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 (921Mistarka)
February 2009 Protests

NOV 15 2010

CERTIFIED - RETURN RECEIPT REQUESTED

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DECISION
FEBRUARY 2009 OIL AND GAS SALE PROTEST OF 145 PARCELS
PROTESTS DISMISSED IN PART
8 PARCELS DEFERRED PRIOR TO SALE
32 LEASE OFFERS DEFERRED

We received 7 protests to the offering of all 145 parcels on the February 3, 2009 competitive oil and gas lease sale located in the Bureau of Land Management (BLM) Wyoming State Office (WSO), Buffalo (BFO), Casper (CFO), Cody (CYFO), Kemmerer (KFO), Lander (LFO),

Newcastle (NFO), Rawlins (RFO), Rock Springs (RSFO) and Worland (WFO) Field Offices. Western Resource Advocates for National Audubon Society and Audubon Wyoming (referred to as Audubon); Theodore Roosevelt Conservation Partnership (TRCP); Center for Native Ecosystems and BCA (CNE); Biodiversity Conservation Alliance and Wyoming Outdoor Council (BCA), Wyoming Outdoor Council, The Wilderness Society, BCA, Greater Yellowstone Coalition and Natural Resources Defense Council (WOC), National Outdoor Leadership School and High Wild and Lonesome Horseback Adventuress LLC (NOLS) and Trout Unlimited (TU) filed protests to this competitive oil and gas lease sale. The State Director elected to include all but 8 of the protested parcels in the competitive sale while the merits of the protests are considered.

DECISION:
The following 32 parcels will be deferred based on the information contained in the text within the Discussion section as well as the information disclosed in the Environmental Assessments (EAs) prepared by each BLM WY Field Office entitled "Previously Sold Lease Parcels EA" and screens for wilderness characteristics and Greater sage-grouse: WY-0902-011, 012, 020, 021, 023, 046, 049, 054, 063, 064, 065, 066, 067, 068, 071, 073, 075, 076, 078, 079, 082, 087, 098, 100, 101, 103, 104, 105, 113, 118, 127, and 128. Parcels 011, 012, 020, 021, 023, 068, 071, 073, 075, 076, 078, and 079 are being deferred to add an inadvertently missed NSO stipulation for Class I and II waters. Parcels 046, 049, 054, and 064 are within the Fort Union Formation in Johnson County, Wyoming and cannot be leased until BFO completes the RMP revision. Parcels 063, 065, 066, and 067 are deferred pending completion of a RMP amendment. Parcels 098, 100, 101, 103, 104, 105, 113, and 118 are deferred pending completion of RMP revisions. Parcels 078, 082, 087, 101, 127, and 128 did not pass the sage-grouse screening criteria are deferred. Parcels WY-0902-108, 109, 110, 111, 112, 124, 125, and 126 were removed from the competitive oil and gas sale before the sale. The remaining 105 parcels will be issued.

Discussion:

1. TRCP and BCA argue that oil and gas development has led to and will continue to lead to fragmented wildlife habitats. BCA argues all of the associated oil and gas activities will disrupt habitats, destroy nesting and brooding grounds, and disturb wildlife. Protesters argue these lands serve as quiet, serene places of natural beauty and provide excellent recreational opportunities. Oil and gas exploration has jeopardized recreational, cultural and biodiversity values making the public lands impossible for the public to use and enjoy.

TRCP, Audubon, and CNE argue that the BLM has not conducted site-specific analysis of leasing; that the leasing analysis done at the planning stage was only to decide whether lands should be open or closed to leasing. Protesters argue that the BLM incorrectly defers site-specific analysis to the project level or development stage. TRCP argues that the BLM must conduct site-specific National Environmental Policy Act (NEPA) analysis before leasing or only use the No Surface Occupancy (NSO) stipulation.

BLM Response: The BLM has the responsibility to manage the public lands in accordance with the Federal Lands Policy and Management Act (FLPMA). FLPMA requires the BLM to manage the public lands and resources under the concept of multiple use and sustained yield. Specifically, the concept of multiple use and sustained yield includes: (1) the lands and their various resource values are managed so they are utilized in the combination that best meets the present and future needs of the American people; (2) a combination of balanced and diverse resource uses taking into account the long-term needs of future generations for renewable and non-renewable resources including, but not limited to recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; (3) the use of some land for less than all of the resources; (4) harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration given to the relative values of the resource and not necessarily to the combination of uses that gives the greatest economic return or the greatest unit output; and (5) to make the most judicious use of the land for some or all of the resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions. The BLM Wyoming manages its oil and gas leasing program in accordance with FLPMA.

FLPMA requires the BLM to develop and maintain Resource Management Plans (RMP). During preparation of the RMP, and prior to issuing any oil and gas leases, the BLM performs an environmental analysis under NEPA which discloses anticipated impacts that can result from leasing and subsequent oil and gas development on the environment, including the public lands and its resources. As a result, the BLM develops appropriate mitigation and protection measures, such as lease stipulations, before the BLM issues any oil and gas lease. FLPMA does not require the BLM to analyze every aspect of a transaction to make sure any actions by the BLM will protect the long-term viability of the public lands. Nevertheless, the BLM has prepared an environmental assessment of the impacts of the lease sale and we disagree with the protesters' argument that the BLM has not performed sufficient NEPA analysis to disclose the potential impacts of oil and gas development before issuing an oil and gas lease.

According to the Tenth Circuit Court of Appeals, site-specific NEPA analysis at the leasing stage may not be possible absent concrete development proposals. Whether such site-specific analysis is required depends upon a fact-specific inquiry. Often, where environmental impacts remain unidentifiable until exploration can narrow the range of likely drilling sites, the Application for Permit to Drill (APD) may be the first useful point at which a site-specific environmental appraisal can be undertaken (*Park County Resource Council, Inc. v. U.S. Department of Agriculture*, 10th Cir., April 17, 1987). In addition, the Interior Board of Land Appeals (IBLA) has decided that, "the BLM is not required to undertake a site-specific environmental review prior to issuing an oil and gas lease when it previously analyzed the environmental consequences of leasing the land . . . ." (*Colorado Environmental Coalition*, et. al, IBLA 96-243, decided June 10, 1999). However, when site-specific impacts are reasonably foreseeable at the leasing stage, NEPA requires the analysis and disclosure of such reasonably foreseeable site-specific impacts. (*N.M ex rel. Richardson v. BLM*, 565 F.3d 683, 718-19 (10th Cir. 2009)). Although

certain site- specific impacts remain unforeseeable at this time, the analysis in the Previously Sold Lease Parcels EA provides additional disclosure and analysis of the environmental impacts associated with our decision to issue leases for these parcels.

2. BCA argues that the BLM has given rights to develop minerals on split estate lands without taking steps to fully protect the rights and interests of the surface owner. BCA further argues Wyoming's rural heritage and lifestyle are threatened by the sale of the subject lease parcels.

BLM Response: We disagree with appellant's arguments that the BLM does not take steps to protect the rights and interests of the surface owner on split-estate lands.

In the case of the subject split estate lands, the United States issued a patent, severing the surface estate from the mineral estate. This patent contains terms and conditions whereby the United States reserved the right to dispose of the minerals in accordance with the mineral land laws in force at the time of such disposal. Any person who has acquired from the United States the right to develop the mineral deposit, has the right to remove the minerals and occupy so much of the surface as may be required for all purposes reasonably incident to the development of the minerals.

The lands protested are available for oil and gas leasing in accordance with the existing applicable RMP. Decisions made in the applicable RMP Record of Decision (ROD) apply only to Federal lands, including lands where non-Federal surface overlies Federal mineral estate. However, the analysis conducted in the RMP Environmental Impact Statement (EIS) evaluated the effects that would occur in the entire area and its affected environment, regardless of land or mineral ownership (40 CFR 1502.15). The effects on non-Federal lands are included to provide a full disclosure of effects for the entire area. When the BLM analyzes the impacts to surface resources caused by drilling and production operations, the analysis includes impacts to both Federal and non-Federal surfaces.

Section 226(g) of the Mineral Leasing Act (MLA) provides that a lessee cannot engage in any surface-disturbing activities before review and approval of an APD. This includes environmental and technical reviews. Therefore, a surface owner's interests and use of the surface will not be affected until the conclusion of these reviews. Surface owners are invited to participate in the onsite pre-drill inspections where most of the information to conduct the environmental analysis is gathered. In this manner, the surface owner can participate in development of the surface-use plan, reclamation requirements, and conditions of approval (COAs).

Prior to performing any surface-disturbing activities, the mineral lessee is required to contact the surface owner and (1) secure written consent or a waiver from the surface owner in the form of a surface owner agreement, or (2) provide payment to the surface owner for damages to crops and tangible improvements; or (3) provide a bond for the benefit of the surface owner to obtain payment for damages to crops and tangible improvements (Section 9 of the Stock Raising

Homestead Act of December 29, 1916 (SRHA)). An APD cannot be considered complete or approved without proof that one of the three requirements listed above has been satisfied.

A notice of an APD must be posted in the local BLM office for at least 30 days prior to approval. This is another opportunity for the surface owner and/or the public to raise any concerns with the BLM regarding any split-estate or surface use issues.

Washington Office (WO) Instruction Memorandum (IM) No. 2003-131, Permitting Oil and Gas on Split Estate Lands and Guidance for Onshore Oil and Gas Order No. 1, was issued by the BLM Washington Office on April 2, 2003. This IM states that, in the case of split-estate lands, one bond (3104 Bond) is required for the oil and gas operations performed under 43 CFR 3160, and a second bond (3814 Bond) is required to satisfy Section 9 of the SRHA, if no agreement between the surface owner and lessee or operator can be reached (43 CFR 3814).

WO IM No. 2003-131 states the BLM will not consider an APD administratively or technically complete until the Federal lessee or the operator complies with Onshore Oil and Gas Order No. 1. Compliance with Onshore Oil and Gas Order No. 1 requires the Federal mineral lessee or its operator to enter into good-faith negotiations with the private surface owner to reach an agreement for the protection of surface resources and reclamation of the disturbed areas, or payment in lieu thereof, to compensate the surface owner for loss of crops and damages to tangible improvements, if any. The BLM will not approve an APD until the operator has complied with all of the requirements in Onshore Oil and Gas Order No. 1, as well as the requirements in WO IM No. 2003-131. It is not necessary to attach a lease stipulation that requires the lessee to comply with applicable laws, regulations, and the BLM policy.

As indicated above, the mineral lessee has a statutory right to develop the mineral estate. The BLM recognizes the surface owner also has interest in how development will occur. The BLM will not approve surface-disturbing activities prior to ensuring the surface owner has been invited to participate in the onsite inspection as described above.

Every member of the public is invited to participate in the development of the BLM Land Use Plans (LUP) and the associated EIS. During preparation of every LUP, the BLM has requested and responded to public comments specifically related to oil and gas leasing (Draft RMP/EIS, Dear Reader Letter). The decision to lease and allocate lands is made at the LUP stage.

The decision in all the applicable RMPs/EISs is that the subject protested lands are available for leasing. We find the field manager is not required by NEPA to involve the public during preparation of every lease sale EA (or Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA)), particularly when the proposed activity is in conformance with the current land use plan (H-1710-1, NEPA Handbook, Chapter IV.4.A, and Preparing Environmental Assessments).

The notice of sale can also be found at http://www.wy.blm.gov/minerals/minerals.html. The notice of sale has been on this website for every oil and gas lease sale we have conducted since

August 1998. For the past 15 years, approximately three weeks prior to the date of the sale, a press release is prepared and sent to the general media. The notice of sale appears in the Cheyenne and Casper, Wyoming newspapers, and sometimes in the Billings, Montana, newspaper. The sale is announced on several Wyoming radio and TV stations. The notice of the sale is mailed out to all those who subscribe to receiving the notice. This subscription includes WOC and BCA. In addition, the BLM provides a copy of the notice of sale to anyone who requests a copy.

3. BCA argues that the BLM cannot offer parcels in citizens' proposed wilderness areas because to do so would violate WO IM No. 2004-110 Change 1, <u>Fluid Mineral Leasing and Related Planning and National Environmental Policy Act (NEPA) Processes and Best Management Practices</u>. Specifically, BCA argues these parcels are located in citizens' proposed wilderness areas (CPW), but there is no indication that the BLM has evaluated the application of Best Management Practices (BMPs) to these parcels as required by the subject WO IM. BCA also argues these areas have special values. Even if the BLM does not recommend them for wilderness designation, the parcels should not be leased. BCA protested the following 9 parcels: WY-0902-089, 091 (Fuller Peak-LFO), 104 (Sheep Mountain-WFO), 108, 109, 110, 111, 112 (Honeycomb Butte, Pinnacles-RSFO), and 114 (Kinney Rim North-RSFO).

<u>BLM Response</u>: All of the lands that the citizens' groups have proposed as wilderness areas are available and eligible for oil and gas leasing in accordance with the existing applicable RMPs.

a) WO IM No. 2004-110, Change 1, does not forbid leasing in CPW areas.

b) The BLM did evaluate application of BMPs to those parcels in conformity with WO IM No. 2004-110, Change 1.

The WO IM No. 2004-110, Change 1, states in part: "Using BMPs either as stipulations or conditions of approval can significantly mitigate impacts from oil, gas, or geothermal development when they are appropriately applied to new or existing leases consistent with lease rights granted." The subject IM also states in part: ". . . the appropriate offices shall evaluate the application of BMPs (see also WO IM No. 2004-194). Often, BMPs applied either as stipulations or conditions of approval, are more effective in mitigating impacts to wildlife resources than stipulations such as timing limitations or seasonal closures."
WO IM No. 2004-194, <u>Integration of Best Management Practices into Application for Permit to Drill Approvals and Associated Rights-of Way</u>, establishes policy that the BLM Field Offices consider BMPs in NEPA documents to mitigate anticipated impacts to surface and subsurface resources. BMPs are innovative, dynamic, and economically feasible mitigation measures applied on a site-specific basis to reduce, prevent, or avoid adverse environmental or social impacts. BMPs not incorporated in the lease agreement (stipulations), may be considered and evaluated through the NEPA process and incorporated into an APD as a COA.

The BLM's decision is consistent with WO IM No. 2004-110, Change 1. As indicated in the subject IMs, BMPs applied as lease stipulations or COAs, on a case-by-case basis, can be more effective in mitigating adverse environmental or social impacts than certain standard lease stipulations. These IMs require the BLM to consider using BMPs whenever possible and appropriate. BMPs are dynamic, innovative, and can be cost effective. The BLM is requiring, and the oil and gas industry is using BMPs. However, none of the subject IMs state that the BLM should not issue an oil and gas lease if the BLM did not consider or use BMPs as lease stipulations or that the BLM should evaluate the effectiveness of the BMPs before the BLM offers for sale leases with BMPs as stipulations.

The IBLA, in, Wyoming Outdoor Council, et al.,171 IBLA 153, 168. (March 29, 2007) held that WO IM No. 2004-110, Change 1 places no limitation on the authorized officer's discretion as to whether BMPs will be applied in any given case. IBLA goes on to state, the subject IM not only expressly preserves the BLM's discretionary authority in matters involving application of BMPs to a given lease but further makes clear that the appropriate time for the requisite evaluation of BMPs is at the APD, or site-specific stage of development.

Only Congress can designate wilderness areas. However, FLPMA provides the BLM with the authority to consider, once lands with wilderness characteristics (as defined in Section 2 (c) of the Wilderness Act of 1964) are identified, to manage lands to protect those wilderness characteristics. 43 U.S.C. §1711 and §1712.

The BLM's policy for handling citizen-proposed wilderness is explained in WO IM No. 2003-275 entitled "Consideration of Wilderness Characteristics in Land Use Plans (Excluding Alaska)." This guidance sets the policy to comply with the settlement in *Utah v. Norton* and the decision to apply the terms of the settlement Bureau-wide, excluding Alaska. The settlement acknowledges that the BLM's authority to conduct wilderness reviews, including the establishment of new Wilderness Study Area (WSAs) expired no later than October 21, 1993, with the submission of the wilderness suitability recommendations to Congress pursuant to Section 603 of FLPMA and that the BLM is without authority to establish new WSAs. However, the BLM's authority under Section 201 of FLPMA to inventory public land resources and other values, including characteristics associated with the concept of wilderness, and to consider such information during land use planning was not diminished. The BLM can make a variety of land use plan decisions to protect wilderness characteristics, such as Visual Resource Management (VRM) classes, Area of Critical Environmental Concerns (ACECs), and establishing conditions of use to be attached to permits, leases or other authorizations. Public wilderness proposals represent a land use proposal. The BLM is authorized to consider such information during the preparation of a land use plan amendment or revision. The BLM must determine, as with any new information, if the public wilderness proposals contain significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or impacts that have not been previously analyzed. New information, or changed circumstances alone, or the failure to consider a factor or matter of little consequence is

not sufficient to require additional NEPA consideration prior to implementing a previously approved decision. The BLM Field Offices maintain current files to document our findings (both positive and negative for lands with wilderness characteristics).

Each Field Office undergoing an RMP revision will or has undertaken review of the 1991 inventoried areas and CPWs related to these areas. If the inventoried areas and the CPWs do not have wilderness characteristics, and if the areas remain open to leasing, any parcels nominated in the areas will go up for sale at an oil and gas competitive lease sale.

An interdisciplinary team (IDT) within the WFO met during the summer of 2009 and reviewed all citizen proposals as well as all other lands within the WFO area for wilderness characteristics. The IDT utilized orthophoto quads, Geographic Information System (GIS) information, and field notes during their review. The IDT team findings have been reviewed and accepted by the WFO Manager. This information was also incorporated into the Previously Sold Lease Parcels EA prepared by the WFO.

As part of revising the LFO 1987 RMP, all of the lands managed for wilderness characteristics were evaluated. This included those lands identified by the CPW. Existing inventory data, comments made during public scoping for the RMP revision, LFO Recreation Opportunity Spectrum Inventory, the LFO roads inventory and the existing LFO wilderness inventory files were utilized. In addition, the information contained in the "Wilderness at Risk: Citizens' Wilderness Proposal for Wyoming BLM-administered Lands" (Wyoming Wilderness Association, Feb. 2004) was evaluated. Information on the evaluations can be found in the Analysis of Management Situation prepared for the LFO RMP revision. Discussion of wilderness characteristics is found in Section 3.3 of the Previously Sold Lease Parcels EA prepared by the LFO.

Fuller Peak is located in Fremont County about 30 miles east of the town of Shoshoni, and 12 miles northwest of Lysite, Wyoming. Fuller Peak is part of the steep and rugged terrain of the Copper Mountain range. This area consists of 9,353 acres of contiguous public land. It is bordered on the north and the west by private land and on the south and east by a maintained county road. There are two parcels of state land totaling about 680 acres that are enclosed by the Fuller Peak area.

Fuller Peak was inventoried during the first wilderness inventory submission to Congress; this inventory was then revisited during the LFO RMP revision. The initial inventory conducted in 1979 found the area to not qualify for wilderness study. The following attributes negatively impacted the areas suitability for inclusion as wilderness:

1. Throughout half of the unit numerous roads, ways, trails, digs, scrapes, and wells impact the naturalness of the unit. Due to severe impacts in the south and west, and the effects of the fences in the eastern flats and valleys, only about 7.5 sections or 480 acres of contiguous lands were sufficiently free from the influences of man's works to meet the naturalness requirement.

2. Solitude may be found within the unit only in the rugged acres of the central and southeast sections. Here the topography is sufficient to screen visitors from one another. This represents approximately ¼ of the unit's area, and roughly 2400 acres of the available area meeting the naturalness requirements. Throughout the remainder of the area, neither vegetation nor topography serves to screen visitors from one another or from the numerous imprints of man that are found nearby. These limited opportunities for solitude are not outstanding.

3. By virtue of the unit's small amount of suitable area, as well as the presence of such confining aspects of local topography and fence lines, opportunities for primitive and unconfined recreation are severely confined and not outstanding.

4. The possibility of the heavily impacted areas returning to a natural condition does not exist in that the impacts are far too extensive.

The LFO RMP revision process reviewed the citizen's proposal for wilderness, as well as other current inventory information to develop the Management Situation Analysis (MSA) for Non-WSA lands with wilderness character. During this review the LFO found the CPW did not contain any new information that was **not** (emphasis added) considered during the initial Wilderness review and subsequent recommendations to Congress. Inventory information (roads, manmade disturbances, and Recreation Setting inventory) indicated that the negative impacts to the Fuller Peak area discovered in 1979 still existed and impacted the area's wilderness characteristics. In fact, the new information indicated the trends documented in 1979 had compounded with additional new disturbances over the decades, reducing the areas wilderness characteristics further.

As a result of the above factors, the LFO MSA (a document released publicly) dismissed the Fuller Peak Area for further consideration (in alternatives) as a non-WSA land with wilderness characteristics. As a result no alternative in the LFO RMP revision considers managing this area as a non-WSA land containing wilderness character.

Sheep Mountain WSA is composed of 23,250 acres of BLM-administered public lands and 640 acres of split estate lands. Sheep Mountain WSA is located in Big Horn County, WFO, approximately 20-25 miles northwest of Worland, Wyoming and 18-20 miles west of Greybull and Basin, Wyoming. The western boundary of the WSA is formed by state and private lands and the Burlington Pass Road. A major oil pipeline and the Dorsey Creek Road form the eastern boundary. The southern boundary is located along the township line to exclude areas lacing the wilderness characteristic of naturalness and a finger of non-WSA created by roads accessing livestock management facilities. The northern boundary follows a road and an oil pipeline.

The Sheep Mountain WSA contains bare, rugged badlands created by peaks and ridges broken by irregular, sharply cut drainages radiating from the central portion of the area dominated by Sheep Mountain. Soils are bare, highly erodible, and red-hued shales and sandstones of the

Willwood Formation, creating a dissected, rugged landform. Geologically, the landform is an anticline. There are no perennial streams and the main drainages are the Elk Creek, Dorsey Creek, and Dry Creek.

No wilderness was recommended for the Sheep Mountain WSA. Wilderness values are not present to the degree deemed necessary for the wilderness designation nor does the WSA contain any single feature or combination of features significant enough to warrant wilderness designation. There are imprints of vehicle or seismograph, cherry-stem roads, trails, 19 reservoirs and 7.5 miles of fence segments. Moderate to high potential for the occurrence of hydrocarbon resources exists with moderate potential for exploration and production. There are no pre-FLPMA leases and one post-FLPMA lease (held by production) within the WSA. There are leases adjacent to portions of its boundary. A split-estate section is located in the interior of the WSA, which increases potential manageability problems, particularly where energy development is concerned.

Kinney Rim North WSA is located in the RSFO area. The Kinney Rim North area was originally reviewed in 1980 for wilderness characteristics and BLM determined these lands were not suitable for further wilderness study. In February 2002, BCA submitted to the BLM a "Citizens' Wilderness Inventory" for several areas in southern Wyoming including the Kinney Rim North. The RSFO reviewed the inventory information provided by the BCA by comparing it to existing databases and conducting field reviews. The evaluation noted those areas within the Kinney Rim North CPW were either located in the railroad grant checkerboard area or there was already significant development. The checkerboard lands were dropped from wilderness consideration because the lands did not meet the minimum size criteria and would be impossible to manage as wilderness. The rest of the CPW land was noted to be influenced by man's past and current activities in the form of livestock improvements and oil and gas development, and therefore, precludes wilderness consideration. The RSFO notified BCA by letter dated January 2, 2003, that the public lands in Kinney Rim North CPW area do not have wilderness characteristics.

The following parcels were deferred before the sale: WY-0902-108, 109, 110, 111, and 112 (Honeycomb Butte, Pinnacles-RSFO). Parcels WY-0902-104 will also be deferred because it is located in an area WFO will analyze during the WFO RMP revision because Sheep Mountain may contain wilderness characteristics. A final more in-depth determination will be conducted during the recently initiated Worland RMP revision. During the RMP revision process, the WFO and the public will determine whether the subject lease parcels will remain open to leasing. If the subject lease parcels remain open to leasing, the WFO may that determine special management requirements in the form of new lease stipulations may be necessary.

Because the BLM has already offered the February 2009 lease parcel WY-0902-104, we will defer issuing the lease for this parcel under the following conditions. The BLM will ask the high bidder for this parcel whether they are willing to wait until the Worland RMP Draft EIS (DEIS) is made available to the public for review and comment:

- If the high bidder is not willing to wait, the BLM will not issue the lease and will refund their money.

- If the high bidder is willing to wait, but the BLM subsequently determines that leasing the particular parcel is no longer appropriate, the BLM will reject the lease offer and refund their money.

- If the high bidder is willing to wait, and the BLM decides that leasing is still appropriate, but determines that additional stipulations are necessary, the BLM will ask the high bidder if it is willing to accept the lease with the new stipulations. If the high bidder is willing to accept the lease with the new stipulations, the BLM will issue the lease. If the high bidder is not willing to accept the lease with the new stipulations, the BLM will reject the lease offer and refund their money.

- If the high bidder requests a refund of their money at any time during this process, the BLM will reject the lease offer and refund the money.

Once the WFO DEIS has been made available to the public for review and comment, the BLM may decide that it is still appropriate to offer leases in the subject areas without any new stipulations.

The LFO appropriately performed documentation of land use plan conformance and NEPA adequacy (DNA) for the subject lease parcels prior to offering the parcels at the lease sale, and subsequently prepared an environmental assessment to analyze whether the decision to issue leases for these parcels remained appropriate. These parcels were also processed through the Wilderness Characteristics Screen, which asks two questions. The first question is has the lands within the parcel been evaluated for wilderness characteristics, and if they have wilderness characteristics has special management been applied. The second question asks if the lands have not been evaluated, is there surface disturbance and/or existing leases. The second question also asks what the surface ownership is and the status of the RMP. The DNA and EA provided the field manager the opportunity to review whether the environmental impacts associated with oil and gas leasing and development operations have been adequately analyzed in the appropriate RMP/EIS and other applicable NEPA documents. The field manager attached stipulations that are in accordance with the existing RMP. The BLM concluded offering the parcels for leasing, with appropriate stipulations and mitigation measures, conforms to the applicable land use plan and that the existing NEPA documentation, along with the Previously Sold Lease Parcels EA fully covers the proposed action and constitutes the BLM's compliance with the requirements of NEPA.

4. BCA, TRCP, and WOC protested some or all of the following 78 parcels because the parcels are located in big game crucial winter range, big game migration routes, and parturition areas: WY-0902- 011, 012, 013, 015, 016, 017, 018, 019, 020, 021, 022, 023, 027, 035, 043, 045, 046, 048, 050, 051, 052, 054, 061, 062, 063, 064, 065, 066, 067, 068, 069, 080, 081, 082, 083, 086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 098, 099, 100, 101, 102, 103, 105, 106, 111, 113, 114, 117, 118, 119, 123, 124, 125, 126, 127, 128, 130, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, and 143. TRCP protested 72 parcels for big game crucial winter range, migration routes or vital habitat for Greater sage-grouse. These protested

parcels were not segregated by concern/issue and have been included in total in this section. These parcels are located in BFO, CFO, CYFO, KFO, LFO, NFO, RFO, RSFO, and WFO. BCA argues that offering the subject parcels is a violation of FLPMA because the BLM is required to consider and resolve inconsistencies between the BLM actions and State plans, as well as to prevent unnecessary or undue degradation of the public lands. BCA argues that although the subject crucial winter range parcels contain a stipulation prohibiting drilling between November 15 and April 30, and a stipulation prohibiting drilling between May 1 and June 30 for parturition, this is not a total prohibition on drilling during all of the stressful winter period and the BLM almost invariably grants lease stipulation exceptions. BCA and TRCP argue that the BLM has violated NEPA because the BLM has not stipulated the parcels to protect crucial migration routes and has not considered the new environmental information (crucial migration routes and mule deer use of winter range during development) in a pre-leasing NEPA document where impacts will occur from offering oil and gas parcels for sale. BCA argues that the BLM has also violated NEPA by failing to consider NSO and No-Leasing alternatives for lands with special characteristics, such as crucial winter ranges and migration routes, and to determine whether leasing is appropriate for these parcels. Several of the groups argue there is new and significant information on the impacts of oil and gas development available that the BLM has not considered and analyzed under NEPA and in the RMPs. TRCP argues new information gained from studies and from Wyoming Game and Fish Department (WGFD) data has not been analyzed in existing documents and should be analyzed before BLM issues new leases. TRCP considers this new information 'significant' thus triggering a new NEPA analysis.

BLM Response**:** The protest is incorrect in its characterization of FLPMA's requirements. Section 202 of FLPMA (Title 43, USC §1712), states when developing and revising land use plans, the Secretary of the Interior shall "to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning and management activities . . . with the land use planning and management programs of other Federal departments and agencies and of the States and local Governments within which the lands are located." The Secretary is also required to assist in resolving, to the extent practical, any inconsistencies between Federal and non-Federal plans.

The Wyoming BLM entered into a Memorandum of Understanding (MOU) (WY-131) with the WGFD (currently in revision). In accordance with the terms of the subject MOU, specifically Appendix 5G, the WSO will transmit a copy of every preliminary notice of competitive oil and gas lease sale list to the WGFD. The preliminary notice is sent to the WGFD approximately 5 months prior to the sale. All eight WGFD Field Offices have approximately 2 to 3 weeks to review the list. The WGFD Field Offices will coordinate with their respective BLM Field Office to review wildlife data and to help ensure appropriate lease stipulations are included as specified in the applicable RMP. When the WGFD review is complete, the preliminary list is returned to the WSO. Any necessary changes will be incorporated into the final notice of competitive oil and gas lease sale list. Wyoming BLM uses WGFD data to stipulate the oil and gas lease parcels. In accordance with the subject MOU, if the WGFD has concerns about any parcel

located in a big game crucial winter range, or along a big game migration route, or in a parturition area, the WGFD will forward their concerns to the BLM. The BLM did coordinate with the WGFD (as specified in FLPMA), reviewed their recommendation, applied appropriate comments, and did not offer for sale on February 3, 2009, the following 8 parcels per WGFD and the Governor of Wyoming's request: WY-0902-108, 109, 110, 111, 112, 124, 125, and126.

In Wyoming Outdoor Council, et al., 171 IBLA 108, 121, (February 20, 2007), IBLA states: "In establishing that the BLM's failure to impose the WGFD's policies, plans, and guidelines, on leases covering the crucial winter range parcels amounts to a violation of section 302(b) of FLPMA, appellants would have to show, at a minimum, that issuance of the leases without incorporating WGFD's policies, plans, and guidelines would result in adverse impacts to resource values of the parcels." BCA, TRCP, Audubon, and WOC have not demonstrated that offering these parcels for sale would result in adverse impacts to big game species and their habitat, and thus cause unnecessary and undue degradation to the parcels. Therefore, consistent with the subject IBLA decision, offering the subject parcels does not result in a violation of FLPMA.

The BLM Wyoming has also coordinated with the WGFD during the preparation and revision of all BLM Wyoming RMPs. During the preparation and revision process, if leasing were determined not appropriate for any lands, the lands would be closed to leasing. If the land is open to leasing, mitigation will be developed and appropriate stipulations would be attached to the lease. We believe the stipulations that are attached to the subject protested parcels are adequate to protect big game crucial winter ranges, big game migration routes, and parturition areas. Stipulations are attached to a lease for valid reasons supported by the applicable RMP. Any temporary change (exception) or permanent change (modification or waiver) to a lease stipulation must also be consistent with the RMP and supported by NEPA analysis. This analysis is documented, and may include mitigation, monitoring, and other compliance measures. Any exception, modification, or waiver to wildlife-related stipulations is coordinated with the WGFD. Prior to making any wildlife lease stipulation exception decision, the BLM will take into account all relevant factors, including, but not limited to, the current condition of the animals in the area; are there any current or potential animal stress related problems; what are the current snow conditions; what are the short-term and long-term weather forecasts; what is the current and future wildlife forage availability situation; how many animals are using the area; etc.

Exceptions are granted only when relevant factors described above merit such a decision. Many times the lessee informally meets with the BLM to discuss possible exceptions. As a result, a lessee may withdraw from any further consideration an exception request because the exception criteria cannot be met. However, if the exception criteria can be met, the lessee will formally request an exception. The formal exceptions are tracked whereas the informal requests are not. This is why it appears BLM grants a high percentage of formal exception requests. To date, the BLM Wyoming has never granted a wildlife lease stipulation modification or waiver.

The regulations at 43 CFR 3162.5-1(a) state in part: "The operator shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality. In that respect, the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan…Before approving any APD, the authorized officer shall prepare an environmental record of review or an environmental assessment, as appropriate." The BLM Wyoming attaches timing and surface use COAs to APDs, developed in coordination with the WGFD to protect big game habitat, including parturition habitat.

43 CFR 3162.5-1(b) states in part: "The operator shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements." The current lease terms specify that the lessee shall conduct operations in a manner that minimizes adverse impacts to the land, air, water, to cultural, biological, visual, and other resources. The lessee shall take reasonable measures deemed necessary by the lessor to accomplish the intent of this section (Section 6 of the lease terms). The Wyoming BLM ensures that oil and gas lessees and operators comply with the above-described regulations and lease terms.

FLPMA gives the BLM authority and responsibility to manage the public lands and resources under the concept of multiple use and sustained yield. Prior to any surface-disturbing activity, The BLM will conduct an environmental review and/or assessment to analyze the anticipated impacts of the proposed activity. The BLM, through this environmental analysis, will impose restrictions and mitigation measures necessary to avoid unnecessary or undue impacts. Therefore, the BLM has determined this protest issue lacks merit.

5. WOC and NOLS protested the sale of parcels WY-0902-108-112 located the Jack Morrow Hills (JMH) Coordinated Activity Plan (CAP) for the following reasons. WOC argues these parcels should not be leased because both parcels contain a stipulation for slopes greater than 25% when the CAP states activity is limited or prohibited on slopes greater than 20%. The parcels are located in the vicinity of overlapping sensitive resources that must receive special protection but currently do not. Applicable or potentially applicable stipulations have not been attached to the parcels, especially the Greater sage-grouse. The Working Group required by the JMH ROD is not in place therefore no lease parcels can be offered. Implementation, monitoring, and evaluation process specified in the JMH ROD is not adhered to. No interdisciplinary monitoring plan is in place. Offering the parcels for sale has not been shown to protect sage-grouse from significant or irreversible adverse effects as stated in the JMH ROD. Stipulations applied to the parcels for protection of the sage-grouse are incorrect, ineffective and inadequate. If the parcels are leased, BLM will not abide by State policy and guidance and would violate BLM's special status species manual and the potential listing of the sage-grouse under ESA. DNA does not recognize new circumstances related to sage-grouse and therefore there is inadequate NEPA compliance. No habitat management plan has been provided and is needed. Area 2 lease management direction has not been complied with. Because of the extensive level of stipulation emphasized the high degree of environmental and social values

attached to these parcels, BLM should defer leasing these parcels until further planning and analysis indicates leasing is advisable. NOLS argues that the lease parcels are in the proximity to existing commercial backcountry horsepacking operations and have potentially detrimental effects on these activities.

BLM Response: The JMH CAP provides specific management direction for the planning area. The CAP prevents or addresses conflicts among development of energy resources, recreational activities, and other resource uses. Management direction is provided to protect certain resources such as elk and other big game habitat, unique sand dune-mountain shrub habitat, and stabilized and non-stabilized sand dunes. The CAP also provides for appropriate levels of recreational activities, leasing and development of mineral resources, livestock grazing and other activities.

The JMH CAP is divided into three implementation management areas. Area 1 is open to fluid mineral leasing with the appropriate stipulations to protect sensitive resources. Expired leases will be considered for subsequent lease offerings with appropriate stipulations.

Area 2 is open to leasing with stipulations applied to protect sensitive resources and considering operational need, resource recovery, geology, and ability to mitigate impacts. Expired leases will be considered for subsequent lease offerings with appropriate stipulations. Before nominated parcels are leased, RSFO sends a letter to the nominee of the parcel asking for information about the parcel. The information received is addressed by the RSFO and/or the Reservoir Management Group (RMG). The parcel is withheld from leasing until the information is obtained and reviewed. This occurs for any parcel nominated within Area 2.

Area 3 is closed to leasing with the exception of approximately 35, 500 acres along the perimeter of the area. This acreage represents a distance of ½ mile within portions of the boundary of Area 3. The closure is established to provide adequate habitat, use of crucial winter range, parturition areas, migration corridors and protection of sensitive resource, public health and safety. Area 3 includes Steamboat Mountain ACEC, Greater Sand Dunes ACEC, White Mountain Petroglyphs ACEC, Oregon Buttes ACEC, South Pass Historic Landscape ACEC, the White Mountain and Split rock areas, and greater sage grouse core habitat and connectivity areas. As existing leases expire in Area 3, the acreage will not be re-offered for lease (approximately 88,200 acres) unless the acreage is within the 35,500 acres along the perimeter of Area 3.

The decision to issue leases in Area 1 was made when the CAP ROD was signed and does not need to be re-analyzed or "re-decided" by members of the interdisciplinary Working Group. Issuing oil and gas leases in this area is not an activity requiring consideration during development of the implementation plan. Appendix 2 of the approved CAP states that implementation, monitoring, and the evaluation process begins with the adoption of the CAP decisions. The Working Group is in place and will be involved in many facets of the management strategy, including data collection and analysis, development of management practices, and input on land use proposals. Information about the Working Group and its meetings can be found at
http://www.blm.gov/wy/st/en/field_offices/Rock_Springs/jmhcap/workgroup.html.

As stated in Response 4, in Wyoming Outdoor Council, et al., 171 IBLA 108, 121, (February 20, 2007), IBLA states: "In establishing that the BLM's failure to impose the WGFD's policies, plans, and guidelines, on leases covering the crucial winter range parcels amounts to a violation of section 302(b) of FLPMA, appellants would have to show, at a minimum, that issuance of the leases without incorporating WGFD's policies, plans, and guidelines would result in adverse impacts to resource values of the parcels." WOC has not demonstrated that offering these parcels for sale would result in adverse impacts to big game species and their habitat, and thus cause unnecessary and undue degradation to the parcels. Therefore, consistent with the subject IBLA decision, offering the subject parcels does not result in a violation of FLPMA.

Prior to offering for sale any of the parcels, the RSFO Manager completed a DNA to determine whether offering the parcels was consistent with their existing RMP, whether there was new information not previously analyzed that might question whether leasing was still appropriate, or whether offering the parcels for sale would limit the choice of reasonable alternatives in the RMPs being revised. Subsequently, the Field Offices prepared environmental assessments (Previously Sold Lease Parcels EA) to analyze the decision to issue leases for these parcels and determined that leasing these parcels remained appropriate. The CSU stipulation for slopes greater than 25 percent inadvertently was placed on these two parcels. The parcels are deferred as stated in Response 3 but before issuance the stipulation placed on the parcels for protecting slopes will have to be corrected to slopes greater than 20 percent as stated in Section 3.10.3.1.2 of the JMH CAP ROD.

6. BCA, WOC and CNE argue offering parcels for sale located in areas with active RMP revisions does not comply with WO IM 2004-110, Change 1. The protested parcels are located in the CFO, LFO and RFO areas. Parcels of concern to BCA are WY-0902-065, 066, 067, 068, 069, 080, 088, 092, 098, 101, 113, 124, 125, and 126. BCA argues that in accordance with the subject IM, specific consideration for lease sale deferral is to be given to certain categories of land that are ". . . designated in the preferred alternative of draft or final RMP revisions or amendments as lands closed to leasing, lands open to leasing under no surface occupancy, lands open to leasing under seasonal or other constraints with an emphasis on wildlife concerns, or other potentially restricted lands."

CNE argues NEPA prohibits interim actions having adverse environmental impacts and/or limit the choice of reasonable alternatives when BLM is in the process of revising or amending an RMP. CNE argues granting valid rights may prejudice management prescriptions for CNE's nominated ACECs. Finally, CNE argues leasing parcels at this time would undermine the RMP revision process.

BLM Response: All the subject parcels protested by BCA, WOC, and CNE in the February, 2009, oil and gas parcel list are available and eligible for oil and gas leasing in accordance with the existing KFO, LFO, and RFO RMPs. The KFO issued their RMP ROD on May 24, 2010. LFO began their revision process in August 2008 and is currently preparing their

DEIS. RFO ROD was signed in December, 2008. Other FOs currently revising their RMPs include WFO, CYFO, and BFO. Socioeconomics are an integral part of the NEPA analysis for each RMP revision.

Similar protest arguments were rejected in the IBLA Order dated July 31, 2002, Wyoming Outdoor Council, et al. (IBLA 2002-303). The Order cites Sierra Club Legal Defense Fund, Inc., 124 IBLA 130, 140 (1992), wherein the Board rejected the argument that BLM must suspend an action that is in conformance with an existing land use plan when it decides to prepare a new plan. IBLA recognized that acceptance of protestor's position would seriously impair the BLM's ability to perform its land management responsibilities.

The IBLA also pointed out in their order dated July 31, 2002, that neither the BLM Handbook (H-1601-1), Land Use Planning, nor WO IM No. 2001-191, Processing of Applications for Permit to Drill, Site-Specific Permits, Sundry Notices, and Related Authorizations on Existing Leases, and Issuing New Leases During Resource Management Plan Development, absolutely preclude issuance of oil and gas leases while the underlying RMP is being amended. Rather, the BLM Handbook states existing decisions remain in effect during the amendment process and directs the BLM to review all proposed implementation actions through the NEPA process to determine whether the approval of a proposed action would harm resource values and limit the choice of reasonable alternatives in the land use plans being re-examined.

WO IM No. 2004-110 replaced all discussion pertaining to oil and gas leasing contained in WO IM No. 2001-191. WO IM No. 2004-110, Change 1, provides additional clarification of guidance found in WO IM No. 2004-110. WO IM No. 2004-110, Change 1, provides that lands, which are open for leasing under an existing RMP, may be leased during a revision or amendment process when BLM management determines there are no significant new circumstances or information bearing on the environmental consequences of leasing not within the broad scope analyzed in an existing RMP EIS.

The Council of Environmental Quality regulations do not require postponing or denying a proposed action covered by the EIS for the existing land use plan in order to preserve alternatives during the preparation of a new land use plan and EIS (40 CFR 1506.1(c) (2)), as long as the action does not prejudice the ultimate decision on the program or limit alternatives.

Prior to offering for sale any of the parcels, the RSFO Manager completed a DNA to determine whether offering the parcels was consistent with their existing RMP, whether there was new information not previously analyzed that might question whether leasing was still appropriate, or whether offering the parcels for sale would limit the choice of reasonable alternatives in the RMPs being revised. Subsequently, the Field Offices prepared environmental assessments (Previously Sold Lease Parcels EA) to analyze whether the decision to issue leases for these parcels remained appropriate.

The following 15 parcels will be deferred until the BFO, or CFO, or CYFO, or LFO, or RSFO, or WFO RMP DEISs have been made available for public review and comment and the CFO RMP amendment has been completed: WY-0902-049, 054, 063, 064, 065, 066, 067, 098, 100, 101, 103, 104, 105, 113, and 118.

Since the BLM has already offered for sale parcels WY-0902-049, 054, 063, 064, 065, 066, 067, 098, 100, 101, 103, 104, 105, 113, and 118, we will defer issuing a lease under the following conditions. BLM will ask the high bidder whether they are willing to wait until the CFO RMP amendment is complete or when the BFO, or CFO, or CYFO, or LFO, or RSFO, or WFO DEISs have been made available for public review and comment:

- If the high bidder is not willing to wait, the BLM will not issue the lease and will refund their money.

- If the high bidder is willing to wait, but the BLM subsequently determines that leasing the particular parcel is no longer appropriate, the BLM will reject the lease offer and refund their money.

- If the high bidder is willing to wait, and the BLM decides that leasing is still appropriate, but determines that additional stipulations are necessary, the BLM will ask the high bidder if it is willing to accept the lease with the new stipulations. If the high bidder is willing to accept the lease with the new stipulations, the BLM will issue the lease. If the high bidder is not willing to accept the lease with the new stipulations, the BLM will reject the lease offer and refund their money.

- If the high bidder requests a refund of the bonus bid and rental at any time during this process, the BLM will reject the lease offer and refund their money.

Once the CFO RMP amendment is complete or when the BFO, or CYFO, or LFO, or RSFO, or WFO DEISs have been made available for public review and comment, the BLM may decide that it is still appropriate to offer leases in the subject areas without any new stipulations.

Parcels WY-0902-108 through and including 112 were deferred prior to the February, 2009 competitive oil and gas sale.

7. BCA and TRCP argue the BLM should apply a No Surface Occupancy (NSO) stipulation to areas in all parcels within three miles of a Greater sage-grouse lek. CNE also argues that, although the Fish and Wildlife Service (FWS) decided not to list the Greater sage-grouse under the Endangered Species Act (ESA), the BLM should not offer oil and gas leases in Greater sage-grouse crucial habitat until the BLM analyzes how its oil and gas program is affecting the Greater sage-grouse and Greater sage-grouse habitat. The following 71parcels were protested because the parcels are located in potential Greater sage-grouse lek/breeding, nesting and winter habitat: WY-0902-026, 027, 030, 043, 045, 046, 047, 048, 050, 051, 052, 053, 054, 056, 061, 062, 063, 064, 065, 066, 067, 068, 069, 080, 081, 082, 083, 084, 086, 087, 088, 089, 098, 101, 102, 103, 105, 106, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, and 141. BCA is asking that these parcels be withdrawn because they contain important habitats and some parcels are in the 75 percent population core areas. If the BLM does not withdraw the parcels, BCA argues that a three-mile NSO should be placed on all parcels containing leks and that all lease parcels

with sage grouse leks, nesting, breeding, brood-rearing and winter habitats contain stipulations which fully comply with and adhere to the Sage-Grouse Habitat Management Guidelines for Wyoming adopted July 24, 2007.

In addition to the above groups, Audubon argues the BLM has not taken a hard look at the environmental impacts of leasing and has substantial and new information about the current condition of habitat and wildlife populations including big game as well as Greater sage-grouse. The BLM has not considered the new information, new or revised mitigation measures and stipulations in the environmental analyses for the current RMPs and is currently using ineffective stipulations (concluded by WAFWA, FWS, and the State of Wyoming). BLM has not analyzed in any applicable NEPA document the policy recommendations from the Greater sage- grouse Implementation Team to the Governor. Audubon also argues BLM has violated NEPA by failing to disclose and reconcile inconsistencies between the State and Federal sage-grouse conservation measures. BLM has violated FLPMA because the proposed action is inconsistent with its sensitive species policy. The protesting groups argue that the BLM must take into account new information from the State of Wyoming (the Governor, WGFD, and the Greater sage-grouse Implementation Team). Audubon and others argue the existing RMPs do not contain any analysis of the substantial post-2000 research and thinking regarding effects of energy development on Greater sage grouse. Therefore, BLM has not taken a "hard look" at new information or circumstances concerning the environmental effects of a federal action.

CNE argues the parcels contain lands that are within a 4-mile buffer zone around occupied greater sage-grouse leks as mapped by the WGFD. CNE protests parcels because they are within the areas delineated as greater sage-grouse core areas (taken from WGFD GIS data) by the Wyoming Governor's greater sage-grouse working group and in areas of potential habitat for greater sage-grouse according to BLM's sale notice.

BLM Response: The BLM is a member of the Governor's Sage-grouse implementation team. The BLM Wyoming is well aware of the need to protect Greater sage grouse and Greater sage-grouse habitat. The BLM attaches stipulations to leases and COAs to APDs, where appropriate, in order to restrict surface-use and surface-disturbing activities during certain times of the year, during certain times of the day, and within certain distances from active Greater sage-grouse leks, and nesting habitat, and crucial winter habitat.

All Wyoming BLM field offices have addressed Greater sage grouse and Greater sage-grouse habitat concerns in their respective RMPs. All BLM field offices have identified timing restrictions to protect the Greater sage-grouse mating season, Greater sage grouse nesting and early brooding season, as well as the Greater sage-grouse crucial winter season. The BLM also requires that oil and gas development avoid leks, nesting/early brooding habitat, and winter habitat. The Wyoming Instruction Memorandum (WY IM) No. 2010-012 will require implementation of the new protection measures as needed, based on site-specific analysis, at the developmental stage as COAs on any leases with the ¼ mile and 2 mile protections currently used. Based on the WY IM No. 2010-013, the BLM will make the decision to offer a parcel for

sale through the sage grouse screening process, which determines whether a parcel is appropriate for sale. Part of the screening process is the use of the core maps (Version 3) developed by the Governor's Sage-grouse implementation team and posted on the WGFD website: http://gf.state.wy.us/wildlife/wildlife_management/sagegrouse/index.asp.

The BLM regulations at 43 CFR 3101.1-2 specify that the lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove, and dispose of all the leased resources in the leasehold. The regulations, however, go on to subject this right to three reservations: (1) stipulations attached to the lease; (2) restrictions deriving from specific, non-discretionary statutes (such as ESA); and (3) reasonable measures (conditions of approval) to minimize adverse impacts to other resource values not addressed in the lease stipulations at the time operations are proposed. At a minimum, measures shall be deemed consistent with lease rights granted, provided they do not require relocation of proposed operations by more than 200 meters, or require that operations be sited off the leasehold.

The current lease terms specify that the lessee shall conduct operations in a manner that minimizes adverse impacts to the land, air, water, to cultural, biological, visual, and other resources. The lessee shall take reasonable measures deemed necessary by the lessor to accomplish the intent of these terms (Section 6). Assistant Director of Minerals, Realty and Resource Protection issued an Information Bulletin (IB) No. 2007-119 entitled "Existing Surface Management Authority for Oil and Gas Leases." This IB describes the legal authority for regulating environmental aspects of oil and gas operations under MLA and FLPMA. The BLM regulations at 43 CFR 3162.1(a) also state "The operating rights owner or operator, as appropriate, shall comply with applicable laws and regulations; with lease terms, Onshore Oil and Gas Orders, Notices to Lessee's (NTL's); and with other orders and instructions of the authorized officer. These include, but are not limited to conducting all operations in a manner . . . which protects other natural resources and environmental quality . . ." See also 43 CFR 3162.5-1(a).

The lessee clearly has a legal right to apply for permission to conduct oil and gas operations; however, as specified above, the BLM retains substantial authority over the lessee's siting of particular surface disturbances. The lessee does not have a right to engage in any surface-disturbing activities until the BLM analyzes the environmental impacts and processes an APD or Sundry Notice. With or without a NSO lease stipulation, at the APD stage, if a Greater sage-grouse lek or crucial Greater sage-grouse habitat is found within the lease, the BLM can and does use its authority to impose reasonable measures, COAs (site-specific mitigation) to minimize adverse impacts to the Greater sage-grouse as described above.

Issuing an oil and gas lease does not cause immediate surface-disturbance. Issuing an oil and gas lease does not jeopardize the continued existence of any listed or special status species or result in the destruction or adverse modification of critical habitat of such species. The lease may never result in drilling or surface-disturbing activities, especially when ESA is concerned. There is great uncertainty as to whether, when, and where a well would be drilled on a lease.

Existing BLM policy protects the Greater sage-grouse and its habitat during all critical times of the year. The BLM has issued an updated sage-grouse policy (WY IM No. 2010-012) and is part of a modeling and mapping effort of sage-grouse habitat on a statewide basis. This extensive statewide mapping and modeling effort includes seasonal habitat types and areas identified by seasonal use. The mapping and modeling effort will allow the BLM and WGFD to identify and refine important Greater sage-grouse seasonal habitat information.

As described in the Previously Sold Lease Parcels EA, the BLM Wyoming has established a sage-grouse screen (WY IM No. 2010-013) that has been performed on all of the previously offered parcels. Screening criteria include: is the parcel outside of or in a sage-grouse core area; is the parcel located adjacent to an existing producing Federal lease; is the parcel located adjacent to a large block of un-leased Federal surface; does the parcel contain a sage-grouse stipulation as required in the applicable RMP; and is the parcel located within one-mile of a producing well located either on a State, fee, or Federal lease. The BLM further considered sage-grouse habitat suitability, population density, geography, and topography.

For those previously offered parcels that pass the screening criteria, and all else is regular, the BLM will issue the lease. For those previously offered parcels that did not pass the screening criteria, the BLM will defer issuing a lease until the CFO, RSFO, or RFO sage grouse RMP amendment is complete or when the BFO, CYFO, LFO, or WFO RMP DEIS has been released to the public for review and comment. Once the applicable RMP amendment is complete or applicable RMP DEIS has been released to the public for review, the BLM will decide whether it is appropriate to issue the lease. If leasing is still appropriate, the BLM may decide to impose stricter sage-grouse stipulations on the lease parcels.

Utilizing the Governor's Sage-grouse implementation team Version 3 core area maps, based on sage grouse screening criteria described in the previously sold lease parcel EA, the following February 2009 parcels will be deferred : WY-0902-078, 082, 087, 101, 127, and 128.

Since the BLM has already offered for sale the parcels listed above, WY-0902-078, 082, 087, 101, 127, and 128, we will defer issuing a lease under the following conditions. The BLM will ask the high bidder whether they are willing to wait until the CFO or RSFO RMP amendment is complete or when the LFO DEIS has been released to the public for review and comment:

- If the high bidder is not willing to wait, the BLM will not issue the lease and will refund their money.

- If the high bidder is willing to wait, but BLM subsequently determines that leasing the particular parcel is no longer appropriate, BLM will reject the lease offer and refund their money.

- If the high bidder is willing to wait, and the BLM decides that leasing is still appropriate, but determines that additional stipulations are necessary, the BLM will ask the high bidder if it is willing to accept the lease with the new stipulations. If the high bidder is

willing to accept the lease with the new stipulations, the BLM will issue the lease. If the high bidder is not willing to accept the lease with the new stipulations, the BLM will reject the lease offer and refund their money.

- If the high bidder requests a refund of the bonus bid and rental at any time during this process, the BLM will reject the lease offer and refund their money.

Once the applicable sage-grouse RMP amendment has been completed or applicable RMP DEIS has been released to the public for review and comment, the BLM may decide that it is still appropriate to offer leases in the subject area without any new stipulations.

8. Audubon and TRCP argue the BLM has not considered the mandates of Executive Order 13443 in deciding to offer parcels at the February 2009 oil and gas competitive lease sale.

BLM Response: Executive Order (EO) 13443, Facilitation of Hunting Heritage and Wildlife Conservation was signed by President Bush on August 16, 2007. The EO directs Federal agencies to manage wildlife habitats on public lands in a manner that expands and enhances hunting opportunities.

The WO issued IM No. 2008-006, Implementation of Executive Order 13443, Facilitation of Hunting Heritage and Wildlife Conservation, on October 10, 2007. The purpose of the IM was to, among other things, evaluate trends in hunting participation; to implement actions that expand and enhance hunting opportunities for the public; establish short and long term goals to conserve wildlife and manage wildlife habitats to ensure healthy and productive populations of game animals in a manner that respects state management authority over wildlife resources and private property rights; seek the advice of state fish and wildlife agencies; and, as appropriate, consult with the Sporting Conservation Council in respect to Federal activities to recognize and promote the economic and recreational values of hunting and wildlife conservation.

The BLM Wyoming issued IM No. WY-2008-007, on October 26, 2007, Implementation of Executive Order 13443, Facilitation of Hunting Heritage and Wildlife Conservation as a supplement to the WO IM.

The BLM Wyoming is working cooperatively with the WGFD to implement EO 13443. The BLM Wyoming manages the habitat on public lands and the WGFD manages the wildlife. As indicated above (refer to our No. 4 response), the BLM and the WGFD entered into a MOU to guide this cooperative process. Appendix 5G of the BLM/WGFD MOU is entitled Oil and Gas Coordination Procedures. This appendix establishes the procedures and responsibilities that both the BLM and WGFD are expected to follow. These procedures and responsibilities include all aspects of the BLM's oil and gas program including the planning process, the leasing process, and the drilling and development process.

Neither the WO nor the Wyoming IMs require the BLM to suspend leasing during the implementation process. The BLM Wyoming will continue to manage the public lands based on

multiple use and sustained yield and in compliance with the EO. The EO did not withdraw lands from the operation of the MLA nor does the EO provide for a private right of action to enforce it. TRCP has not shown the decision to offer the parcels for lease will affect hunting opportunities on any parcel.

9. Audubon argues the DNAs contain incorrect assertions concerning new information specifically in relation to sage-grouse. CNE argues DNAs cannot substitute for site specific NEPA.

BLM Response: The BLM's policy, WO IM No. 2001-062, Documentation of Land Use Plan Conformance and National Environmental Policy Act (NEPA) Adequacy, is to perform a DNA to verify whether leasing certain lands has been previously analyzed in an existing NEPA document. The BLM performs a DNA ("the hard look") to determine if BLM can rely on existing NEPA documents for the proposed action of leasing parcels for oil and gas. The RMP is the document that authorizes the land allocation (lands open or closed to leasing). The RMP/EIS analyses the impacts of oil and gas development (leasing) on all the other resources (Chapter 4, Environmental Consequences). The BLM also prepares environmental documents (tiered to the RMP) that are site-specific to oil and gas field development. The IM is clear that BLM can rely on a DNA to determine whether leasing certain lands is still appropriate and in accordance with the RMP. The BLM analyzed the potential impacts of oil and gas development (leasing) to all other resources prior to offering the parcels for sale. In addition to preparing DNAs prior to the February 3, 2009, competitive oil and gas sale, the Field Offices prepared environmental assessments (Previously Sold Lease Parcels EAs) to analyze whether the decision to issue leases for these parcels remained appropriate.

10. BCA argues several parcels are located in areas that conflict with nesting raptors. They argue BLM should apply stronger, science-based lease stipulations. Timing limitation stipulations are inadequate because they allow vehicle traffic and human activity close to nest sites during nesting season after the drilling/construction phase of development is completed. BCA states NSO buffers of at least one mile for raptor nests should be applied. BCA protests the following 65 parcels: WY-0902-004, 005, 008, 014, 022, 024, 025, 026, 027, 028, 030, 042, 043, 044, 047, 052, 053, 055, 058, 060, 065, 066, 067, 068, 069, 070, 071, 072, 073, 075, 076, 078, 079, 080, 081, 083, 086, 087, 088, 089, 090, 091, 092, 093, 094, 107, 108, 109, 114, 115, 116, 118, 121, 123, 124, 125, 126, 128, 130, 138, 139, 140, 141, 143, and 144.

BLM Response: The BLM Wyoming protects Raptors and raptor habitat pursuant to the Migratory Bird Treaty Act (MBTA) and Bald and Golden Eagle Protection Act (BGEPA). The BLM attaches stipulations to leases and COAs to APDs, where appropriate, in order to restrict surface-use and surface-disturbing activities during certain times of the year and within certain distances from active raptor nests, nesting habitat, and roosting areas. Generally each RMP states the distances and time periods for the type of raptor where surface disturbing and

disruptive activities are prohibited. BLM has designated special management areas for the protection of important raptor habitat such as the Shamrock Hills Raptor Concentration Areas or the Jackson Canyon ACEC.

BLM includes in every RMP an appendix, usually Appendix 1, entitled "Wyoming Bureau of Land Management Mitigation Guidelines for Surface Disturbing and Disruptive Activities." These guidelines give the BLM the right to modify operations of all surface and other human presence disturbance activities as part of the statutory requirements for environmental protection. Raptor surveys may be required of the operator before any operations may take place. Other BMPs that may be required are installation of raptor anti-perch devices, artificial nesting sites, or raptor studies/monitoring that may be documented in a project specific Avian Protection Plan (APP).

11. TU requests BLM remove portions of parcel WY-0902-134 located in the KFO due to the sensitive species that exist or potentially exist within the waters and wetland/riparian areas along the Hams Fork River drainage.

BLM Response: The KFO appropriately performed documentation of land use plan conformance and NEPA adequacy (DNA) for the subject lease parcel prior to offering the parcels at the lease sale, and subsequently prepared an environmental assessment to analyze whether the decision to issue leases for these parcels remained appropriate. The DNA and EA provided the field manager the opportunity to review whether the environmental impacts associated with oil and gas leasing and development operations have been adequately analyzed in the appropriate RMP/EIS and other applicable NEPA documents. The field manager attached stipulations that are in accordance with the existing RMP. The BLM concluded offering the parcels for leasing, with appropriate stipulations and mitigation measures, conforms to the applicable land use plan and that the existing NEPA documentation, along with the Previously Sold Lease Parcels EA fully covers the proposed action and constitutes the BLM's compliance with the requirements of NEPA.

The Previously Sold Lease Parcels EA shows on pages 2-6 that fish and wildlife (excluding federally listed species), floodplains, hydrologic conditions, recreation, threatened, endangered or candidate plant species, water resources/ quality, and wetlands/riparian zones were all present and adequately analyzed in the RMP/FEIS for leasing actions. The RMP further disclosed that effects from surface disturbing activities and other activities associated with fluid mineral leasing were mitigated by appropriate mitigation measures attached to the lease parcels. This analysis is found in Chapter 4 of the Kemmerer RMP/FEIS. Special status plant and animal species, including fish, are also present and effects from surface disturbing activities and other activities associated with fluid mineral leasing were analyzed in Chapter 4 of the RMP/FEIS. The Previously Sold Lease Parcels EA did not identify any new information that would require further analysis of potential impacts to special status species.

12. CNE points out that they have previously commented to the BLM WSO and individual BLM Wyoming Field Offices about the imperiled status of the white-tailed prairie dog,

black–tailed prairie dog, and black-footed ferrets. CNE argues BLM must re-examine and conduct new site-specific NEPA analysis of the oil and gas leasing program (including adequate range of alternatives; direct, indirect, and cumulative impacts; post-leasing developments; stipulations and mitigation measures and their effectiveness; and any new information) before issuing any new leases in white-tailed prairie habitats and citizen proposed ACECs. CNE argues temporary management (no leasing) is required to preserve the values of these areas such as the potential ACECs.

CNE argues that BLM Wyoming Field Offices have ignored all of their white-tailed prairie dog ACEC nominations. CNE argues they made their ACEC nominations to provide protection for important white-tailed prairie dog complexes that are key to the long-term persistence of the white-tailed prairie dog and a variety of other sensitive species that are dependent upon or associated with the white-tailed prairie dog colonies. BLM is violating NEPA, FLPMA and the BLM Manual by not using ACECs to help conserve sensitive habitats and species.

CNE protests the following 62 parcels: important white-tailed prairie dog habitat, important black-tailed prairie dog habitat, potential white-tailed prairie dog habitat, potential black-tailed prairie dog habitat and potential black-footed ferret habitat (WY-0902-008, 049, 051, 052, 054, 057, 065, 066, 067, 071, 072, 073, 080, 081, 082, 083, 084, 086, 087, 088, 089, 090, 091, 092, 093, 094, 098, 099, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 140, 141, 142, and 143.

BLM Response: All the lands protested by CNE are available and eligible for oil and gas leasing in accordance with the existing applicable LUPs. These decisions remain in effect until they are properly amended or revised.

In May 2008, the FWS initiated a status review of the white-tailed prairie dog to determine if the species warrants protection under the ESA. In 2004, the FWS determined that a petition submitted by the CNE and others did not present substantial biological information indicating that listing may be warranted. In 2007, after questions were raised regarding whether the petition decision was based on the best science, the FWS announced the decision would be reconsidered. Subsequently, the CNE filed a lawsuit regarding the petition finding. In a stipulated settlement, the FWS agreed to submit to the Federal Register by May 1, 2008, a notice initiating a status review for the white-tailed prairie dog and submit the results of that status review to the Federal Register by June 1, 2010. The FWS and the plaintiffs agreed to a status review completion date of June 2010 to allow sufficient time to obtain solid data.

In March 2008, WildEarth Guardians filed a complaint against the FWS for failure to complete a finding on their August 2007 petition to list the black-tailed prairie dog. In a July 2008 stipulated settlement, the FWS agreed to submit a finding on the petition by November 30, 2008, and a status review finding by November 30, 2009. The FWS has completed a status review of the black-tailed prairie dog and has determined it does not warrant protection as a threatened or

endangered species under the ESA. The FWS assessed potential impacts to the black-tailed prairie dog including conversion of prairie grasslands to croplands, large-scale poisoning, and sylvatic plague and has determined that these impacts do not threaten the long-term persistence of the species. Black-tailed prairie dogs occupy approximately 2.4 million acres across its range. The estimated population of black-tailed prairie dogs in the U.S. is approximately 24 million.

Shortly after the CNE (and others) petitioned the FWS to list the white-tailed prairie dog, the White-Tailed Prairie Dog Working Group of the 12-state Prairie Dog Conservation Team began development of the White-Tailed Prairie Dog Conservation Assessment, (WTPDCA). The WTPDCA was completed in August 2004. The WTPDCA states: "BLM land use planning efforts . . . are underway at this time in the white-tailed prairie dog range in Wyoming (Rawlins, Pinedale, Casper, Kemmerer and Lander). . . . Each of these land use planning efforts is currently, or will be, addressing white-tailed prairie dogs in the plan revisions, including ACEC nominations." A BLM state-wide programmatic biological evaluation has been prepared for white-tailed prairie dogs, the results of which will be incorporated into all the revised RMPs.

The BLM participated in the review of the WTPDCA. The BLM also participates in strategies such as the Black-Tailed Prairie Dog Conservation Assessment and Strategy. The assessments, strategies, and guidance are valuable management tools that the BLM utilizes.

The State of Wyoming, through the WGFD, completed a draft conservation plan for black-tailed prairie dogs in Wyoming. This plan contains a large number of management recommendations and planned actions that apply to white-tailed prairie dogs. The BLM has referred to the State conservation plan to help focus white-tailed prairie dog management efforts (State Conservation Plan, page 58).

Whenever the BLM receives an APD, the BLM will consult with the FWS on a case-by-case basis when white-tailed prairie dog and other special status species' habitat is an issue. The BLM, in cooperation with the FWS, will develop appropriate COAs in order to avoid adverse impacts to special status species' habitat. For example, the BLM will avoid authorizing any surface-disturbing activities in prairie dog colonies. We do not agree that the BLM ignores or fails to consider impacts to special status species. The BLM manages all of the public resources in a manner that precludes the need to list any species in the future.

The BLM Wyoming is currently in the process of revising all of its LUPs over the next several years. During this revision effort, every Field Office will consider all ACECs. For example, the RFO recently analyzed CNE's white-tailed prairie dog ACEC nomination in their draft RMP. However, since the proposed ACEC designation did not meet the relevance and importance criteria (as defined in the BLM Manual Section 1613), the ACEC designation was not advanced in the draft Rawlins RMP/EIS preferred alternative.

In every existing RMP and during every RMP revision, the BLM Wyoming prepares an EIS that analyzes whether to allow oil and gas leasing. The BLM analyzes the direct, indirect and cumulative impacts of leasing. The BLM Wyoming has closed many areas of public land to

leasing as a result of that analysis. In areas that are open to leasing, the BLM has developed appropriate mitigation measures (lease stipulations and APD COAs) in order to prevent or reduce adverse impacts and monitors the effectiveness of the mitigation. We disagree with the protesters' allegation that the BLM Wyoming needs to perform more NEPA analysis prior to leasing.

Finally, the Field Offices prepared environmental assessments (Previously Sold Lease Parcels EA) to analyze whether the decision to issue leases for these parcels remained appropriate.

13. CNE argue BLM is failing to protect sensitive species as required. CNE argues BLM has not adequately addressed or developed mitigation to protect sensitive species in its RMPs or in supplemental NEPA analyses. CNE is protesting the following 25 parcels because the habitat for species currently protected under the ESA include but are not limited to Colorado butterfly plant and Preble's meadow jumping mouse: WY-0902-002, 007, 009, 010, 011, 012, 013, 017, 019, 020, 021, 022, 023, 031, 032, 033, 034, 035, 036, 038, 051, 052, 061, 062, and 064.

BLM Response: We disagree that BLM Wyoming is failing to protect sensitive plant and animal species. The threatened & endangered (T&E) species stipulation that BLM attaches to every oil and gas lease protects all special status species. Specifically, the stipulation states in part: "The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened, endangered, or other special status species. BLM may recommend modifications to exploration and development proposals to further its conservation and management objectives to avoid BLM-approved activity that will contribute to a need to list such a species or their habitat." Clearly, this stipulation, the lease terms (Section 6), and the regulations at 43 CFR 3162.5-1(a) give BLM the authority to require the operator to conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality, including imposing restrictions from specific, nondiscretionary statutes, such as the Endangered Species Act. In addition, the BLM has participated in substantial special status species research and conservation efforts. BLM has sponsored the preparation of species assessments that document the distribution, habitat, and threats to sensitive species. Please check this internet page for more information: http://www.blm.gov/wy/st/en/programs/Wildlife.html.

14. CNE argues that leasing the protested parcels violates the ESA because: (1) ESA listed species may be present on several of the parcels; (2) the parcels have inadequate stipulations; (3) and the leases are being offered for sale without prior consultation with the Fish and Wildlife Service (FWS). CNE argues that BLM should perform Section 7 ESA consultation with the FWS before the BLM issues a lease, rather than waiting to consult with the FWS when an APD is submitted, i.e., before the BLM makes an irretrievable commitment of resources.

BLM Response: The BLM consults under Section 7 of the ESA with the FWS when the BLM prepares a RMP or a RMP revision. The BLM prepares a biological assessment and the FWS prepares a biological opinion once the BLM determines which lands will be available for leasing during preparation of a RMP or RMP revision.

The BLM has retained its authority after lease issuance to modify or deny the use of the lease in order to meet ESA requirements. The lessee does not have a right to engage in any surface-disturbing activities until the BLM analyzes the environmental impacts and processes an APD.

As indicated by Response No. 15, by regulation, lease terms, lease stipulations, and the BLM policy, the BLM may require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed species. The BLM will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the ESA.

Issuing an oil and gas lease does not cause immediate surface disturbance. Issuing an oil and gas lease does not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat of such species. It is far from certain that the lease will ever result in drilling or surface-disturbing activities, especially where T&E species are concerned. There is great uncertainty as to whether, when, and where a well would be drilled on a lease. We disagree with CNE's argument that the BLM violated the ESA because the BLM failed to consult with the FWS before the BLM offered specific parcels for sale. The operational stage is the point in time, when, in accordance with Section 7 of the ESA, the BLM is required to consider whether the proposed action (APD) is likely to jeopardize the continued existence of any endangered species. To carry out this requirement, the BLM must work closely with the FWS. The BLM must ask the FWS whether a listed species is present in the area of the proposed action. If the FWS responds affirmatively, the BLM must complete a biological assessment. If the BLM's assessment indicates that the proposed action "may affect" listed species or critical habitat, the BLM must initiate formal consultation with the FWS. The BLM's "final" commitment of irreversible resources occurs at the APD approval stage, therefore, it is premature and impractical to engage in Section 7 ESA consultation procedures at the lease issuance stage when it is still uncertain whether a "may affect" issue even exists or ever will exist.

In District Court, District of Columbia, Wyoming Outdoor Council v. Bosworth, Case No. 1-01CV02340(RMU) (2003), WOC argued lease issuance triggers the ESA's formal consultation requirement. Specifically, WOC argued the Forest Service (FS) and the BLM failed to formally consult with the FWS before issuing six oil and gas leases in Wyoming (two FS leases, four BLM leases), therefore, the FS and the BLM violated the ESA. WOC pointed out that the FS and BLM were both aware that the Brent Creek area served as grizzly bear habitat and that lease issuance constituted an action that "may affect" grizzlies. WOC also argued that lease issuance threatens grizzlies because lease issuance is the irreversible and irretrievable point at which the lessee gains the legal right to undertake surface development, even if such development does not occur until years later. The District Court ruled that since WOC's claims ". . . rest upon contingent future events that may not occur as anticipated, or indeed may not occur at all, the court concludes that the Wyoming Outdoor Council's claims are not ripe." The District Court dismissed WOC's arguments and ruled that the irreversible commitment of resources does not occur at the point of lease issuance, but rather at the point when the BLM receives a site-specific proposal. The BLM is not required to consult at lease issuance, but rather at the APD stage.

15. CNE argues that according to FLPMA: "In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." CNE and TRCP argue that the BLM cannot proceed with the subject lease sale because there has been no determination whether special provisions may be necessary to prevent unnecessary or undue degradation; therefore, leasing would be arbitrary, capricious, and an abuse of discretion.

BLM Response: The regulations at 43 CFR 3162.5-1(a) state in part: "The operator shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality. In that respect, the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan . . . Before approving any APD, the authorized officer shall prepare an environmental record of review or an environmental assessment, as appropriate."

43 CFR 3162.5-1(b) states in part: "The operator shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements." As stated in WO IB No. 2007-119, "The Secretary has multiple authorities to base his decision to mitigate impacts stemming from oil and gas operations . . . It is, therefore, inappropriate to assume the 'unnecessary or undue' clause in FLPMA as the only or even primary authority for mitigating environmental impacts anticipated from permitted oil and gas activities."

The current lease terms (Section 6) specify that the lessee shall conduct operations in a manner that minimizes adverse impacts to the land, air, water, to cultural, biological, visual, and other resources. The lessee shall take reasonable measures deemed necessary by the lessor to accomplish the intent of this section.

Prior to any surface-disturbing activity, the BLM will conduct a site-specific EA or EIS to analyze the anticipated impacts of the proposed activity. Through this environmental analysis, BLM, if necessary, will impose appropriate site-specific restrictions and mitigation measures to avoid or limit unnecessary and undue impacts.

The BLM Wyoming prepares the EIS that analyses the direct, indirect and cumulative impacts of leasing. The RMP will also address whether leasing will be allowed in the planning area, and if so, where it can occur. In areas that are open to leasing, the BLM has developed appropriate mitigation measures (lease stipulations and APD COAs) in order to prevent or reduce adverse impacts and monitors the effectiveness of the mitigation. As IBLA noted in Wyoming Outdoor Council et al., 171 IBLA 108, 121022, where a leasing decision comports with the provisions of the governing RMPs, a disagreement with the BLM's approach does not suffice to overturn a decision to offer parcels for lease, nor would it violate section 202(c)(9) or section 302(b) of FLPMA. Here, BLM Wyoming took appropriate measures to ensure that the decision to offer these parcels was consistent with the applicable RMPs. Given that decision to offer the parcels complies with the applicable RMPs, the BLM Wyoming's oil and gas leasing program is neither arbitrary, capricious, nor an abuse of discretion.

16. CNE argues that the BLM has broad discretionary authority to approve or disapprove mineral leasing of public lands.

BLM Response: We agree with CNE that BLM has discretion whether to lease public lands. The Secretary of the Interior is vested by the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (2000), as amended, with discretionary authority to lease or not lease public lands which are otherwise available for oil and gas leasing. This authority has been delegated to the State Director. If the State Director determines not to lease lands that are otherwise available for leasing as designated in the RMP, the justification must be rational and defensible, otherwise the decision will be found to be arbitrary and capricious. (Continental Land Resources, 162 IBLA 1 (June 16, 2004)).

Lands are nominated by an interested party to be included in the BLM Wyoming's competitive oil and gas lease sale. The sales are now held quarterly (4 sales per year) in Wyoming. The nominations are checked to ensure the lands described in the nomination are available and eligible for leasing. The field office manager will determine if leasing the nominated lands is still appropriate and then document the adequacy of previous NEPA analysis with a DNA. If there is new information available since the RMP ROD was signed, and the field manager believes it is no longer appropriate to lease the land, the field manager will recommend to the Wyoming Deputy State Director, Division of Minerals and Lands, to remove the parcel from the sale list. In summary, the BLM Wyoming has a process in place to determine whether any nominated land should be leased based on the best and most recent information. That process is followed for all lease sales, including the February 2009 sale.

17. BCA argues leasing the protested parcels would violate the National Historic Preservation Act (NHPA). BCA argues an agency must comply with the NHPA's provisions before selling oil and gas leases. BCA also argues a NSO should be applied to the trails' parcels or the parcels should be withdrawn from the sale until adequate pre-leasing NEPA analysis is conducted and protections and mitigation are incorporated into the leases. BCA protested the following 10 parcels: WY-0902-064, 070, 127, 128, 130, 133, 134, 135, 136, and 137.

BLM Response: NHPA is a procedural statute designed to ensure an agency identifies and considers significant cultural resources in its decision-making process. The BLM is to identify and protect historic and cultural properties from surface activities undertaken by a BLM authorization (Federal undertaking).

The BLM, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, entered into a national programmatic agreement to describe and document the BLM's responsibilities and procedures under NHPA. The Wyoming State Historic Preservation Officer and Wyoming BLM also entered into a State Protocol programmatic agreement after the 1997 national programmatic agreement was in place. The State programmatic agreement established the manner in which BLM will comply with the NHPA requirements. The State Protocol is found on the internet at

http://www.blm.gov/wy/st/en/programs/Cultural_Resources/protocol.html. Because of these agreements among all the appropriate agencies and subject matter experts, BLM Wyoming complies with the NHPA with respect to oil and gas leasing issues.

Stipulations are derived from the protections afforded by the NEPA analysis of the impacts in the FEIS of the RMP. There are stipulations applied to parcels where there are trails' concerns. In most cases, this involves a CSU that restricts or prohibits activity until the operator and BLM come to an agreement concerning mitigation of any impacts. A CSU is also used to protect Class I and/or Class II visual resources. Petroglyphs and other Indian rock art are also protected by stipulations derived from the NEPA analysis in the FEIS of the RMP and the JMH NEPA analysis in the activity plan-JMHCAP.

18. CNE protests three parcels that overlap with designated Areas of Critical Environmental Concern: WY-0902-113, 119, and 123.

BLM Response: Parcel 113 is located in T. 31 N., R. 99 W., Sections 14 and 24, N2, SW, NESE, S2SE, Fremont County and the LFO. The entire parcel of 1240 acres is covered by a NSO-no surface occupancy. Even though the parcel can be leased, there can be no surface occupancy or disturbance by the operator. According to the LFO RMP ROD, 1987, page 43, the Red Canyon Management Unit will be kept open to oil and gas leasing with restrictions. All of the lands within this management unit have been rated as having low potential for the occurrence of oil and gas. Any future leases, including parcel 113, will be issued with a NSO restriction to protect water quality, fisheries, riparian, sage-grouse leks, steep slopes, threatened and endangered species, significant cultural sites, sensitive visual resources, and the Red Canyon National Natural Landmark.

Parcel 119 located in T. 12 N., R. 103 W., Section 1, S2N2, Sweetwater County, RSFO. This parcel is located in the Horseshoe Basin Unit within the Pine Mountain Management Area. Pine Mountain is not a designated ACEC because it does not contain the same sensitivity of resources found in the Greater Red Creek ACEC, even though the watershed resources in this area are interconnected with those of Greater Red Creek. This area also does not contain populations of the Colorado River Cutthroat trout that the Greater Red Creek area does. This area is open to mineral leasing and related exploration and development activities with appropriate mitigation requirements applied to protect all other resource values.

Parcel 123 located in T. 22 N., R. 103 W, portions of or all of sections 4, 6, 12, 14, and 30, Sweetwater County, RSFO. This parcel is located in the northern most portion of the checkerboard (public sections alternating with private sections) lands. The BLM administered public lands in this ACEC is open to consideration for mineral leasing with restrictions to protect cultural and wildlife values, particularly raptors and raptor habitat, big game winter range, and watershed values.

Of these three parcels, parcel 113 is deferred for the LFO RMP revision as stated in Response No. 6.

19. BCA asks the BLM to prepare an environmental analysis (EIS) pursuant to NEPA in order to address BCA's issues and concerns on global warming and climate change including the supporting evidence provided by BCA's protest. BCA argues that this NEPA process will need to be consolidated with the BLM Wyoming's current RMP revision efforts and at a statewide or regional scale. BCA argues that Secretarial Order 3226, FLPMA, NEPA, and the BLM's Public Trust Duty requires the BLM to consider and analyze potential climate change impacts before lease rights are sold.

BLM Response: The protest specifically states at the outset that it is "predicated on the BLM's failure to address global warming and climate change and the impacts of this failure upon BCA's interest." The protest consists of comments concerning the BLM's role in addressing global warming, climate change, and greenhouse gas emissions (GHG) from Federal onshore oil and gas activities before lease rights are sold.

BCA asserts that the BLM has a general obligation to consider and analyze potential climate change impacts under the NEPA, 42 U.S.C. 4321, et seq., the FLPMA, 43 U.S.C. 1701 et seq., Secretarial Order (SO) 3226 (signed January 19, 2001), and BLM's "Public Trust Duty." Notably, BCA does not allege that BLM violated any provision of NEPA, FLPMA or their implementing regulations in offering the leases for sale.

The core of BCA's protest appears to be a recommendation that BLM, before issuing leases for the 145 parcels offered in the February, 2009 sale, prepare an EIS pursuant to NEPA to address global warming and climate change issues allegedly implicated by the lease sale. Specifically, BCA asks the BLM, through the NEPA process, to take the following actions:

(1) Quantify past, present, and reasonably foreseeable greenhouse gas emissions from the BLM-authorized oil and gas development to address the direct, indirect, and cumulative impacts of these greenhouse gas emissions to the environment;

(2) Identify, consider, and adopt a greenhouse gas emissions limit or greenhouse reduction objective for the BLM-authorized oil and gas activities;

(3) Identify, consider, and adopt management measures – such as pre-commitment lease stipulations and post-commitment conditions of approval – to reduce greenhouse gas emissions from the BLM-authorized oil and gas activities;

(4) Track and monitor greenhouse gas emissions from the BLM-authorized oil and gas operations through time; and

(5) Consider how global warming and climate change impacts the environment, and whether such impacts warrant additional environmental protections.

BCA explains that their intent is to ensure that oil and gas development on public lands is held to the highest science-based standards. Their "fundamental purpose in recommending that the BLM prepare an EIS is to engage the BLM in a dialogue to address these issues with the participation of the broader public and oil and gas industry."

The BLM's inventory and land use planning process under FLPMA is ongoing. The BLM Wyoming is currently revising its plans in Buffalo, Worland, Cody, and Lander, and recently revised the Casper, Kemmerer, Pinedale, and Rawlins plans. The BLM Wyoming has also completed the "Previously Sold Lease Parcels EAs" that addresses climate change. While BLM revises RMPs, it will continue to manage public lands according to existing land use plans, see Colorado Environmental Coalition, 161 IBLA 386 (2004). The BLM recently completed environmental analyses as described in the Previously Sold Lease Parcels EAs. These EAs provide additional disclosure and analysis of the environmental impacts associated with the BLM's decision to issue leases for the February 2009, parcels.

We appreciate BCA's recommendations relating to global warming and climate change and the wealth of scientific information they have provided in the protest and attached exhibits. BCA has not alleged, however, and has not demonstrated by competent evidence that the BLM's decision to offer the 145 parcels in the lease sale violated any law. Nor does the protest allege any deficiencies or irregularities in the notice of lease sale or supporting documentation. The protest fails to identify any specific effect on global warming or climate change that will result from leasing the protested parcels. Further, the protest fails to identify any change in the affected environment in which the action will occur that would alter our analysis of the other effects of the leasing action.

A. SO 3226 Does Not Require BLM to Evaluate Potential Climate Change Impacts of Leasing the Parcels in the February 2009 Sale.

BCA assert that "[t]he starting point underscoring the BLM's legal obligation to address global warming and climate change" is a short order, issued by former Secretary of the Interior Babbitt on January 19, 2001. SO 3226, entitled "Evaluating Climate Change Impacts in Management Planning," provides in pertinent part:

> Each bureau and office of the Department will consider and analyze potential climate change impacts when undertaking long-range planning exercises, when setting priorities for scientific research and investigations, when developing multi-year management plans, and/or when making major decisions regarding the potential utilization of resources under the Department's purview.

SO 3226 directs bureaus and offices within the Department of the Interior to address potential climate change impacts of multi-year management plans and major decisions regarding resource utilization.

Because the February 2009 oil and gas lease sale involving 145 parcels is not a programmatic or long-range land allocation or management decision, SO 3226 does not apply. Second, some of the BLM RMPs containing the decisions to open the lands to leasing involved in the February 2009 sale predate the 2001 order. Most of the relevant plans were issued between 1985 and 2000. Therefore, the order does not apply to them.

Finally, nothing in the 2001 order requires the cessation of actions authorized under existing plans. As the BLM is developing new RMPs and plan amendments for public lands in Wyoming, it is addressing greenhouse gas emissions and climate change. The BLM Wyoming has prepared EAs addressing climate change for the previously sold but not issued parcels including those parcels sold in the February 2009 sale and relied upon these EAs to make the decision on lease issuance.

B. FLPMA Does Not Require that BLM Analyze Potential Climate Change Impacts Before Leasing the Protested Parcels.

BCA states that FLPMA provides the BLM with the authority and responsibility to address global warming and climate change through resource inventories, land use planning, and land use protection and management. BCA recites the broad Congressional policies behind FLPMA and its general mandate that the BLM manage its lands for multiple-use and sustained yield. Notably, the protest does not allege that the BLM failed to comply with any provision of FLPMA or the applicable land use plans developed pursuant to FLPMA by offering the protested parcels for sale.

We agree that FLPMA vests the BLM with broad authority and responsibility to gather information about the public lands, their resources and values; to develop land use plans; and to manage the public lands in accordance with these plans. Sections 201 and 202 of FLPMA, 43 U.S.C. 1711 and 1712, provide for a comprehensive, ongoing inventory of Federal lands and for a land use planning process that projects present and future uses, based on the inventoried characteristics.

Not surprisingly, FLPMA, which was enacted more than 30 years ago, does not address how the BLM is to manage the public lands under the principles of multiple use and sustained yield in light of the alleged phenomena of greenhouse gas emissions, global warming and climate change. FLPMA gives the BLM ample authority, however, to address emerging issues in its ongoing inventory and land use planning efforts. At the same time, the BLM has broad discretion in deciding how to exercise this authority. See Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 58 (2004) (FLPMA establishes a dual regime of inventory and planning to enable the BLM to carry out its "enormously complicated task" of multiple-use management of the public lands).

The protest does not identify any deficiencies, traced to a lack of compliance with FLPMA, in any of the land use plans that opened to leasing the 145 parcels offered in the February 2009 sale. FLPMA does not dictate when a relevant plan is too old to authorize a leasing decision or compel the BLM to engage in new land use planning. Just as FLPMA does not establish a clear duty of when to revise land use plans, it does not create a duty to cease actions during such revisions. (ONRC Action v. BLM, 150 F.3d 1132, 1139 (9th Cir. 1998)). Plaintiff ONRC Action contended that BLM had failed to act in accordance with duties established under FLPMA to adequately monitor and update its management plans before relying on them to make land management decisions. Specifically, the plaintiffs relied on 43 U.S.C. §§ 1701, 1712, and

1732, the same provisions of FLPMA on which BCA relies in this protest. The Ninth Circuit agreed with the BLM's interpretation of FLPMA that nothing in these provisions provided a clear statutory duty with which the BLM must comply. The court explained:

> *Section 1701* provides several policy statements which require due consideration, but do not provide a clear duty to update land management plans or cease actions during the updating process. *Section 1712* requires the revision of LUPs when "appropriate." *Section 1712* also provides the proper procedure and criteria to follow during development or revision of a land use plan. The language in *Section 1712* does not, however, establish a clear duty of when to revise the plans, nor does it create a duty to cease actions during such revisions. *Section 1732* also lacks a statement of clear statutory duty.

Id.

A 2007 report by the Government Accountability Office (GAO) is consistent with our position that FLPMA does not compel the BLM to defer leasing the protested parcels until the BLM addresses global warming and climate change. "Climate Change: Agencies Should Develop Guidance for Addressing the Effects on Federal Land and Water Resources," The GAO recognized that the statutes governing the BLM's and other federal agencies' resource management activities "generally do not require the agencies to manage for specific outcomes, such as to provide a specific response to changes in ecological conditions." Instead, the GAO observed:

> [T]hese laws give the agencies discretion to decide how best to carry out their responsibilities in light of their respective statutory missions as well as the need to comply with or implement specific substantive and procedural laws, such as the Endangered Species Act of 1973 (ESA), the National Environmental Policy Act (NEPA), or the Clean Air Act. The agencies are generally authorized to plan and manage for changes in resource conditions, regardless of the cause that brings about the change. As a result, federal resource management agencies are generally *authorized, but are not specifically required,* to address changes in resource conditions resulting from climate change in their management activities.

2007 GAO Report at 2 (emphasis added).

C. BLM Does Not Have A "Public Trust Duty" to Consider and Analyze Climate Change Impacts.

BCA contends that the BLM has a so-called "Public Trust Duty" that "obligates the BLM to exercise its duty of reasonable care by quantifying GHG emissions from oil and gas operations on public lands, to affirmatively reduce those GHG emissions to protect the atmosphere and the public lands, and to affirmatively take action to ensure that the built and natural environments on the BLM public lands are sufficiently resilient to withstand, as best as they are able, global

warming and climate change impacts." In support of this alleged duty, BCA relies on two decisions of the U.S. Supreme Court rendered more than a century ago: Illinois Central R.R. Co. v. Illinois, 146 U.S. 387, 455 (1892); and Geer v. Connecticut, 161 U.S. 519, 525-29 (1896).

Whether any type of public trust duty applies to management of Federal lands is unclear. In Sierra Club v. Andrus, 487 F. Supp. 443 (D.D.C. 1980), the district court concluded that a 1978 amendment to the National Park Service Organic Act reflected Congress' intention to eliminate claimed public trust duties arising outside of statutes and that FLPMA is the exclusive embodiment of the BLM's management responsibilities. Confronted with similar public trust arguments, most courts have ruled that an agency's statutory duty is exclusive. Even if a public trust duty exists, its contours would be defined by statutes and regulations, as is the case of the clear trust responsibility resulting from the United States' elaborate control over Indian property. See United States v. Mitchell, 463 U.S. 206, 224 (1983) (Statutes and regulations "define the contours of the United States' fiduciary responsibilities" to Indian allottees.).

Even if the BLM has a public trust duty (beyond its statutory duties) to ensure that public lands and resources are managed appropriately, this general allegation is not a sufficient objection to the February 2009 sale. As stated in the posted oil and gas lease sale notice, parties must be specific in their protests and direct their objections to the proposed action. BCA's claim is vague and unsupported by any evidence. BCA does not attempt to explain how this claim relates to the protested parcels. This argument lacks merit and we reject it.

D. NEPA Does Not Require that the BLM Evaluate Potential Climate Change Impacts in an EIS Before Leasing the Protested Parcels.

BCA's primary objection to issuance of the leases in the February 2009 sale is the BLM's failure to consider and analyze in an EIS the potential climate change impacts associated with offering the 145 parcels for sale. BCA contends that the BLM must defer leasing until the BLM has analyzed these impacts in an additional or supplemental EIS.

BCA asserts that, "once a NEPA analysis is completed, an agency must prepare a supplement whenever the agency makes substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." Thus, they argue, "The BLM cannot rely on existing NEPA analyses to justify the lease sales given that these NEPA analyses do not appear to address global warming and climate change in any capacity."

BCA implies that the BLM has failed to comply with its obligations under NEPA through broad allegations and suggestions. They have not supported such claims, however, with respect to the specific parcels offered in the February 2009 lease sale.

1. The Legal Standard

NEPA requires a Federal agency to prepare an EIS as part of any "proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). The decision whether to prepare a new EIS is similar to the decision

whether to prepare a supplemental EIS and is highly factual. The Council on Environmental Quality regulations, which the Supreme Court has held are entitled to substantial deference, requires Federal agencies to supplement either draft or final EISs if there "are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii). In Marsh v. Oregon Natural Resources Council, 490 U.S. 360 (1989), the Supreme Court interpreted § 4332 in light of this regulation to require agencies to "take a hard look at the environmental effects of their planned action" to assess if supplementation might be necessary. Id. at 374.

The Supreme Court has indicated that a pragmatic approach should be used in deciding whether and how to update existing NEPA analyses in light of new information. The Court noted that the "cases make clear that an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decision-making intractable, always awaiting updated information outdated by the time a decision is made." Marsh, 490 U.S. at 374. The Court suggested that an agency's inquiry should be: Is the new information sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered? Id. As the Ninth Circuit puts it, an agency must prepare additional NEPA analysis if the proposed action "will have a significant impact on the environment in a manner not previously evaluated and considered." Westlands Water District v. Interior, 376 F.3d 853, 873 (9th Cir. 2004), quoting South Trenton Residents Against 29 v. FHA, 176 F.3d 658, 663 (3d Cir. 1999).

As explained below, and supported by the analyses in the Previously Sold Lease Parcels EAs, we find that BCA's information is not significant in terms of the leasing decision.

2. BLM's existing NEPA analysis covering the protested parcels is adequate.

The sale and issuance of oil and gas leases is needed to meet the growing energy needs of the United States public. Wyoming is a major source of natural gas for heating and electrical energy production in the lower 48 states, especially for markets in the eastern United States. Continued sale and issuance of lease parcels is necessary to maintain options for production as oil and gas companies seek new areas for production or develop previously inaccessible or uneconomical reserves.

The BLM prepares a DNAs for each parcel nominated for lease to determine whether offering the parcel conforms to the existing land use plan and whether the environmental analysis completed for the plan is adequate to support the lease decisions. DNAs are forms used by the BLM to examine whether it can rely on existing NEPA documents to issue the lease. DNAs document whether new circumstances, new information, or environmental impacts not previously anticipated or analyzed in the governing LUP and NEPA analyses warrant new analysis in addition to existing NEPA documents.

Each of the relevant the BLM Field Offices in this case examined the existing NEPA analyses covering the parcels offered at the February 2009 sale and determined that the analyses

sufficiently assessed the environmental consequences of leasing the parcels. The Field Offices used DNAs to make and document that assessment. In addition, the BLM also prepared EAs to verify conformance with the approved land use plan, address new information related to climate change and other issues, and provide the rationale for issuing parcels sold during the February 2009 lease sale.

Scientists and the BLM resource specialists have only limited ability to estimate potential future impacts of climate change on the environment of a particular area, regionally or locally. Based on the BLM resource inventories conducted, monitoring data collected, resource assessments made on a continuous basis to help understand the condition and health of the resources on public lands, and other additional information, the descriptions of the affected environment made in the relevant RMP/EISs are still accurate and do not substantially change the analysis of the effects of leasing the 145 parcels in question.

As the Previously Sold Lease Parcels EAs point out, while future development of the parcels could emit GHGs, leasing alone will not, because the leasing decision itself does not authorize development or production. Climate change science at this time does not enable us to translate any incremental contributions to global GHG emissions that may result from potential development of these parcels into incremental effects on the global climate system or the environment in the leasing area. *See, e.*g. *Powder River Basin Resources Council*, 180 IBLA 119, 132-135 (2010). Because the incremental effects of potential future activities on these parcels cannot be analyzed with any degree of reliability, the new information regarding climate change would not substantially change the analysis of the action here. Nevertheless, the BLM has adequately disclosed and analyzed climate change impacts in the Previously Sold Lease Parcels EAs.

E. Protestors' Recommendations for Addressing Global Warming, Climate Change and Greenhouse Gas Emissions Do Not Require that Oil and Gas Leasing be Deferred.

The protest recommends that the BLM take specific actions, through the NEPA process, before issuing leases for the protested parcels. BCA recommends that the BLM should identify, consider, and adopt measures to reduce GHG emissions from oil and gas activities that the BLM regulates. BCA states that the BLM should consider making the types of measures that BCA suggests mandatory as lease stipulations. The recommendations do not relate specifically to the parcels offered in the February 2009 lease sale and are not legal requirements.

We have reviewed the recommended actions in the protest and find that all of them concern operational issues that can be addressed, as described in the Previously Sold Lease Parcels EAs, in conditions of approval at the stage of an APD. These conditions can be required at that stage based on either programmatic or site-specific NEPA analysis if they can be demonstrated to be reasonable and appropriate. They need not be adopted as lease stipulations. Mere lease issuance, in other words, does not preclude BLM from imposing the types of requirements on lease operations suggested in the protest at the time when APDs, surface use plans, and rights-of-way, are submitted to the BLM. The BLM regulations pertaining to surface use rights provide

that the BLM may regulate surface use through reasonable measures "to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed," consistent with lease rights granted (43 C.F.R. 3101.1-2).

Conclusion

We agree with BCA that NEPA provides a useful mechanism to analyze the phenomena of climate change and GHG emissions associated with oil and gas leasing. The BLM is currently addressing these issues in environmental analyses associated with new resource management plans and plan amendments in Wyoming. BCA has failed to sustain their burden. Although they have submitted extensive exhibits that discuss the developing scientific understanding of climate change in global terms, little of this documentation, if any, is directly relevant to the lease parcels at hand. Instead, BCA is asking that the BLM defer leasing the parcels while BLM undertakes a review of the developing science regarding global climate change and the likely contribution of GHG emissions. Such a review would not contribute to a better decision on the 145 parcels at issue and, therefore, will not be undertaken.

Decision:

The following 32 parcels will be deferred based on the information contained in the text within the Discussion section as well as the information disclosed in the Environmental Assessments (EAs) prepared by each BLM WY Field Office entitled "Previously Sold Lease Parcels EA" and screens for wilderness characteristics and Greater sage-grouse: WY-0902-011, 012, 020, 021, 023, 046, 049, 054, 063, 064, 065, 066, 067, 068, 071, 073, 075, 076, 078, 079, 082, 087, 098, 100, 101, 103, 104, 105, 113, 118, 127, and 128. Parcels 011, 012, 020, 021, 023, 068, 071, 073, 075, 076, 078, and 079 are being deferred to add an inadvertently missed NSO stipulation for Class I and II waters. Parcels 046, 049, 054, and 064 are within the Fort Union Formation in Johnson County, Wyoming and cannot be leased until BFO completes the RMP revision. Parcels 063, 065, 066, and 067 are deferred pending completion of a RMP amendment. Parcels 098, 100, 101, 103, 104, 105, 113, and 118 are deferred pending completion of RMP revisions. Parcels 078, 082, 087, 101, 127, and 128 did not pass the sage-grouse screening criteria are deferred. Parcels WY-0902-108, 109, 110, 111, 112, 124, 125, and 126 were removed from the competitive oil and gas sale before the sale. The remaining 105 parcels will be issued.

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 February 2009 sale and are, therefore, adverse parties who must be served with any pleadings.

Larry Claypool
Deputy State Director,
Minerals and Lands

2 Attachments:
1 – Appeal Form (1842-1)
2 – February 2009 Oil and Gas Sale Results