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 Protest

FEB 10 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Wyoming Outdoor Council, et al.
262 Lincoln Street
Lander, WY 82520-2848

Greater Yellowstone Coalition, et al.
1285 Sheridan Ave., Suite 215
Cody, WY 82414

DECISION

PROTESTS DISMISSED
ALL PROTESTED PARCELS WILL BE OFFERED FOR SALE

On December 12, 2013, the Bureau of Land Management (BLM), Wyoming (WY) State Office (WSO), timely received two protests to the offering of particular parcels at the February 2014 lease sale. Six parcels are protested. Greater Yellowstone Coalition (GYC) filed a protest on behalf of GYC, Wyoming Outdoor Council (WOC), Wyoming Wilderness Association (WWA), and the Clark Resource Council (GYC et al.) to the offering of parcels WY1402-156, 157, 158, 159 and 160. Wyoming Outdoor Council, on behalf of WOC and Wyoming Wilderness Association (WOC et al.) filed a second protest, also received on December 12, 2013, to parcel WY 1402-118. All parcels are located within the Bighorn District and are addressed in the Wind River/Bighorn River Basin District (WRBBD) National Environmental Policy Act (NEPA) analysis discussed below.

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 mineral estate located in the BLM WY High Plains (HPD) and WRBBD 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 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. 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 (EA) including RMP amendments 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 EAs.

Parcels that pass the criteria outlined in WY IM 2012-019 are forwarded to the District and Field Office staff for 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 (WO) 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).

Protest Submittal:
Before we examine the arguments raised by WOC et al., we must address the circumstances surrounding the 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 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 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)[1] 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.*

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[1] *§ 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

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 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 [a] 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,atvii. 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.

Consistent with WO IM 2010-117, and as detailed within the EAs (HPD page 5 and WRBBD page 5-2), the BLM initiated public participation when each District Office 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 WY 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.

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 the BLM from taking action to deny, dismiss, or grant a protest after considering the issues that have been raised in any protest.

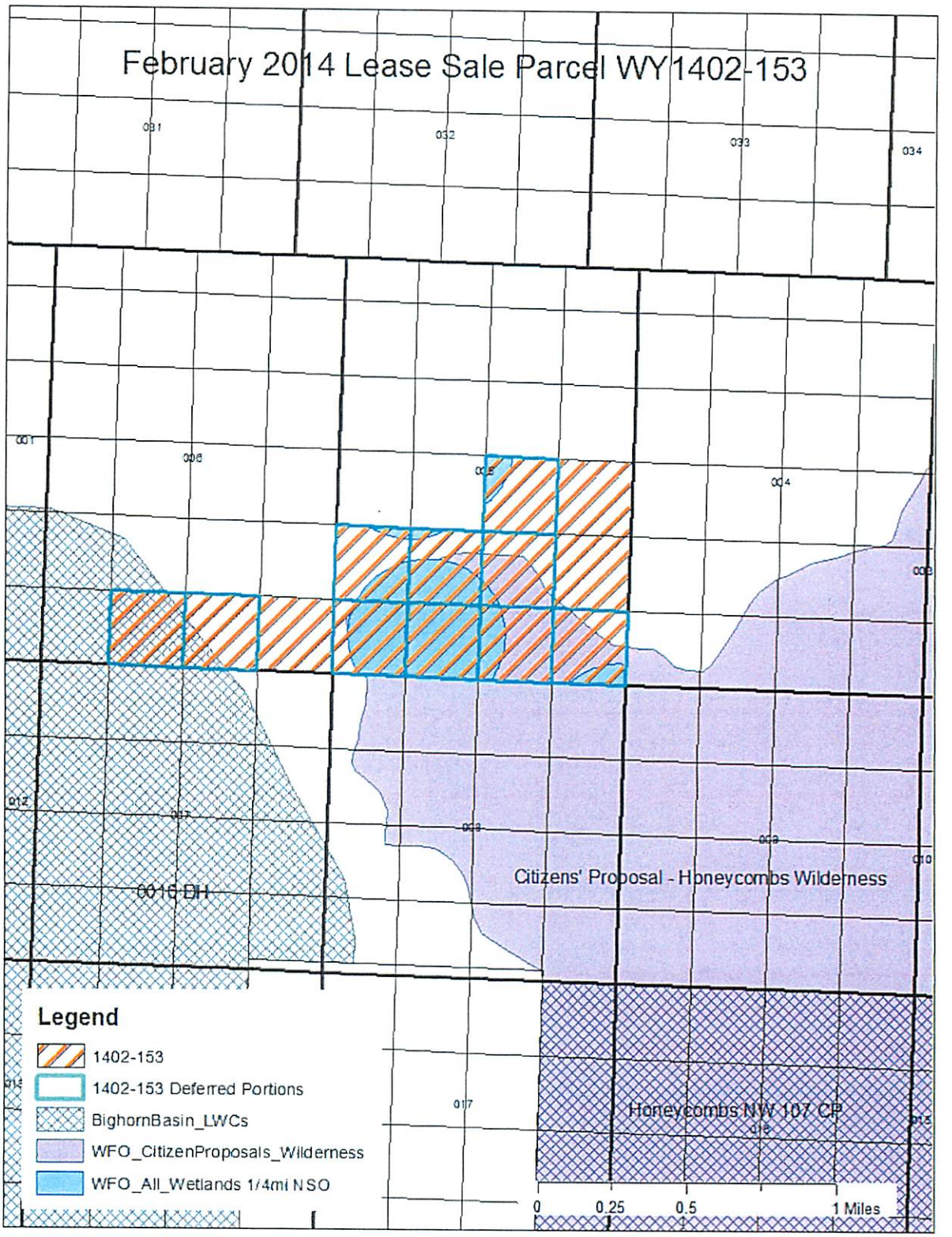
As IBLA recently held "Where BLM gives notice to the public on its website of its intent to prepare an Environmental Assessment, an appellant who has not taken an action that is the subject of the decision on appeal, is not the object of that decision, and does not attempt to become involved in BLM's 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." *Wild Earth Guardians*, 183 IBLA 165, Feb 12, 2013. WOC and GYC have both participated in the NEPA process by submitting comments on the February 2014 Lease Sale EA.

ISSUES- Wyoming Outdoor Council and Wyoming Wilderness Association

1. We protest the sale of parcel WY 1402-118 (WY 1402-153 in the EA); this parcel is within the boundaries for the Honeycombs Citizens' Wilderness Proposal. This parcel is implicated by new wilderness quality data presented to the BLM by Wyoming Wilderness Association in a 2012 inventory. Until the data from this inventory is fully analyzed by BLM, parcels implicated by this new information...should not be offered for sale.

BLM Response:

As noted in the response to comments provided by the WRBBD, (Appendix F, Comment number 23), parcel 153 is recommended to be partially deferred (400 acres) due to the analysis of Lands With Wilderness Characteristics (LWC) inventory record 0016 DH (WY-010-221E) Bighorn Basin RMP Record #6258 under Alternative B. Discussions with FO staff during protest response indicate that this parcel is also deferred for issues related to draft RMP management actions in the preferred alternative which requires a ¼ mile water resources related No Surface Occupancy stipulation (Management Action 4037); the comment response and documentation associated within this parcel in the EA and Appendices has been amended to reflect this oversight (See WRBBD EA page 4-39 and 4-40, Appendix B un-paginated page 4, Appendix D un-paginated page 9, and Appendix F, comment 23). Further, it was determined during protest review that while the Worland Field Office does have record of the Honeycomb Citizen Proposed Wilderness (CWP), this was not the reason for deferral; however, the area already recommended for deferral overlaps the affected areas of the CWP. As the remainder of this parcel is located outside of these areas, we find the WRBBD appropriately deferred a portion of this parcel and recommends that the remainder be offered for sale. Should the subject parcel be sold and development proposed, BLM will comply with Manual 6310 and our requirements under NEPA. BLM-WY has provided a map showing the area proposed for deferral and the area contained within the subject Honeycombs Citizens Proposed Wilderness area (See Map 1)



Map 1: Parcel 1402-153 Proposed Lease Sale deferral

ISSUES-Greater Yellowstone Coalition, Wyoming Outdoor Council, Wyoming Wilderness Association, and Clark Resource Council (GYC et al.)

1. We protest the sale of lease parcels WY-1402-156, WY-1402-157, WY-1402-158, WY-1402-159, and WY-1402-160 totaling 6389.25 acres. Due to the proximity of these agency-managed surface sections within two proposed two proposed Areas of Critical Environmental Concerns (ACEC's) within the Bighorn Basin Draft Resource Management Plan in the Cody Field Office and/or would negatively impact important habitat for greater sage grouse, long-billed curlew and mountain plover. It is our collective opinion that strong conservation prescriptions for this landscape are warranted and oil and gas development should be avoided. To summarize, our points of disagreement include: lease parcels should not be sold within areas holding pending land conservation designation within a Draft RMP; lease parcels should not be sold that pose a direct negative impact to special status species; and the BLM's oil and gas leasing decisions and subsequent stipulations should reflect Best Management Practices prior to and during the process of issuing a lease sale. (Protest, page 3)
   - Parcels 158, 159 and 160 are located in two proposed ACECs. (Protest, page 4)
   - The sagebrush landscape that contains the proposed parcels 156, 157, 158, 159, and 160 hosts at least a dozen sensitive species of biological concern (Protest, pages 6-7).
   - According to BLM's Map 32 "Biological Resources-Special Status Species" included as part of the Bighorn Basin Draft RMP, the vast majority of 160 and part of 159 are situated within great sage grouse key habitat areas. (Protest, page 7)
   - The Wyoming Game and Fish Department' "Wyoming Sage Grouse Core Management Area Map Version 3, implemented on June 29, 2010", also includes core habitat in parcels 158, 159, and 160. (Protest7-8)

2. The leasing of parcels WY 1402-156, 157, 158, 159 and 160 and any subsequent drilling activity would likely directly impact the nesting fledging success of ...golden eagle nests-a direct violation of the "disturb" clause of said act. It is also noteworthy that there are no stipulations attached to these protested parcels related to golden eagle/raptor nest protection. (Protest, page 8)

3. The 0.25 mile lek buffer that is delineated as a stipulation with parcel WY-1402-159 in the February 11, 2014 Notice of Competitive Oil and Gas Lease Sale does not meet Best Management Practices. In the event that the BLM were to follow the expertise of its own National Technical Team, which represent the best available science on sage grouse conservation, the protested parcels would need to be abandoned for lease sale. A 4-mile No Surface Occupancy buffer encompasses these parcels and this stipulation should be implemented to protect priority greater sage-grouse habitat. (Protest, page 9-10)

BLM Response:

1. We understand that GYC et al. disagrees with the BLM decision to offer these parcels for sale. However, mere disagreement is not enough to sway the decision before us. As has been explained in past protest responses, the IBLA has noted that "a difference of opinion regarding the proper management of the sage-grouse . . . does not establish a NEPA violation." 183 IBLA 97 at 121.

   The WSO has reviewed the record and we agree that portions of parcels 158 and 159 (preliminary parcel numbers 223 and 225) are located within the two subject ACECs as identified by GYC and WOC et al. We have also verified that all portions which intersect the subject ACECs are recommended for deferral pending completion of the RMP revisions (see Appendix A of the

WRBBD EA). That portion of parcel 159 (parcel 225 in the EA) located within in delineated Greater sage-grouse Core Area habitat was also deferred under WY IM 2012-019. These deferrals will remain in effect until the NEPA analysis being undertaken in the Bighorn Basin RMP revision process is completed. As the remaining portion of these parcels fall outside of areas considered to be in potential conflict with the RMP revision process, they are appropriately offered for sale.

Parcels 158 and 160 (parcels 223 and 230, respectively, in the EA), are not located in Greater sage-grouse Core Area so any protest to this effect is dismissed from detailed review. Parcels 158, 159 and 160 are stipulated with Timing Limitations (TLS) for the protection of Greater sage-grouse, Raptors, and Long Billed curlew and/or Mountain Plovers. The three listed parcels are also stipulated with a Controlled Surface Use for the protection of paleontological resources and another for Endangered Species and Special Status Species (see Lease Stipulation 2 described on page 54 of the February 2014 Competitive Lease Sale book). As well, Lease Notice number 3 which is specific to sage grouse is also attached to all parcels offered for sale (February 2014 Competitive Lease Sale book, page 50).

Lease Stipulation 2 will allow the BLM to determine the presence of endangered species and/or special status species prior to development should the subject parcels be sold, and may modify operations accordingly. The appropriate level of NEPA analysis will occur prior to actual development.

2. A review of our records confirms that none of the subject parcels (156, 157, 158, 159 and 160) contain active golden eagle nests, but as noted above, parcels158, 159 and 160 include a TLS for the protection of raptors to protect known and active nests. If the parcels are sold and development proposed, all operations would have to comply with all appropriate regulatory requirements which include the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act (See Appendix A of the WRBBD EA). The base RMP provides management actions and mitigation measures for minimizing impacts to Bald and/or Golden Eagles, raptors, and migratory birds.

3. It must be noted that stipulations are not best management practices. Best management practices are generally included as Conditions of Approval to Applications for Permit to Drill and are identified through NEPA analysis to minimize or avoid site-specific impacts associated with proposed construction, drilling and/or operations. Stipulations modify the actual terms of the lease contract. The application of a 0.25-mile No Surface Occupancy stipulation to parcels outside of designated Greater sage-grouse Core Areas is in accord with the existing RMPs and multiple BLM policies, including the State of Wyoming Executive Order implementing the Core Area strategy. The BLM has maintained adequate "decision space" through the lease sale screening process for all alternatives being considered in the Bighorn RMP revision process and GYC has not provided any additional information, which would necessitate a different determination.

In consideration of the circumstances of this protest this protest is dismissed.

DECISION: Regarding those parcels which have been protested by GYC et al. and WOC et al., WYW1402-156, 157, 158, 159, 160, and 118, the protests are 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.

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.

You will find attached to this decision a "Competitive Oil and Gas Lease Sale Results" which contains a list of persons who have purchased the protested parcels at the August 2010 sale and are, therefore, adverse parties who must be served with any pleadings.

for Michael G. Valle

Larry Claypool
Deputy State Director,
Minerals and Lands

Attachment

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