



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. Box 1828

Cheyenne, Wyoming 82003-1828

In Reply Refer To:
3100 (921 Gamper)
February 2014 Protests

FEB 10 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Rocky Mountain Wild
1536 Wynkoop, Suite 305
Denver, CO 80202

DECISION

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PROTEST DISMISSED

ALL PROTESTED PARCELS WILL BE OFFERED FOR SALE

On December 13, 2013, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received a protest from Rocky Mountain Wild (RMW) to the offering of particular parcels at the February 2014 lease sale. Protested parcels include: WY1402-17, 18, 19, 20, 28, 29, 30, 31, 32, 33, 34, 35, 74, 87, 88, 89, 93, 102, 103, 107, 114, 125, 126, 127, 130, 135, 136, 151 and 159.

The BLM received nominations for the February 2014 Competitive Lease sale from December 24, 2012, to March, 29, 2013. The February 2014 sale includes unleased Federal fluid mineral estate located in the BLM Wyoming High Plains and Wind River/Bighorn Basin District Offices. After preliminary adjudication of the nominated parcels, the WSO independently screens each of the parcels in accordance with BLM WY Instruction Memorandum (IM) WY 2012-019, Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands Including the Federal Mineral Estate, (at pages 13-15 and Attachment 7). Under WY IM 2012-019 the BLM conducts a sage-grouse screen on every nominated oil and gas parcel to determine if the parcel(s) should be offered for sale or deferred pending completion of the on-going Resource Management Plan (RMP) amendments and/or plan revisions in all 10 BLM WY field offices. This screen provides for an objective, repeatable evaluation of nominated parcels to ensure that large contiguous blocks of unleased sage-grouse habitat in Core Areas are not leased until the BLM's RMP revision or amendment processes have been completed. This process allows the BLM to balance the need to provide energy production from public lands while preserving the decision-makers' ability to select from a range of reasonable alternatives during the RMP amendment process in Casper, Newcastle, Rock Springs, Kemmerer, Pinedale, and Rawlins Field Offices and RMP revisions in Worland, Buffalo, Cody, and Lander. Screening criteria are described in the IM and the results of the screening process for all parcels in the February 2014 lease sale are included in each of the leasing Environmental Assessments (EAs).

Parcels that pass the criteria outlined in WY IM 2012-019 are forwarded to the District and Field Office staff for National Environmental Policy Act (NEPA) analysis which includes, but is not limited to: confirmation of plan conformance, field-visits to select parcels, coordination with the State of Wyoming

Governor's Office and the Wyoming Game and Fish Department (WGFD), confirmation of compliance with multiple national and state BLM policies and/or laws, and consideration of on-going land use planning efforts including RMP amendments in Casper, Newcastle, Rock Springs, Kemmerer, Pinedale, and Rawlins Field Offices and RMP revisions in Worland, Buffalo, Cody, and Lander.

As directed by Washington Office IM 2010-117, Oil and Gas Leasing Reform-Land Use Planning and Lease Parcel Reviews, EAs for the February 2014 lease sale, (HPD EA WY-070-EA13-180, WRBBD EA WY-050-EA13-81) along with draft, unsigned Findings of No Significant Impact (FONSIs) were released on July 30, 2013, for a 30-day public review period which ended on August 28, 2013. The EAs tiered to the existing field office/resource area RMPs and their respective Environmental Impact Statements (EISs).

ISSUES – Rocky Mountain Wild

RMW's protest includes the following arguments:

1. Parcels 17, 18, 19, 20, 28, 29, 30, 31, 32, 33, 34, 35, 74, 87, 88, 89, 93, 102, 103, 107, 114, 125, 126, 127, 130, 135, 136, 151 and 159 are within Greater Sage Grouse Preliminary Priority Habitat (PPH) derived from WGFD 2010 data. "No leasing in Core Areas" is one reasonable alternative which BLM has been asked to consider in its Sage Grouse Plan Amendments process, and also in its RMP revision and leasing Core Area lands regardless of what screening mechanisms they have been subject to will violate CEQ Guidance¹.
2. The most recent BLM-sponsored sage grouse Population Viability Analysis placed the population in this region one West Nile Virus outbreak away from functional extinction. Further, peer-reviewed modeling predicted a 98 percent reduction in lek activity when combined effects of drilling and a West Nile virus outbreak were considered (Taylor et al., 2012). This information was never analyzed in the EA and this lack of analysis violates NEPA's hard look requirement.
3. These parcels contain sage-grouse leks, nesting habitat, breeding habitat, wintering habitat and brood-rearing habitat. BLM has failed to conduct parcel-by-parcel NEPA analysis to determine the true impacts of leasing.
4. All parcels listed above should be deferred from the lease sale pending analysis of whether large-block unleased parcels in Core Areas are being leased, pursuant to the 2012 Wyoming leasing IM.

BLM Response

Background:

RMW has protested the inclusion of 29 parcels, containing approximately 51,353 acres, in this lease sale. Following a review of these parcels under WY IM 2012-019, 1 parcel was recommended to be offered in whole (3,040 acres), and the remaining 28 parcels were recommended for partial deferral which resulted in approximately 16,602 acres being deferred from the sale pending completion of the Nine-plan Programmatic Greater Sage Grouse Land Use Plan Amendment and revision of the Buffalo, Lander, and Bighorn Basin RMPs.

¹ RMW does not state what this violation of CEQ Guidance would be; we believe it to be "NEPA's hard look requirement" and have answered this protest under this assumption. We also note that guidance is not a binding regulation.

After completing the WY IM2012-10 leasing screen, the BLM determined that one of the 29 protested parcels (WY1402-18) would be offered in whole because it did not meet the screening criteria and did not present any other resource conflicts. The remaining 28 parcels were partially deferred, and those portions of the parcels not deferred were analyzed in the leasing EAs. Of these 28 partial parcels, 14 are outside of the delineated Core Area habitat (CAHs) boundaries. At the discretion of the BLM Wyoming State Director, 10 parcels with acreage within Core Areas were deferred from leasing until completion of the 9-plan sage grouse amendment and revision of the Buffalo, Lander, and Bighorn Basin RMPs. Ten of the 29 protested parcels are located within Core Area Habitats (CAH) and the leasing screen effort removed the remaining acreage within CAHs from 18 parcels. Finally, parcel WY1402-114 (140 in the EA) is not located within CAHs. (See Table 1 attached to this protest response for pertinent information regarding the results of the SGCAH screening process for each of the protested parcels.)

Protest Submittal:

Before we examine the arguments raised by RMW, we must address the circumstances surrounding RMW's protest submittal.

The Sale Notice describes the manner in which protests will be considered, and requires (at page viii) that any submittal of a protest:

[...] must state the interest of the protesting party in the matter.

The Sale Notice is just that, a notice to the public that certain parcels have been nominated for sale. The provisions of the sale notice do not govern the process that the BLM must undertake to lease parcels of land, nor the provisions of how interested members of the public may bring challenge, nor what the standards are for the BLM to respond to such challenges.

The BLM's regulations addressing protests of competitive oil and gas lease sales (at 43 CFR §3120.1-3)² do not describe any limitations as to who may protest inclusion of lands in a sale notice. However, in *Wyoming Outdoor Council et al.*, 156 IBLA 379, 382 (2000) the IBLA held that this regulation is not dispositive in determining the right to protest the sale of parcels:

However, we disagree with BLM that 43 CFR 3120.1-3 controls here in. We find that the purpose of that regulation was to insure that competitive oil and gas lease sales were not delayed by the protest and appeal process. In this case, the August 7, 2001, sale proceeded following BLM's deletion of 19 parcels from the sale.

Again, the regulation uses an improper term when it states that the Assistant Secretary may suspend a lease sale after reviewing the reasons for an "appeal." "Protest" is the proper term because, absent action by BLM, there can be no appeal. See Mesa Sand and Rock, Inc., 124

² § 3120.1-3 Protests and appeals.

No action pursuant to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale. The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale. Only the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good and just cause after reviewing the reason(s) for an appeal

IBLA 243, 245 (1994). BLM's issuance of a Notice of Competitive Lease Sale would not be an appealable action. As we have stated, the purpose of providing notice is to allow interested parties to provide input to BLM regarding proposed action and to allow BLM to address those objections prior to consideration by this Board. California Association of Four-Wheel Drive Clubs, 38 IBLA 383, 385 (1977); see Notice of Competitive Oil and Gas Lease Sale, August 7, 2001, at vii. Denial by the authorized officer of a protest to the inclusion of a parcel or parcels in a sale notice would, as in this case, be a decision appealable to this Board. See Steinheimer Trust, 87 IBLA 308, 310 (1985); Sierra Club, 87 IBLA 1, 6 (1985). On the other hand, a decision by the Assistant Secretary to suspend a lease sale would not be appealable to this Board. See Cook Inlet Region, Inc., 132 IBLA 186, 188-89 (1995); Blue Star, Inc., 41 IBLA 333, 335 (1979). (emphasis added.)

In *Wyoming Outdoor Council*, 153 IBLA 379, 384 (2000), the Board held that “Thus, while an individual or a group has the right under 43 C.F.R. § 4.450-2 to protest all parcels offered at a lease sale, dismissal of such a protest does not guarantee the right to appeal the dismissal decision as to all parcels.”

43 C.F.R. § 4.450-2 Protests.

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

The Board in *Wyoming Outdoor Council*, 153 IBLA 379, 384, recognized that while entities may protest the inclusion of parcels in an oil and gas lease sale, a protestor must show that it has standing for any subsequent appeal of the protest resolution decision.

Here, RMW did not participate or provide any comments on the leasing EAs. Consistent with Washington Office (WO) IM 2010-117, and as detailed within the EAs (HPD page 5 and WRBBD page 5-2), the BLM initiated public participation when the District Offices entered the EAs into their NEPA tracking databases in May 2013. The BLM issued a news release on July 30, 2013, notifying the public that the EAs were posted on the BLM Wyoming website for a 30-day public comment period, and sent letters to split-estate landowners. Three comment letters were received on the HPD EA and five on the WRBBD EA. RMW failed to participate or provide any comments on the two February 2014 Lease Sale EAs.

WO IM 2010-117 includes the following direction:

G. Public Notification of Lease Sale

Field or state offices will post the NEPA compliance documentation on the appropriate website and make the documentation available in the public room(s). The state office will post the final sale notice at least 90 days prior to the sale date. Each sale notice will include a link to the NEPA compliance documentation.

H. Lease Sale Parcel Protests

A 30-day protest period will begin the day the sale notice is posted, as it has in the past. The earlier posting of the sale notice will provide the state and field offices with at least 60 days to review protests before the oil and gas lease sale. The process outlined in this IM—which includes site-specific parcel analysis and increased public participation—will help identify, address, and resolve most issues before the lease sale. When possible, state offices should attempt to resolve protests before the sale of the protested parcels. Protests that are not

resolved do not prevent bidding on protested parcels at the auction. Protest decisions should advise the protesting parties of their right to appeal denied protests to the Interior Board of Land Appeals (IBLA), but that appeals will not automatically halt the auction or issuance of leases. (emphasis added)

Clearly the intent of this policy is to identify, address and resolve issues associated with including particular parcels in the lease sale, and to provide 60 days to do so. It does not contemplate allowing an entity that failed to participate in the underlying NEPA process to raise new issues in last-minute protests. Nor does the policy prevent BLM from denying, dismissing, or granting a protest after considering the issues that have been raised in any protest.

Here, and similar to our decision on protests to the May 2013 BLM Wyoming competitive oil and gas lease sale, we find that RMW has failed to show that it is an "interested party" because it has failed to participate in the NEPA process, and its protest is consequently dismissed. *See Wyoming Outdoor Council*, 153 IBLA 379, 384. As the IBLA recently held:

"Where BLM gives notice to the public on its website of its intent to prepare an Environmental Assessment, an appellant who has not taken an action that is the subject of the decision on appeal, is not the object of that decision, and does not attempt to become involved in BLM's decision making process by proffering its views and comments, or by timely requesting an opportunity to participate, is not a party to the case and its appeal is properly dismissed for lack of standing." *WildEarth Guardians*, 183 IBLA 165, Feb 12, 2013.

However, while not conceding that RMW has standing to protest the decision, we have addressed the issues it raises and have also modified the leasing EAs to address RMW's protest argument (the modification can found in an addendum attached to each EAs' FONSI/DR).

1. The State Director has found on numerous occasions³, and the Board held in *Biodiversity Conservation Alliance*, 183 IBLA 97, 120-121(2013), that analysis of "No leasing in Core Areas" is embedded in the No Leasing alternative⁴. RMW has provided no new significant information to change our previous decisions.

The EAs describe the potential impacts to sage grouse and their habitats on these parcels (see HPD WY-040- EA13-129 at Table 1, pages 36-37 and 55-56, and Appendix C and WRBBD WY-050-EA-13-81 at pages 1-2, and 3-18 through 3-20, and Appendix C). WRBBD also considered an alternative that would defer all parcels within core area habitats but dismissed it from further analysis as it is imbedded within the No Action alternative that is analyzed in detail. As decided in *Biodiversity Conservation Alliance*, 183 IBLA 97, 120-121(2013), this is adequate and complies with NEPA.

Offering and subsequently issuing leases is an implementation decision made in accordance with the applicable RMPs. Of the parcels nominated and reviewed for the February 2014 Sale, 63 percent of the reviewed lease parcel acreage was deferred, primarily as a result of the BLM Wyoming Greater sage-grouse screen. We believe the EA and RMP EISs to which they are tiered provide adequate disclosure and analysis for the decision-maker regarding the potential impacts to sage-grouse and their habitats from leasing the protested parcels.

³ See Protest May 2012, August 2012, November 2012, etc

⁴ See WRBBD EA page 2-1 (Alt 1), and HD EA page 15 (Alt A)

BLM Wyoming's Greater sage-grouse screening process provides an objective, reasonable means for the BLM to facilitate cautious decision-making under the current RMPs and during preparation of the sage-grouse RMP amendments and plan revisions. We find that adherence to the screening process described in the applicable BLM Wyoming policy will ensure a range of reasonable alternatives are available for the Authorized Officer to select from. As the Board ruled in *Biodiversity Conservation Alliance*, 183 IBLA 97, the appellant "effectively seeks a blanket preclusion of any leasing and development in Core Areas. However, BLM's interim management policy does not provide for a blanket preclusion in development areas, and it is unclear whether such a preclusion would be applicable even were the sage-grouse to be formally designated a threatened or endangered species. Appellants' position appears to reflect little more than a difference of opinion regarding the proper management of the sage-grouse, which does not establish a NEPA violation." 183 IBLA 97 at 121. Further, "BLM is not required to await a further decision regarding the amendment or revision of an existing land use plan, before taking an action that comports with the existing land use plan" and "nothing in NEPA or its implementing regulations requires BLM to postpone or deny a proposed action that is covered by the EIS for the current land use plan, in order to preserve alternatives during the course of preparing a new land use plan and EIS." *Powder River Basin Resource Council and Biodiversity Conservation Alliance*, 180 IBLA I, 17 (2010).

Offering these parcels conforms with the applicable RMPs, complies with current BLM policy and a rational basis exists for offering them while the RMP amendments and revisions are ongoing. For the reasons described above, and consistent with the IBLA decision in *Biodiversity Conservation Alliance*, we find no violation of Council of Environmental Quality regulations by offering these parcels for sale.

2. A review of the data indicates eight of the protested parcels (125, 126, 127, 130, 135, 136, 151 and 159) are not located within the North East Zone that is the subject of the Taylor (2012) report, and are dismissed from any additional consideration under this point of protest.⁵ Of the remaining parcels, eight are located in the Newcastle field office, and 12 are located in the Casper field office. The Casper RMP (2008) acknowledges the potential impacts to wildlife (raptors) from West Nile virus (WNV). The Newcastle RMP (2000) predates the issues associated with WNV and potential impacts of the virus therefore are not discussed. However, on page 50 of the HPD EA, the potential impacts from WNV are disclosed and discussed.

The issues surrounding WNV are multi-faceted. Many actions considered necessary for addressing WNV and other potential impacts to state wide populations of sage grouse are being considered in the Draft RMP amendments and/or revisions that are currently being prepared. To further clarify how the BLM has analyzed WNV issues and the Population Viability Analysis (PVA) report (Taylor et al., 2012), additional information has been appended to the February 2014 lease sale EAs. Specific information pertaining to sage grouse and WNV has been incorporated by reference where appropriate into both HPD and WRBBD EAs. These are listed in an Addendum to the signed FONSI/DR records.

The analysis contained in the PVA report assumed specific development scenarios and specific impacts to Greater Sage-grouse lek attendance from a theoretical "outbreak" of WNV which would result in a loss of population viability. While the impact from WNV can be described in general terms, the potential for, and severity of any future outbreak cannot be predicted with

⁵ These parcels are located within the Lander and Cody field offices.

any certainty, and as such, cannot be quantified in a NEPA analysis. Further, at the time of leasing, BLM has no information about whether or how a particular lease may be developed.

Specifically, not all oil and gas development results in large volumes of produced water that would necessitate intensive planning and oversight, with or without WNV occurrences. Coal-bed methane produced water evaporation ponds have been linked to outbreaks of WNV.⁶ But, the authors of the PVA report “concluded that energy development alone would not result in extirpation of the sage-grouse population if all other environmental factors remained favorable. However, energy development combined with the threat of WNV compromises this small population. Intensive population monitoring combined with large scale habitat reclamation/restoration and reducing the WNV threat (man-made water sources) are recommended.” (Quoted from: Northeast WY Sage-Grouse (Draft) Conservation Plan Addendum dated October 20, 2013).

The PVA report also indicates that populations in the Powder River Basin (PRB) remain viable as of the time of the publication. The study further maintains that efforts to bolster populations near and within the basin itself through restoration can help to maintain or improve the remaining viability of these local populations. The BLM is operating with increased focus on accelerated reclamation and habitat restoration projects alike. The High Plains District has embarked on a new Healthy Lands focal area called Powder River Restoration and has further supported the development of a Candidate Conservation Agreement covering five counties of northeastern Wyoming. The agreement is coupled with a Candidate Conservation Agreement with Assurances and a Conservation Agreement. The intended outcome of all these agreements and collaborative conservation actions are to further enhance the remaining viability of populations in the basin and throughout NE Wyoming.

There are several on-going studies and strategies for limiting the potential for WNV outbreaks in north east Wyoming because the severe impacts of a widespread outbreak are of great concern to the BLM and its partners. The Taylor et al. (2012) report reinforces the concept that robust strategies are necessary for healthy sage-grouse populations that require large and predominantly un-fragmented landscape-scale habitats. BLM Wyoming continues to work with industry partners, WGFD, private landowners and the U.S. Fish and Wildlife Service to maintain and manage for the long-term conservation and restoration of sage-grouse habitats and populations in the PRB.

WY IM 2012-019 recognized the need for overarching policy direction for those activities⁷ that can contribute to occurrences and/or outbreaks of WNV. Policy direction specific to WNV would be applicable at the time development was proposed, should the subject parcels be offered and sold.

⁶ http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/SG_NORTHEAST_DRAFT0004678.pdf
http://www.fws.gov/home/feature/2006/WHB06_08sagegrouse.pdf

⁷ This Instruction Memorandum (IM) provides guidance to Bureau of Land Management Wyoming (BLM WY) Field Offices (FOs) regarding management consideration of Greater Sage-Grouse habitats for proposed activities until resource management planning updates are completed. This guidance is in place of direction provided in Washington Office (WO) IM No. 2012-043 concerning interim management policies and procedures for Greater Sage-Grouse. Specifically, this IM addresses all BLM WY programs and provides all necessary interim program direction consistent with WO IM No. 2012-043.

WY IM 2012-019 Policy Statement 7: West Nile Virus

Artificial water impoundments will be managed to the extent of BLM's authority for the prevention and/or spread of West Nile virus (WNV) where the virus poses a threat to sage-grouse. This may include but is not limited to: (a) the use of larvicides and adulticides to treat waterbodies; (b) overbuilding ponds to create non-vegetated, muddy shorelines; (c) building steep shorelines to reduce shallow water and emergent aquatic vegetation; (d) maintaining the water level below rooted vegetation; (e) avoiding flooding terrestrial vegetation in flat terrain or low lying areas; (f) constructing dams or impoundments that restrict seepage or overflow; (g) lining the channel where discharge water flows into the pond with crushed rock, or use a horizontal pipe to discharge inflow directly into existing open water; (h) lining the overflow spillway with crushed rock and construct the spillway with steep sides to preclude the accumulation of shallow water and vegetation; and (i) restricting access of ponds to livestock and wildlife (Doherty 2007).

Field Offices should consider alternate means to manage produced waters that could present additional vectors for WNV. Such remedies may include re-injection under an approved Underground Injection Control (UIC) permit, transfer to single/centralized facility, etc.

Policy Statement 7 regarding WNV does not apply to naturally occurring waters. Impoundments for wildlife and/or livestock use should be designed to reduce the potential to produce vectors for WNV where the virus may pose a threat to sage-grouse.

To summarize the addendum to the EAs, whether a parcel will be sold and ultimately developed is uncertain before the lease sale. Assuming a parcel is sold, whether there will be a need to manage for produced water resulting from development is even more uncertain until the BLM receives a specific development proposal. If development is proposed, all available information will be considered during the NEPA process in accordance with WY IM 2012-019 and Onshore Order #7.

The PVA report included conclusions based on a modeled analysis using a theoretical outbreak of WNV. While the BLM has put in place measures regarding the management of produced water intended to reduce the possibility of a WNV outbreak, the BLM has no control over whether such an outbreak might occur, how severe outbreak an could be, nor do we have the ability to predict when or where such an outbreak would occur. Accordingly, we find that these parcels were appropriately offered.

3. "These parcels contain sage-grouse leks, nesting habitat, breeding habitat, wintering habitat and brood-rearing habitat. BLM has failed to conduct parcel-by-parcel NEPA analysis to determine the true impacts of leasing."

The protested parcels tier to the existing RMPs which identify fluid mineral leasing and development as one of the multiple-uses allowed and the decision to offer these parcels conform with the appropriate Draft RMP EIS revision and/or amendment documents, including any cumulative impact analysis. For this particular sale, the parcels were subjected to field review

where access was allowable⁸, and where field office staff were not familiar with the resources on and around the parcels under review to gather any new information and/or confirm existing information. Furthermore, we refer RMW to Chapters 3 and 4, Appendix B, C, D and E of the HPD EA, and Chapters 3 and 4, Appendix B, C, and D of the WRBBD EA for documentation of parcel review. During the draft EAs' 30-day public comment period, the BLM also requested additional information. The EAs adequately, and reasonably, evaluated the potential resources located on these parcels and the potential impacts from leasing the proposed parcels using best available data.

4. We refer RMW to the WRBBD EA page 3-20 and 4-42, and to the HPD EA page 32, Figure 3.4, for a chart that illustrates the amount of new acreage leased in Core Areas beginning prior to the implementation of BLM Wyoming Greater sage-grouse strategy. Since the EAs were drafted, this figure has been updated to reflect data through December 13, 2013; the EA has been updated with this information. WY IM 2012-019 provides that parcels may not be offered for sale where large continuous blocks (11 square miles) exist, unless the parcel is located within a Federal Oil and Gas Unit that was established prior to 2009. The status of existing leases (remaining term) is also reviewed in making the determination of whether a parcel should be offered, deferred, or offered/deferred in part.

In consideration of the circumstances of this protest, 183 IBLA 165 (2013), and similar to a previous protest decision of the May 2013 lease sale, this protest is dismissed.

DECISION: Regarding those parcels which have been protested by RMW, WY1402-17, 18, 19, 20, 28, 29, 30, 31, 32, 33, 34, 35, 74, 87, 88, 89, 93, 102, 103, 107, 114, 125, 126, 127, 130, 135, 136, 151 and 159 the protest is dismissed and all parcels will be offered for sale at the February 2014 Competitive Lease Sale.

Appeal Information

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 (copy attached).

If an appeal is taken, your notice of appeal must be filed in this office 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 on the attached document. Copies of the notice of appeal and petition for a stay must be submitted to the Interior Board of Land Appeals and the appropriate Office of the Solicitor (see 43 CFR §4.413) at the same time the original documents are filed with this office. Copy of the notice of appeal and petition for a stay must also be submitted to each adversely affected party named in this decision 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.

⁸ See WRBBD EA (version2) page 1-5, and HPD EA (version 2) page 10

Standards for Obtaining a Stay

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

- (1) The relative harm to parties if the stay is granted or denied,
- (2) The likelihood of the protesters' success on the merits,
- (3) The likelihood of the immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.


Larry Claypool
Deputy State Director,
Minerals and Lands

2 Attachments

- 1 – Appeal Form (1842-1)
- 2 – Table 1

cc:

High Plains and Wind River Bighorn Basin District Offices
HPD/WRBBD Field Offices
DSD (920)
DSD (930)
Acting (923)
S. Moberley (923)
M.Gamper (921) e-mail of final and a letterhead copy

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, 5353 Yellowstone Road, Cheyenne, WY 82009 OR
Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003

WITH COPY TO SOLICITOR...

U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region
755 Parfet Street, Suite 151, Lakewood, CO 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).

WITH COPY TO SOLICITOR.....

U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region
755 Parfet Street, Suite 151, Lakewood, CO 80215

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.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, 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 appellant'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.

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.

PARCEL NUMB	Final PN	Field Office	In Core	11sq. Miles	Screen: D_P_O	OccLek 0.6m	Comments	Less Than 640	640 Deferral Remnd	In Unit 2009	Acres Deferred	Offer Acres	Final RCMND
18	18	Newcastle	Yes	No	OFFER	no		No	no	No	0	1600	Offer
17	17	Newcastle	Yes	No	OFFER	no		Yes	Partial	No	840	1080	Partial
19	19	Newcastle	Yes	No	OFFER	Yes		Yes	Partial	No	520.02	1080.86	Partial
20	20	Newcastle	Yes	No	PARTIAL	Yes		Yes	Partial	No	440	1122.32	Partial
31	28	Newcastle	Yes	No	OFFER	no		Yes	Partial	No	360	1720	Partial
33	29	Newcastle	Yes	No	OFFER	no		Yes	Partial	No	639.92	1000	Partial
35	30	Casper	Yes	Yes	PARTIAL	no	Remaining acreage out of core	no	na	No	1360	628.32	Partial
36	31	Casper	Yes	Yes	PARTIAL	no	Remaining acreage out of core	no	na	No	1677.86	224.08	Partial
37	32	Newcastle	Yes	Yes	PARTIAL	no		Yes	Partial	No	580	1273.92	Partial
38	33	Casper	Yes	No	OFFER	no		Yes	Partial	No	1080	945.43	Partial
39	34	Casper	Yes	No	PARTIAL	Yes	LEK	Yes	Partial	No	960	720	Partial
40	35	Newcastle	Yes	No	PARTIAL	Yes	lek	Yes	Partial	No	480	1640	Partial
87	74	Casper	Yes	No	PARTIAL	Yes	lek only	no	na	No	200	1080.57	Partial
102	87	Casper	Yes	Yes	PARTIAL	no	Remainder not in Core	no	na	No	239.61	720.28	Partial
104	88	Casper	Yes	Yes	PARTIAL	no	Remainder not in core	no	na	No	240	1480	Partial
106	89	Casper	Yes	Yes	PARTIAL	no	Remainder not	no	na	No	200	1120	Partial

							in core						
112	93	Casper	Yes	Yes	PARTIAL	no	Remainder not in core	no	na	No	160	1960	Partial
122	102	Casper	Yes	Yes	PARTIAL	no	Remainder not in core	no	na	No	200	1920	Partial
124	103	Casper	Yes	Yes	PARTIAL	no		no	na	No	200	2040	Partial
131	107	Casper	Yes	No	OFFER	no	s13:w2nw private minerals (80 acres) deleted/included in deferred acreage calc	Yes	Partial	No	185	400	Partial
170	125	Lander	Yes	Yes	PARTIAL	no	remainder outside of core	No	na	No	120	1760	Partial
171	126	Lander	Yes	Yes	PARTIAL	no	remainder outside of core.	No	na	No	1764.44	200	Partial
172	127	Lander	Yes	Yes	PARTIAL	no	remainder outside of core.	No	na	No	1240	680	Partial
175	130	Lander	Yes	Yes	PARTIAL	no	remainder outside of core.	Yes	Partial	No	560	720	Partial
180	135	Lander	Yes	Yes	PARTIAL	no	remainder outside of core.	No	na	No	640	1000	Partial
181	136	Lander	Yes	Yes	PARTIAL	no	remainder outside of core.	No	na	No	640	960	Partial
205	151	Lander	Yes	Yes	PARTIAL	no	Remainder not in core	No	NA	No	120	782.74	Partial
225	159	Cody	Yes	No	PARTIAL	no	mis-mapped; fixed	no	na	No	955.75	1532.96	Partial