and considering the need for the BLM to implement its RMPs in order to accomplish its multiple-use mandate, we deny this portion of the WOCs protest.

## **ISSUES – WILDEARTH GUARDIANS**

The WEG argues that the BLM failed to (1) quantify greenhouse gas (GHG) emissions that could result from leasing the parcels in the May 2016 Sale, (2) analyze the “social cost of carbon” for the GHG emissions, and (3) that the sage grouse stipulations attached to the

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<sup>8</sup> Portions of parcels -015 and -016 (preliminary parcel numbers -019 and -020) were deferred from the sale at the discretion of the state director and are not included in this response.

parcels are insufficient. They have protested the inclusion of 32 proposed parcels included in the EA proposed action.

Final parcels -016 and -017 were deferred at the discretion of the State Director; this decision was made in response to public comments received on the initial EA. Only 30 parcels are included in the Final CLS Notice. The WEG's protest against parcels -016 and -017 is dismissed as moot.

Based on our review of the record, it does not appear that the WEG's arguments vary significantly from previous protest points raised in their November 2014, May 2015, or November 2015 lease sale protests. Because the WEG raises arguments previously addressed without showing how those arguments remain viable in light of previous decisions, we incorporate by reference our previous responses in full. The WEG's arguments are subject to summary disposition *See, Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

**“WildEarth Guardians protests the BLM's May 2016 oil and gas lease sale over the agency's failure to adequately analyze and assess the climate impacts of the reasonably foreseeable oil and gas development that will result in accordance with the [NEPA].” (WEG Protest at page 3).**

1. **“The BLM completely rejected analyzing and assessing the potential direct and indirect greenhouse gas emissions, including carbon dioxide and methane, that would result from the reasonably foreseeable development of the proposed leases. Although acknowledging that development of the lease parcels would occur and that greenhouse gas emissions would be produced, no analysis of these emissions was actually prepared.” (WEG Protest at page 5).**

#### The BLM Response

We refer the WEG to the November 2015 Protest Decision, dated November 2, 2015, pages 14-20 for a detailed response to this comment. The WEG has provided no new information that would cause us to change our previous decision.

For this reason, this portion of the WEG's protest is denied.

2. **“Compounding the failure of the BLM to make any effort to estimate the greenhouse gas emissions that would result from reasonably foreseeable oil and gas development is that the agency also rejected analyzing and assessing these emissions in the context of their costs to society. It is particularly disconcerting that the agency refused to analyze and assess costs using the social cost of carbon protocol, a valid, well-accepted, credible, and interagency endorsed method of calculating the costs of greenhouse gas emissions and understanding the potential significance of such emissions.” (WEG Protest at page 10).**



### The BLM Response

We refer the WEG to the November 2015 Protest Decision, dated November 2, 2015, pages 20-22 for a detailed response to this comment. The WEG has provided no new information that would cause us to change our previous decision.

For this reason, this portion of the WEG's protest is denied.

### **3. The BLM failed to appropriately analyze and assess impacts to Sage Grouse**

**...We remain concerned that sage grouse stipulations prescribed in the BLM land-use plan amendments and revisions to protect greater sage grouse are scientifically unsound, legally invalid, and fail to grant an adequate level of protection to allow for the survival of greater sage grouse in the context of development on oil and gas leases, and therefore protest these parcels.**

**...The BLM should not issue these sage grouse parcels unless a rigorous set of stipulations, far stronger than those provided in the EA, are applied to the parcels. This should include at a minimum 4-mile NSO stipulations around active leks.**

**...The NSO stipulation of 0.6 mile surround lek locations is insufficient to prevent significant impacts to lek populations based on the best available science.**

**...The programmatic the RMP allows a 5% level of surface disturbance within sage grouse Core Areas, a level of surface disturbance that is incompatible with maintaining sage grouse populations and preventing population declines caused by excessive habitat destruction and fragmentation.**

**...It is critically important for the BLM to identify and protect winter concentration areas. These lands should be closed to fluid mineral leasing, with Conditions of Approval applying the NSO stipulation inside and within 2 miles of these areas.**

### The BLM Response

No portion of any parcel proposed to be offered at the May 3, 2016 CLS is within Priority Habitat Management Areas. The two preliminary parcels which are located in a delineated Winter Concentration Area (WCA) outside of PHMAs have been deferred pending additional environmental analysis associated with the Normally Pressured Lance project in the Pinedale and Rock Springs field office. Analysis of alternatives for development within WCAs are outside the scope of the May 3, 2016 Lease Sale EA.

Protest against the decisions of the ARMPA is outside the scope the May 3, 2016 EA and cannot be resolved within this lease sale protest decision.

The Draft EIS prepared for the ARMPA specifically analyzed various levels of protection for Sage Grouse including 4-mile NSOs and closing the lands altogether. The land use restrictions included in the Preferred Alternative and ultimately selected in the ARMPA ROD are

appropriate to conserve Greater Sage-Grouse habitat. The BLM and Forest Service developed Alternative E in the ARMPA, and selected in the ROD, based on the Wyoming Executive Order (WY EO 2011-5) Core Area Strategy, BLM WY IM No. 2010-012, BLM WY IM No. 2012-019, BLM WO IM No. 2012-044, the National Technical Team Report, best available science, and input from the USFWS, State of Wyoming, cooperating agencies, and the public to create a management approach to both protect Greater Sage-Grouse and allow for multiple use of public lands. The combination of surface disturbance restrictions, timing limitations, limits on density of development, and other management meet the purpose and need of the planning effort and will allow the continued existence of the Greater Sage-Grouse in Wyoming and allows for multiple use of public lands as required by the Federal Land Policy and Management Act.

As a result of the ultimate RMP decisions in WY and surround states involved in the planning effort, the USFWS found the plans to be sufficient for protection of the Greater Sage-Grouse and found on September 22, 2015 that listing of the bird was no longer warranted.<sup>9</sup>

All parcels proposed to be sold at the May 3, 2016 CLS are offered in conformance with the Pinedale RMP, the Green River RMP, the Rawlins RMP and the Kemmerer RMP, as amended by the September 2015 ROD for the Approved Resource Management Plan Amendments (RMPAs) for the Rocky Mountain Region Greater Sage-Grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming, and the Approved Resource Management Plans (RMPs) for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland.

For the above-described reasons, this portion of WEGs protest is denied.

## **ISSUES –CENTER FOR BIOLOGICAL DIVERSITY**

- 1. The proposed lease sale is inconsistent with the revised RMPs requirement to prioritize oil and gas development outside of Greater Sage Grouse Habitat.**

**...the proposed action is directly in conflict with a core provision of the 2015 sage RMP amendments. Despite its acknowledgement of the prioritization requirement by deferring 12 parcels, however, the BLM's proposed action would lease 22 out of 30 parcels comprising approximately 20, 276 acres that fall within greater sage-grouse habitat.**

### The BLM Response

The CBD is arguing that offering parcels in GHMA is not consistent with the BLM Wyoming Greater Sage Grouse RMP RODs and FLPMA. The CBD however does not provide specific explanation of how the lease sale decision is not compliant with FLPMA.

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<sup>9</sup> See US Fish and Wildlife Service, 12-Month Finding on a Petition to List Greater Sage-Grouse, 80 Fed. Reg. 59,858, 59,883 (October 2, 2015)



The GSG ROD on page 1-25 states that:

*Prioritization Objective-In addition to allocations that limit disturbance in PHMAs and GHMAs, the ARMPs and ARMPAs prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs. This is to further limit future surface disturbance and encourage new development in areas that would not conflict with GRS. This objective is intended to guide development to lower conflict areas and as such protect important habitat and reduce the time and cost associated with oil and gas leasing development by avoiding sensitive areas, reducing the complexity of environmental review and analysis of potential impacts on sensitive species, and decreasing the need for compensatory mitigation.*

According to the BLM Manual 1601 – Land Use Planning, page 2, Conformance is defined as “a proposed action shall be specifically provided for in the land use plan or, if not specifically mentioned, shall be clearly consistent with the goal, objectives, or standards of the approved land use plan.” Further, on page 4, Objective is defined as “a description of a desired condition for a resource. Objectives can be quantified and measured and where possible, have established time frames for achievement.”

In a land use plan, Objectives are complemented by a Land Use Allocation, which is defined as “the identification in a land use plan of the activities and foreseeable development that are allowed, restricted, or excluded for all or part of the planning area, based on desired future conditions.”

For the subject lands proposed to be offered at the May 3, 2016, CLS, the RMP allocations, as amended (2015), are open and available for fluid mineral leasing: “Fluid mineral leasing would be allowed in Greater Sage-Grouse core habitat areas, except in areas that are unavailable for leasing due to the need to protect other sensitive resources. And, the agencies would allow oil and gas leasing consistent and subject to the leasing stipulations analyzed in the timing, distance, disturbance, and density restrictions sections. (See DEIS, Chapter 2, page 2-63)

We further refer CBD to page 2-2 of the GSG ROD which states that: Management decisions and actions are those provisions that help in meeting the established goals and objectives. They are the measures that will be applied to guide day-to-day activities on public lands, including but not limited to, stipulations, guidelines, BMPs (best management practices) and RDFs (required design features).” Prioritization was not an assumption in any of the impact analysis because the management actions were developed to meet the objective. (See FEIS, Chapter 4, page 4-13 and 4-14)

The subject parcels are being offered in conformance with the management decisions of the RMP ROD and include all appropriate stipulations as required to manage and control the rate and density of development should the parcels be sold, issued, and development proposed.

The BLM WSO further recognizes that the GSG ROD states that: “The BLM shall complete IMs for the following management direction and intends to complete these IMs within 90 days of the RODs: oil and gas leasing and development prioritization and livestock grazing.” Consistent with previous leasing decisions while the RMP amendments/revisions were being drafted, the BLM WSO has deferred all parcels in PHMA pending receipt of the subject

Instruction Memoranda identified in the GSG ROD. It is fully expected that the additional guidance will provide the BLM with more clarity as to how, where and when the BLM should offer parcels in the PHMA and the GHMA. However, here the BLM's prioritization involved not including any parcels in the PHMA and also deferred the two parcels located in the WCAs as result of public comments received on the preliminary EA. Because none of the nominated parcels analyzed for this sale were located completely outside of Greater Sage-Grouse habitat, the BLM determined that the prioritization for this lease sale would offer parcels in the GHMA and not offer parcels in the PHMA.

Based on the foregoing explanation, this portion of CBDs protest is denied.

2. **The BLM must cease all new leasing at least until the issue (of climate change) is adequately analyzed in a programmatic review of all U.S. fossil fuel leasing, at least within amended RMPs.**

**"...the EAs cannot postpone the discussion of air pollution and climate change impacts until site-specific plans are proposed. 'Reasonable forecasting' is possible based on development projections in the RFD for each planning area.... A piecemeal analysis at the APD stage risks sweeping under the rug cumulative impacts of drilling on multiple parcels for lease within the same locale. At the individual APD stage, the BLM would have no more information than it does now to analyze the cumulative impacts of developing multiple leased parcels in a given area, except for the development plans for an individual APD.... The BLM must discuss these cumulative impacts before the lease sale." (CBD Protest at page 10).**

#### The BLM Response:

In general we refer CBD to our response to the WEG's arguments related to estimating the GHG emissions and evaluating climate change impacts, above.

The request for a programmatic review is generally outside the scope of the May 3, 2016 lease sale EA. The subject EA tiers to the base RMPs (as amended, 2015) and incorporates by reference Appendix D, Hydraulic Fracturing White Paper and greenhouse gas estimates from the GSG FEIS (See GSG FEIS Chapter 4 in Section 4.2.5 and also in the cumulative effects analysis in Section 4.22.3).

The CBD's argument is substantially similar to the WEG's, and we do not find any distinctions in the points raised by the CBD to reach a different conclusion (and in additional consideration of the extensive treatment the EA provides regarding impacts to air quality more generally, not specifically limited to GHGs). We would point out, however, that the CBD overlooks an important acknowledgment in their assertion that the BLM "would have no more information" at the APD stage than now, at the leasing stage, "except for the development plans for an individual APD...."

By ignoring the APD "development plans," the CBD disregards the importance of those site-specific plans in disclosing, assessing, and developing mitigation for impacts from actual oil and gas development.



As the BLM Wyoming continues to demonstrate<sup>10</sup>, when site-specific oil and gas lease exploration or development projects are received the BLM will determine the appropriate level of analysis for the circumstances, and will ensure our NEPA obligations are fulfilled. This allows for compliance with NEPA and avoids speculative guesses as to impacts at leasing stage.

For these reasons, and incorporating our response to the WEG's protest, we deny this portion of the CBD's protest.

3. **"The EA refers to a white paper generally discussing the impacts of hydraulic fracturing (of 'fracking'), but provide no sense of the risk and severity of public health impacts that could potentially result from increased natural gas drilling and hydraulic fracturing operations on the proposed parcels for lease.... The white paper's cursory discussion does not amount to a 'hard look' at the health risks posed by oil and gas development, including hydraulic fracturing." (CBD Protest at page 10).**

#### The BLM Response

In their protest, the CBD takes issue with the addendum to the EA that includes additional discussion regarding hydraulic fracturing operations.

The EAs also acknowledge the possibility that, if the leases are issued and if an operator proposes to explore or develop a lease, hydraulic fracturing operations may be proposed (see EA at page 1-8: "Without a discrete development proposal, the use of hydraulic fracturing in the oil and gas development process cannot be predicted."). The "white paper" discussion on hydraulic fracturing in the EAs' appendix provides a brief discussion regarding public health and safety (at page 12).

The BLM has developed rules pertaining to the regulation of hydraulic fracturing operations (80 FR 16128-16222, March 26, 2015; see also 80 FR 16577, March 30, 2015). In litigation challenging the regulations, the effective date of the regulations has been stayed by an order of the U.S. District Court for the District of Wyoming.<sup>41</sup>

We disagree that the leasing EA does not adequately address impacts to public health and safety from hydraulic fracturing operations; we agree with the EAs' conclusion that the BLM cannot disclose or analyze specific, detailed effects from hydraulic fracturing operations at the leasing stage, and that such analysis is more appropriate at the time actual operations are proposed.

For these reasons, we deny this portion of the CBD's protest.

#### **DECISION**

After a careful review, all 30 protested parcels described in the Notice of Competitive Oil and Gas Lease Sale will be offered at the May 3, 2016 CLS. Protest to parcels -021 and -022 are

<sup>10</sup> See, for example, the extensive air quality modeling and analysis triggered by the BLM's receipt of lease development plans in the Continental Divide – Creston EIS, available at: [http://www.blm.gov/wy/st/en/info/NEPA/documents/rfo/cd\\_creston.html](http://www.blm.gov/wy/st/en/info/NEPA/documents/rfo/cd_creston.html)

dismissed as moot because they were deferred from sale as a result of public comments received on the preliminary EA.

Protest against parcels included in the February 2, 2016 CLS is denied.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (Attachment 6).

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 protestor 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 Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 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.

#### 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.



/s/ Michael Valle

Deputy State Director, Minerals and Lands, acting

2- Attachments

1- Form 1842-1

2- Map 1