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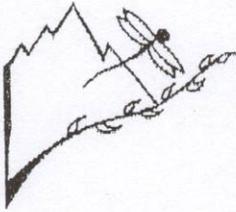
TO: WY BLM STATE DIRECTOR AT 307-775-6203

FROM: CENTER FOR NATIVE ECOSYSTEMS AT 303-546-0214 EXT. 6

DATE: MAY 18, 2009

PAGES: 34, INCLUDING COVER SHEET

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Bob Bennett  
State Director  
Bureau of Land Management  
Wyoming State Office  
5353 Yellowstone Road  
Cheyenne, WY 82009

May 18, 2009

BY FAX

**Re: Protest of the Bureau of Land Management's Notice of Competitive Oil and Gas Lease  
Sale of Parcels with High Conservation Value**

Dear Director Bennett:

In accordance with 43 C.F.R. §§ 4.450-2; 3120.1-3, Center for Native Ecosystems ("CNE") and Biodiversity Conservation Alliance ("BCA") protest the June 2, 2009 sale of the following parcels:

**I. Protested Parcels**

WY-0906-005	WY-0906-030	WY-0906-047	WY-0906-076
WY-0906-006	WY-0906-031	WY-0906-048	WY-0906-078
WY-0906-009	WY-0906-033	WY-0906-049	WY-0906-079
WY-0906-011	WY-0906-034	WY-0906-050	WY-0906-080
WY-0906-012	WY-0906-035	WY-0906-051	WY-0906-081
WY-0906-013	WY-0906-036	WY-0906-055	WY-0906-082
WY-0906-014	WY-0906-037	WY-0906-056	WY-0906-083
WY-0906-015	WY-0906-038	WY-0906-057	WY-0906-084
WY-0906-016	WY-0906-039	WY-0906-064	
WY-0906-018	WY-0906-040	WY-0906-065	
WY-0906-019	WY-0906-041	WY-0906-070	
WY-0906-021	WY-0906-042	WY-0906-071	
WY-0906-025	WY-0906-043	WY-0906-072	
WY-0906-026	WY-0906-044	WY-0906-073	
WY-0906-027	WY-0906-045	WY-0906-074	
WY-0906-028	WY-0906-046	WY-0906-075	



## II. Protesting Parties

Center for Native Ecosystems has a well-established history of participation in Bureau of Land Management ("BLM") planning and management activities, including participation in Wyoming BLM oil and gas leasing decisions and the planning processes for the various Wyoming BLM Field Offices. CNE's mission is to use the best available science to participate in policy and administrative processes, legal actions, and public outreach and education to protect and restore native plants and animals in the Greater Southern Rockies.

Biodiversity Conservation Alliance's mission is to protect and restore biological diversity, habitat for wildlife and fish, rare plants, and roadless lands in Wyoming and surrounding states.

CNE and BCAs members visit, recreate on, and use lands on or near the parcels proposed for leasing. The staff and members of CNE and BCA enjoy various activities on or near land proposed for leasing, including viewing and studying rare and imperiled wildlife and native ecosystems, hiking, camping, taking photographs, and experiencing solitude. CNE and BCAs staff and members plan to return to the subject lands in the future to engage in these activities, and to observe and monitor rare and imperiled species and native ecosystems. We are collectively committed to ensuring that federal agencies properly manage rare and imperiled species and native ecosystems. Members and professional staff of CNE and BCA are conducting research and advocacy to protect the populations and habitat of rare and imperiled species discussed herein. CNE and BCAs members and staff value the important role that areas of high conservation value, should play in safeguarding rare species and communities and other unique resources on public land. Our members' interests in rare and imperiled species and ecosystems on BLM lands will be adversely affected if the sale of these parcels proceeds as proposed. Oil and gas leasing and subsequent mineral development on the protested parcels, if approved without adequate environmental analysis under the National Environmental Policy Act, consultation under the Endangered Species Act, and appropriate safeguards to minimize negative impacts, is likely to result in a greatly increased risk of significant harm to rare and imperiled species and native ecosystems. Further, our staff and members have been deprived of the opportunity to publicly comment on the proposed leasing. As a result, BLM's decision to lease the protested parcels is uninformed and will result in significant harm to rare and imperiled species and native ecosystems. The proposed leasing of the protested parcels will harm our members' interests in the continued use of those public lands and the rare and imperiled species they support. Therefore protestors have legally recognizable interests that will be affected and impacted by the proposed action.

Megan Mueller, like all other CNE employees is authorized to file this protest on behalf of CNE. Erik Molvar, executive director of Biodiversity Conservation Alliance is authorized to file this protest on behalf of Biodiversity Conservation Alliance.

### III. Affected Resources

Oil and gas exploration and development authorized through the proposed leasing of the protested parcels is likely to have significant negative impacts on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret and other special status species. Exhibit 1 lists the protested parcels, and the special status species and habitats of concern located within each parcel. In addition, many of the protested parcels contain habitat for raptors and for species listed under the Endangered Species Act. The description of the protested parcels in BLM's sale notice discloses when raptors are present in the protested parcels. In addition, the descriptions of the protested parcels in the sale notice discloses when species listed under the Endangered Species Act may be present in the protested parcels. Oil and gas development authorized through the proposed leasing of the protested parcels is likely to have significant impacts on the species and habitats listed above and in Exhibit 1. Oil and gas exploration and development authorized through the proposed leasing of the protested parcels is also likely to have significant impacts on lands of high conservation value and the rare and imperiled species and other unique resources they support. Lands of high conservation value that may be significantly impacted by the proposed leasing include Holton Ranch Complex, Pathfinder Complex, Shamrock Hills Complex, 15 Mile Complex, Baxter Basin Complex, and Manderson Complex, nominated white-tailed prairie dog ACECs; and Adobe Town and Sheep Mountain and Badlands Draw Wilderness Study Areas. Exhibit 1 lists the protested parcels and the areas of high conservation value that overlap with the protested parcels and may be significantly impacted by the proposed leasing. The issues raised in the statement of reasons apply to these species and areas of high conservation value. In this section, we have provided additional background on greater sage-grouse and white-tailed prairie dog.

#### **greater sage-grouse**

Oil and gas development authorized by the leasing of the protested parcels will have significant impacts on greater sage-grouse. A number of the protested parcels are located within a four mile buffer around occupied greater sage-grouse leks. Some of the parcels directly overlap with greater sage-grouse leks. In addition, a number of the protested parcels are within greater sage-grouse core areas. Finally, a number of the protested parcels are within greater sage-grouse winter habitat. (Information on overlap between protested parcels and the above types of sage-grouse habitat was obtained from a GIS overlay of the parcels proposed for leasing and sage-grouse habitat as mapped by the Wyoming Game and Fish Department). Please see Exhibit 1 for details on the overlap between protested parcels and key greater sage-grouse habitat.

Oil and gas development authorized by the leasing of the protested parcels is likely to have significant direct, indirect, and cumulative impacts on greater sage-grouse breeding, nesting, brood rearing and winter habitat, and result in population declines and lek abandonment. The studies listed below contain information on:

- the status of the greater sage-grouse
- the impacts of oil and gas development on greater sage-grouse
- the efficacy of application of various protective measures (including protective measures applied to the protested parcels as lease stipulations and notices) in mitigating impacts of oil and gas development on greater sage-grouse
- expert recommendations on how best to minimize and mitigate impacts of oil and gas development on greater sage-grouse
- information essential to analysis of the direct and indirect impacts of the oil and gas development on the protested parcels on greater sage-grouse
- information essential to analysis of the cumulative impacts of oil and gas development on the protested parcels, and other past, present and reasonably foreseeable activities, including grazing, climate change, fire, grazing etc., on greater sage-grouse populations

This information is essential to adequate NEPA analysis of the likely direct, indirect, and cumulative impacts of oil and gas development on the protested parcels on greater sage-grouse. In addition, this information is crucial to any effort to develop a range of alternatives for oil and gas development, and to develop and analyze the likely effectiveness of lease notices and stipulations applied to the protested parcels to mitigate impacts of oil and gas development on greater sage-grouse to insignificance. The information in these documents constitutes the best available science on greater sage-grouse, and the impacts of oil and gas development on greater sage-grouse. The BLM has not considered the information contained within these documents as part of a National Environmental Policy Act (NEPA) analysis of the impacts of oil and gas development authorized by the leasing of the protested parcels on greater sage-grouse. We hereby incorporate the following documents by reference:

2007. *Western Watersheds Project v. U.S. Forest Service*. 535 F. Supp. 2d 1173: D. Idaho

Aldridge CL, Boyce MS. 2007. Linking occurrence and fitness to persistence: habitat-based approach for endangered greater sage-grouse. *Ecological Applications* 17: 508-526.

Baxter RJ, Flinders JT, Mitchell DL. 2008. Survival, movements, and reproduction of translocated greater sage-grouse in Strawberry Valley, Utah. *Journal of Wildlife Management* 72: 179-186.

Braun CE. 2006. A blueprint for sage-grouse conservation and recovery. Tucson, AZ: Grouse Inc.

Connelly JW, Schroeder MA, Sands AR, Braun CE. 2000. Guidelines to manage sage grouse populations and their habitats. *Wildlife Society Bulletin* 28: 967-985.

Doherty KE. 2008. Sage-grouse and energy development: Integrating science with conservation planning to reduce impacts. Ph.D. Dissertation. University of Montana, Missoula.

Doherty KE, Naugle DE, Walker BL, Graham JM. 2008. Greater sage-grouse winter habitat selection and energy development. *Journal of Wildlife Management* 72: 187-195.

Holloran MJ, Anderson SH. 2005. Spatial distribution of greater sage-grouse nests in relatively contiguous sage-brush habitats. *The Condor* 107: 742-752.

Holloran MJ, Heath BJ, Lyon A, Slater SJ, Kuipers JL, Anderson SH. 2005. Greater sage-grouse nesting habitat selection and success in Wyoming. *Journal of Wildlife Management* 69: 638-649.

Moynahan BJ, Lindberg MS, Rotella JJ, Thomas JW. 2007. Factors affecting nest survival of greater sage-grouse in Northcentral Montana. *Journal of Wildlife Management* 71: 1773-1783.

Oyler-Mooanoe SJ, Taylor SE, Quinn W. 2005a. A multilocus population genetic survey of the greater sage-grouse across their range. *Molecular Ecology* 14: 1293-1310.

Oyler-Mooanoe SJ, St. John J, Taylor SE, Apa A, Quinn TW. 2005b. Population genetics of Gunnison sage-grouse: Implications for management. *Journal of Wildlife Management* 69: 630-637.

Schroeder MA, et al. 2004. Distribution of sage-grouse in North America. *The Condor* 106: 363-376.

Teddy Roosevelt Conservation Partnership, North American Grouse Partnership. 2008. Petition for rulemaking to protect greater sage-grouse on lands administered by the Bureau of Land Management. 44 pages.

Biologists from the Western Association of Wildlife Agencies ("WAFWA") recently authored a memorandum entitled: Using the best available science to coordinate conservation actions that benefit sage-grouse across states affected by oil and gas development in Management Zones I-II (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming) (Memorandum from Terry Cleveland and John Emmerich to Tom Christiansen and Joe Bohne, Wyoming Game and Fish Department, January 29, 2008).

Walker BL, Naugle DE, Doherty KE. 2007. Greater sage-grouse population response to energy development and habitat loss. *Journal of Wildlife Management* 71: 2644-2654.

Hard copies of these documents will be provided to BLM by mail. We ask that BLM consider the information contained within these documents in making a decision regarding whether to withdraw the protested parcels given the arguments outlined below in the statement of reasons.

## white-tailed prairie dog

A number of the protested parcels are located within important white-tailed prairie dog habitat, including areas that CNE has nominated as white-tailed prairie dog Areas of Critical Environmental Concern (See Exhibit 1 for details). GIS data for this analysis was obtained from various sources, details on the data sources will be provided upon request. Oil and gas development authorized by the leasing of the protested parcels is likely to have significant direct, indirect, and cumulative impacts on white-tailed prairie dog and other species that rely on white-tailed prairie dogs, including black-footed ferrets. The studies listed below contain information on:

- the status of the white-tailed prairie dog
- the impacts of oil and gas development on the white-tailed prairie dogs
- the efficacy of application of various protective measures (including protective measures applied to the protested parcels as lease stipulations and notices) in mitigating impacts of oil and gas development on white-tailed prairie dogs
- expert recommendations on how best to minimize and mitigate impacts of oil and gas development on white-tailed prairie dogs
- information essential to analysis of the direct and indirect impacts of the oil and gas development on the protested parcels on white-tailed prairie dogs
- information essential to analysis of the cumulative impacts of oil and gas development on the protested parcels, and other past, present and reasonably foreseeable activities, including grazing, climate change, plague, shooting etc., on white-tailed prairie dog populations

This information is essential to adequate NEPA analysis of the likely direct, indirect, and cumulative impacts of oil and gas development on the protested parcels on the white-tailed prairie dog, and associated species, including black-footed ferret. In addition, this information is crucial to any effort to develop a range of alternatives for oil and gas development, and to develop and analyze the likely effectiveness of lease notices and stipulations applied to the protested parcels to mitigate impacts of oil and gas development on white-tailed prairie dogs to insignificance. The information in these documents constitutes the best available science on white-tailed prairie dogs, and the impacts of oil and gas development on white-tailed prairie dogs. The BLM has not considered the information contained within these documents as part of a National Environmental Policy Act (NEPA) analysis of the impacts of oil and gas development authorized by the leasing of the protested parcels on white-tailed prairie dogs or associated species, including black-footed ferrets. We hereby incorporate the following documents by reference:

Center for Native Ecosystems et al. 2002. ESA petition to list the white-tailed prairie dog, submitted to U.S. Fish and Wildlife Service on July 11, 2002.

<http://nativeecosystems.org/wp-content/uploads/vtwpd-esa-listing-petition.pdf>

Center for Native Ecosystems. 2003. Nominations for the designation of Areas of Critical Environmental Concern for 25 large white-tailed prairie dog complexes. Submitted to Wyoming Bureau of Land Management on January 21, 2003  
<http://nativeecosystems.org/wp-content/uploads/acec-nomination.pdf>  
<http://nativeecosystems.org/wp-content/uploads/acec-map.pdf>

Hard copies of these documents will be provided to BLM by mail. We ask that BLM consider the information contained within these documents in making a decision regarding whether to withdraw the protested parcels given the arguments outlined below in the statement of reasons.

#### IV. Statement of Reasons

BLM should withdraw from the sale all protested parcels for the reasons set forth below. There is credible evidence of resource conflicts and potentially significant environmental impacts which have not been properly analyzed. Oil and gas development authorized by the leasing of the protested parcels is likely to have significant impacts on several special status species, including greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, and black-footed ferret. In addition, oil and gas development authorized by the proposed leasing of the protested parcels is likely to have significant impacts on nominated and designated Areas of Critical Environmental Concern, Citizen's Proposed Wilderness Areas, and other sensitive resources. The BLM should withdraw the protested parcels pending completion of pre-leasing programmatic and site-specific Environmental Assessments or Environmental Impact Statements that provide an adequate analysis of the impacts of the proposed leasing on rare and imperiled species, special status species, areas of high conservation value, and other sensitive resources; and compliance with the National Environmental Policy Act (NEPA). In addition, the BLM should withdraw the protested parcels until the BLM has met its obligations with respect to special status species. The BLM should also withdraw all protested parcels that may contain habitat for species protected under the Endangered Species Act (ESA), pending BLM compliance with the requirements of the ESA. In addition, BLM should withdraw the protested parcels until BLM can demonstrate that leasing the protested parcels will not violate the Federal Land Policy and Management Act (FLPMA). Finally, BLM should withdraw the protested parcels until the BLM has met its obligations under the Administrative Procedure Act.

#### A. National Environmental Policy Act

##### 1. BLM Has Not Taken the Required "Hard Look" at the Environmental Effects of the Proposed Leasing

NEPA requires agencies to take a "hard look" at the environmental effects of major federal actions. The National Environmental Policy Act, 42 U.S.C. § 4332(C) (2008); *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). The Supreme Court stated that "NEPA does not mandate particular results, but simply prescribes the necessary process." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989).

"Federal agencies shall use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. §1500.2 (e). Agencies are required to consider alternatives to a proposed action and must not prejudge whether it will take a certain course of action prior to completing the NEPA process. 42 U.S.C. § 4332(C). The courts have made clear that the discussion of alternatives is "the heart" of the NEPA process. *See* 40 C.F.R. §1502.14.

The BLM has not taken the required "hard look" at the potential impacts of the proposed action on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species. The BLM has not considered an adequate range of alternatives to minimize impacts to these species, including a 'No Surface Occupancy' alternative, or alternatives with lease stipulations and notices that provide varying degrees of protection; in any of the documents to which the proposed leasing is tiered.

None of the NEPA documents to which the proposed leasing is tiered, take the required "hard look at the potential impacts of the proposed leasing of the protested parcels, on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species; or areas of high conservation value, including several nominated white-tailed prairie dog Areas of Critical Environmental Concern and Wilderness Study Areas.

#### a. Significant New Information

None of the NEPA documents, to which the leasing is tiered, adequately address the significant new information now available on the status of greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species. An "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look at the environmental effect of [its] planned action, even after a proposal has received initial approval.'" *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000), quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 374 (1989).

The BLM must supplement its existing environmental analyses when new circumstances 'raise[] significant new information relevant to environmental concerns[.]'" *Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705, 708-09 (9th Cir. 2000). An agency "shall prepare supplements to either draft or final environmental impact statements 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(e)(1)(ii). "If there remains 'major Federal actio[n]' to occur, and if the new information is 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, a supplemental Environmental Impact Statement ("EIS") must be prepared. *Marsh v. Oregon Natural Resources Council*, 109 S.Ct. 1851, 1859 (1989); *see* 42 U.S.C. § 4332(2)(C).

The BLM has been provided with significant new information and changed circumstances relevant to the potential impacts of the proposed leasing on a number of the special status species at issue here, including, greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species. Center for Native Ecosystems has provided BLM with significant new information on a number of these special status species, in each of our previous protests of BLM oil and gas lease sales, and in comments on Resource Management Plan Revisions and environmental analyses of proposed oil and gas developments. We hereby incorporate the significant new information section in each of our past protests of WY BLM oil and gas lease sales by reference. In addition, we hereby incorporate by reference significant new information on the aforementioned species that we have provided to BLM in our comments and protests throughout the relevant RMP revision processes, and/or as part of comments on oil and gas leasing environmental assessments. Finally, we have provided BLM with significant new information on greater sage-grouse and white-tailed prairie dog in the 'Affected Resources' section of this protest. The BLM has been provided with new information on the status of these species, new science on the likely impacts of oil and gas development on these species, new information on the likely extent of oil and gas development likely in habitat for these species, and new science on the likely effectiveness of the standard mitigation measures proposed by BLM to mitigate the impacts of the proposed leasing on these species. None of the NEPA documents, to which the leasing is tiered, adequately address significant new information that bears directly on the impacts of the proposed leasing on the aforementioned special status species. The BLM must address the significant new information and changed circumstances that have arisen since publication of the NEPA documents to which the proposed leasing is tiered, in order to comply with NEPA.

#### **b. Inadequate Direct, Indirect, Cumulative Impacts Analysis**

None of the NEPA documents, to which the leasing is tiered, adequately consider the potential direct, indirect, and cumulative effects the proposed leasing and subsequent oil and gas drilling on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species; or on nominated Areas of Critical Environmental Concern or Citizen's Proposed Wilderness Areas.

At bottom, "the agency's [Environmental Assessment] must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 342 (D.C. Cir. 2002). "An environmental impact statement must analyze not only the direct impacts of a proposed action, but also the indirect and cumulative impacts." *Utahns for Better Transp. v. U.S. Dept. of Transp.*, 305 F.3d 1152, 1163 (10th Cir. 2002) citing *Custer County Action Ass'n v. Garvey*, 256 F.3d at 1024, 1035 (10th Cir. 2001) (internal quotation omitted); see also 40 C.F.R. § 1508.25(a)(2) (scope of EIS is influenced by cumulative actions and impact). BLM must consider the direct and indirect impacts of the proposed leasing. In addition, BLM must consider the cumulative impacts of the proposed leasing. Cumulative impact is the impact on the environment, which results from the incremental impact of the action

when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7.

The BLM has issued determinations of NEPA adequacy that conclude that various existing NEPA documents contain adequate analysis of the impacts of the proposed leasing, and consideration of alternatives. The BLM also proposes to conduct further site-specific NEPA analysis at the time when a lessee applies for an Application for a Permit to Drill (APD). As discussed further below, the appropriate time to conduct site-specific NEPA analysis is at the leasing stage, not at the stage when a lessee files an APD. However, regardless of whether BLM is correct in its position that the appropriate time to conduct site-specific analysis at the APD stage rather than at the leasing stage, the BLM's existing programmatic NEPA documents do not contain adequate analysis of the environmental impacts of the proposed leasing, or adequate consideration of a range of alternatives. These programmatic NEPA documents form the basis for the decision to lease the protested parcels. The Finding of No Significant Impact in these programmatic NEPA documents and subsequent DNAs, is predicated on the application of lease stipulations that are intended to protect resources (in this case special status species and their habitat, nominated Areas of Critical Environmental Concern, Citizen's Proposed Wilderness Areas and other sensitive resources), from significant impacts. However, most of the programmatic NEPA documents that BLM relies upon in making this FONSI (primarily Resource Management Plans (RMPs) and various RMP Amendments), are decades old, and have been rendered obsolete by, 1) new information on the rate and scale of oil and gas development on BLM lands, 2) new information on impacts of oil and gas development on special status species, 3) research demonstrating that lease stipulations outlined in these documents and applied to the protested parcels are ineffective at minimizing impacts to special status species, and 4) changes in the status (both biological and regulatory) of many special status species. Further, many of these documents did not contain an adequate analysis of impacts to special status species, or consideration of alternatives, even given the information that was available at the time they were prepared. BLM has completed revisions of some of the relevant Resource Management Plans. However, these revised Resource Management Plans fail to adequately analyze the impacts of oil and gas development on the special status species at issue here, or to consider an adequate range of alternatives. We hereby incorporate our comments on the relevant revised Resource Management Plans, by reference.

The BLM must revise its existing programmatic NEPA documents prior to a decision to apply particular lease stipulations to the protested parcels and lease them for oil and gas exploration and development. In doing so, the BLM must adequately analyze the potential direct, indirect, and cumulative impacts of the proposed leasing on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species that may occupy the protested parcels, as well as nominated Areas of Critical Environmental Concern, and Citizen's Proposed Wilderness Areas.

For example, the NEPA documents to which the proposed leasing is tiered, do not provide adequate analysis of the potential direct and indirect effects of oil and gas exploration and development on the protested parcels on greater sage-grouse. In addition, the BLM has not adequately analyzed the potential cumulative impacts of oil and gas development, grazing, climate change, oil shale and tar sands development, geothermal development, alternative energy development, off-road vehicle use, and other activities on greater sage-grouse over the life of the Resource Management Plans. BLM adopted a National Sage-Grouse Conservation Strategy in 2004 as part of an effort to ensure that greater sage-grouse populations and habitats are conserved and recovered across the range of the greater sage-grouse. The old Resource Management Plans to which much of the proposed leasing is tiered, do not include significant new information outlined in the National Sage-Grouse Habitat Conservation Policy, yet the BLM proposes to authorize leasing on the protested parcels without revising or supplementing these RMPs, or conducting a site-specific pre-leasing NEPA analysis that addresses this information. In addition, the recently revised RMPs at issue here do not undertake the analysis or management measures required by that strategy. The BLM National Sage-Grouse Habitat Conservation Strategy has failed, and BLM has contributed to significant declines in sage-grouse populations across the species' range, and has contributed to the need to list the species under the Endangered Species Act. On December 4, 2007, the Federal District Court for the District of Idaho reversed and remanded the U.S. Fish and Wildlife Service's ("FWS") decision not to list the sage grouse as "threatened" or "endangered" under the ESA. *Western Watersheds Project v. U.S. Forest Service*, 535 F. Sup. 2d 1173 (D. Idaho 2007). The court explained the perilous condition of the sage grouse and the impact suffered by its habitats to date. *Id.* at 1173. Further elaborating on the current state of grouse habitat, the court noted: "Nowhere is sage-grouse habitat described as stable. By all accounts, it is deteriorating, and that deterioration is caused by factors that are on the increase." *Id.* at 1186. The court specifically focused on the impact of oil and gas development on grouse habitat as identified by an independent expert team. *Id.* at 1179. The court noted "a singular lack of data on measures taken by the BLM to protect the sage-grouse from energy development, the single largest risk in the eastern region." *Id.* at 1188. The BLM has failed to adequately protect greater sage-grouse from significant declines on BLM lands across its range, in large part because it has systematically failed to adequately analyze the direct, indirect and cumulative impacts of oil and gas development, and a variety of other BLM authorized activities, on the greater sage-grouse. An emerging scientific consensus amongst sage-grouse experts suggests that, in order to avoid significant continued declines of greater sage-grouse, BLM must: 1) set aside substantial areas of sage-grouse habitat as reserves free from oil and gas development, and 2) avoid development within breeding, summer and winter habitats, which are essential to the survival of populations, and 3) apply adequate mitigation measures as lease stipulations, to ensure against significant declines in response to energy development in areas outside of core reserves. In this instance the BLM is authorizing leasing of significant acreage of key greater sage-grouse habitat, including sage-grouse leks, breeding habitat, and nesting habitat. Experts recommend avoiding development within breeding and winter habitats, and within 4 miles of greater sage-grouse leks. BLM is authorizing oil and gas development within these key habitats, with lease stipulations that are unlikely to prevent significant declines in greater sage-grouse populations in

these areas. The best available science on the greater sage-grouse suggests that BLM's lease stipulations (including those attached to the leases at issue here), are inadequate to prevent significant declines of greater sage-grouse in response to large-scale oil and gas development. Please see the references listed in the 'Affected Resources Section of this Protest for studies and research reviews that substantiate the above claims. The BLM has failed to conduct adequate programmatic analysis of the direct, indirect and cumulative impacts of the proposed leasing on greater sage-grouse. The BLM has failed to address significant new information that bears directly on the impacts of leasing the protested parcels in greater sage grouse habitat in general, and particularly in areas that are within a four mile buffer surrounding greater sage-grouse leks, or are within greater sage-grouse core areas identified by the Governor's greater sage-grouse working group. The BLM's outdated and inadequate programmatic analysis of leasing the protested parcels in greater sage-grouse habitat has resulted in application of lease stipulations that have been repeatedly demonstrated to be ineffective at mitigating impacts of leasing and subsequent oil and gas development to insignificance. Past leasing with identical lease stipulations has resulted in significant impacts to greater sage-grouse in Wyoming, and has resulted in the BLM contributing to the need to protect the greater sage-grouse under the Endangered Species Act. The decision to lease the protested parcels in greater sage-grouse habitat with the stipulations attached in the sale notice, will result in substantially increased and unnecessary risk of significant impacts to greater sage-grouse. BLM failed to conduct an adequate NEPA analysis of the proposed leasing. BLM's conclusion that sale of the leases at issue here, will not significantly impact the greater sage-grouse, is arbitrary and capricious.

Similarly, the BLM has not adequately consider the direct, indirect and cumulative impacts of oil and gas leasing and subsequent development on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species that may rely on habitat within the protested parcels. The BLM must address the effects of direct, indirect, and cumulative impacts of oil and gas leasing on the all of these special status species, in a NEPA document in order to comply with NEPA.

## **2. Site-Specific NEPA Required at the Leasing Stage**

"The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes . . . ." *Center for Native Ecosystems*, 170 IBLA 332, 345 (2006) (emphasis added); see *Southern Utah Wilderness Alliance (SUWA)*, 166 IBLA 270, 276-77 (2005). As the Tenth Circuit clarified, *Park County Resource Council v. United States Dept. of Agriculture* does not exouse BLM from its obligation to analyze consequences of a major federal action prior to leasing. *Pennaco Energy Inc. v. United States Dept. of Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004). *Park County* may allow the agency to forego preparation of an EIS if and when it has prepared an extensive environmental assessment covering the leases in question. This, however, is not the case. The BLM has not prepared adequate site-specific NEPA for the leasing of any of the protested parcels.

The BLM has not conducted a detailed site specific NEPA analysis of the impacts of oil and gas development in and adjacent to each protested parcel, on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret and other special status species, or on nominated Areas of Critical Environmental Concern, or Citizen's Proposed Wilderness Areas.

**a. Irreversible and Irretrievable Commitment of Resources**

The appropriate time for preparing an EIS is prior to a decision "when the decision-maker retains a maximum range of options" prior to an action, which constitutes an "irreversible and irretrievable commitment of resources." *Mobile Oil Corp. v. F.T.C.*, 562 F.2d 170, 173 (2d Cir. 1977). Leasing without a No Surface Occupancy stipulation ("NSO") has on-the-ground consequences and is an "irreversible and irretrievable commitment of resources," which requires a NEPA document. *SUWA*, 166 IBLA 270, 276-77 (2005). The court in *Conner v. Burford* addressed oil and gas leasing in the Flathead and Gallatin National Forests. 848 F.2d 1441 (9th Cir. 1988). It held that leases with NSO stipulations did not require an EIS, whereas, leases without NSO stipulations did require an EIS. *Id.* at 1447-51. The Tenth Circuit stated that the critical stage for environmental analysis is the leasing stage, not the APD stage. *Pennaco Energy v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004) ("In the fluid minerals program, this commitment occurs at the point of lease issuance.") Thus, the BLM must complete its NEPA analysis, in which it considers all stages of oil and gas production, at the leasing stage.

The BLM cannot adequately analyze the, direct, indirect and cumulative impacts of oil and gas development on the protested parcels on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species, or on nominated Areas of Critical Environmental Concern or Citizen's Proposed Wilderness Areas, without conducting a site-specific Environmental Impact Statement at the leasing stage.

**b. Resource Management Plans Do Not Constitute Consideration of the Adequate Range of Alternatives**

None of the NEPA documents that the proposed leasing is tiered to consider an adequate range of alternatives to leasing the protested parcels. The NEPA documents that the proposed leasing is tiered to, do not contain an adequate range of alternatives to explore the best ways to minimize impacts of the proposed leasing on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret and other special status species, or on sensitive lands within nominated Areas of Critical Environmental Concern and Citizen's Proposed Wilderness Areas. The purpose of NEPA's alternatives requirement is to ensure that agencies do not undertake projects

"without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Envnt'l Defense Fund, Inc. v. U.S. Army Corps of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); see also *Or. Env't'l Council v. Kunzman*, 614 F.Supp. 657, 660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would 'avoid or minimize' adverse environmental effects). "Federal agencies shall use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. §1500.2 (e). Alternatives should include reasonable alternatives to a proposed action that will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *City of Aurora v. Hunt*, 749 F.2d 1457, 1466-67 (10th Cir. 1984).

*Pennaco Energy, Inc. v. Department of the Interior*, was a challenge to an IBLA ruling overturning the BLM's decision to lease certain oil and gas parcels. 377 F.3d 1147, 1150 (10th Cir. 2004) The IBLA found the NEPA requirements were not satisfied and remanded the case to the BLM after Pennaco successfully bid on three of the plots. *Id.* The district court reversed the IBLA, ruling for Pennaco. *Id.* The IBLA decision was appealed to the 10th Circuit. *Id.* The court stated that for proposed "major Federal actions significantly affecting the quality of the human environment," agencies must prepare an environmental impact statement (EIS) in which they consider the environmental impact of the proposed action and compare this impact with that of "alternatives to the proposed action." *Id.*; see 42 U.S.C. § 4332(2)(C). Further, "in order to provide 'a clear basis for choice among options by the decision maker and the public,' an agency's EIS must consider the "no action" alternative." *Id.*; 40 C.F.R. § 1502.14 ; see *id.* at (d) (EIS shall "[i]nclude the alternative of no action"). *Pennaco*, 377 F.3d at 1150. The court found that because "the leasing decisions had already been made and the leases issued, the EIS did not consider reasonable alternatives available in a leasing decision, including whether specific parcels should be leased, appropriate lease stipulations, and NSO [no surface occupancy] and non-NSO areas." *Id.* at 1154. The court upheld the IBLA's determination that the BLM did not take the required "hard look" at the environmental impacts of coal bed methane in its existing NEPA documents. *Id.* at 1152, 1162.

BLM must consider a "reasonable range of alternatives," in a site specific NEPA analysis of leasing of each of the protested parcels. The BLM should analyze an adequate range of alternatives, including permanently suspending leasing in key habitat for rapidly declining species that may be significantly impacted by oil and gas development at a landscape scale, applying 'no surface occupancy' stipulations to key habitat for special status species, and conducting phased leasing in key habitat for special status species. When new information suggests that existing lease stipulations are ineffective, and that alternative lease stipulations might better minimize impacts of oil and gas exploration and development on a particular special status species, the BLM should consider a range of alternatives that includes application of any such alternative lease stipulations. BLM has not considered an adequate range of alternatives to the proposed leasing of the protested parcels.

For example, none of the RMPs to which the proposed leasing is tiered, consider setting aside large core reserves for greater sage-grouse, that will remain free from oil and gas development for the life of the RMPs. Nor do any of the RMPs consider an alternative in which oil and gas development activities are prohibited within 4 miles of active leks and associated nesting areas, an alternative with phased development of sage-grouse habitat, an alternative that concentrates road construction and development so as to avoid key sage-grouse habitat, etc. The best available science suggests that these alternatives may better protect greater sage-grouse in the face of oil and gas development, and that adoption of more protective alternatives may be necessary in order to ensure that BLM does not continue to contribute to the need to list the greater sage-grouse under the Endangered Species Act (See documents listed in the 'Affected Resources Section of this Protest).

The BLM has failed to consider an adequate range of alternatives to explore the best ways to minimize impacts of the proposed leasing to greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, or on sensitive lands within nominated Areas of Critical Environmental Concern and Citizen's Proposed Wilderness Areas.

**c. DNA's Cannot Substitute for Site-specific NEPA Analysis**

"DNAs, unlike EAs and [Findings of No Significant Impact], are not mentioned in [ ] NEPA or in the regulations implementing [ ] NEPA'. . . Thus, DNAs are not themselves documents that may be tiered to NEPA documents, *but are used to determine the sufficiency of previously issued NEPA documents.*" *SUWA v. Norton*, 457 F. Supp. 2d 1253, 1262 (2006) (emphasis supplied); *Southern Utah Wilderness Alliance*, 164 IBLA at 123 (quoting *Pennaco*, 377 F.3d at 1162).

**3. NEPA Requires Analysis of Effectiveness of Mitigation Measures, BLMs FONSI is Arbitrary and Capricious.**

**d. FONSI Must be Based on NEPA Analysis of Effectiveness Unless the Leases Have NSO Stipulations**

When a proposed action will result in impacts to resources, the Agency is obligated to describe what mitigating efforts it could pursue to off-set the damages that would result from the proposed action. See 40 C.F.R. § 1502.16(h) (stating that an EIS "shall include discussions of . . . [m]eans to mitigate adverse environmental impacts"). "Mitigation must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated." *Carmel-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir 1997) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989)).

Agencies must "analyze the mitigation measures in detail [and] explain how effective the measures would be . . . [a] mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." *Northwest Indian Cemetery Protective Ass'n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev'd on other grounds*, 485 U.S. 439 (1988). When an agency acknowledges that a proposed project will negatively impact a species, the agency must identify mitigation measures that decrease the negative impacts to the species in the area in question, provide an estimate of how effective the mitigation measures would be if adopted, or give a reasoned explanation as to why such an estimate is not possible. *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1381 (9th Cir. 1998). Further, the agency must make it clear that the mitigating measures in question will be adopted. *Id.*

In *Neighbors of Cuddy Mountain v. United States Forest Service* the court found that while the U.S. Forest Service ("USFS") had acknowledged that a proposed timber sale would negatively impact the redband trout by increasing sedimentation levels, the EIS prepared by the USFS did not identify which (or whether) mitigation measures might decrease sedimentation in the creeks affected by the sale. *Id.* Further, the court noted that "it is also not clear whether any mitigating measures would in fact be adopted. Nor has the Forest Service provided an estimate of how effective the mitigation measures would be if adopted, or given a reasoned explanation as to why such an estimate is not possible." *Id.* Further, the court found that "The Forest Service's broad generalizations and vague references to mitigation measures in relation to the streams affected by the Grand/Dukes project do not constitute detail as to mitigation measures that would be undertaken, and their effectiveness, that the Forest Service is required provide."

None of the NEPA documents that the proposed leasing is tiered to contain an analysis of the likely effectiveness of mitigation measures applied as lease stipulations, lease notices, or conditions of approval of APDs, in mitigating to insignificance, impacts of oil and gas development on special status species, including greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret; or on sensitive lands within nominated Areas of Critical Environmental Concern, and Citizen's Proposed Wilderness Areas.

Merely listing mitigation measures, without analyzing the effectiveness of the measures, is contrary to NEPA. *Northwest Indian Cemetery Protective Ass'n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev'd on other grounds*, 485 U.S. 439 (1988). The BLM must evaluate the effectiveness of the mitigation measures used in oil and gas leasing with the best available science. "The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R. §1500.1(b). The BLM is required to use "best available science and supporting studies conducted in accordance with sound and objective scientific practices." Thus, if there is scientific uncertainty NEPA imposes the mandatory duties to (1) disclose the scientific uncertainty; (2) complete independent research and gather information if no adequate information exists unless costs are exorbitant or the means of obtaining the information are not known; and (3) evaluate the potential,

reasonably foreseeable impacts in the absence of relevant information. See 40 C.F.R. §1502.22.

The BLM is "proceeding in the face of uncertainty," contrary to the NEPA regulations. *Save Our Ecosystems v. Clark*, 747 F.2d at 1244.

None of the NEPA documents to which the proposed leasing is tiered, include an adequate analysis of likely effectiveness of the mitigation measures applied as lease notices and stipulations to protect the special status species, ACECs and other sensitive resources that occur in the protested parcels. BLM provides no NEPA analysis of the effectiveness of assorted lease stipulations applied to habitat for special status species, including greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, and black-footed ferret.

For example, the NEPA documents, to which the proposed leasing is tiered, contain little or no discussion of the likely effectiveness of the lease stipulations and lease notices that BLM has applied to the protested parcels in important greater sage-grouse habitat. These mitigation measures have no basis in science. In fact, the BLM is aware of a substantial body of scientific information suggesting that these lease stipulations are likely to be completely ineffective at preventing significant impacts to greater sage-grouse. For example, many of the lease stipulations for greater sage-grouse consist of timing limitations that restrict surface disturbance during the breeding season in breeding and nesting habitat, and during winter in winter habitat. These stipulations allow surface disturbance and construction of facilities associated oil and gas development activities to occur in this habitat outside of the season during which the seasonal stipulation is applied. The resulting loss and fragmentation of habitat may make these habitats unusable in the breeding and winter seasons, in the years following development activity that takes place in previous years outside of these seasons. These timing limitations are unlikely to protect the greater sage-grouse from significant declines in response to oil and gas development in crucial breeding and winter habitat. See the documents listed in the 'Affected Resources' Section of this protest for details on the ineffectiveness of timing limitations at mitigating impacts of oil and gas development on greater sage-grouse to insignificance. The BLM also applies a restriction on surface occupancy within ¼ mile of occupied greater sage-grouse leks. This lease stipulation will be completely ineffective at mitigating impacts to insignificance. WAFWA (See Attachment 1) reviewed available literature from 2003-2008 and identified the following persistence levels resulting from application of different "no surface occupancy" or "NSO" buffer sizes:

NSO Buffer Size	Lek Persistence	Lek Loss
0.25 mi.	4%	96%
0.5 mi.	5%	95%
1.0 mi.	10%	90%
2.0 mi.	28%	72%

Thus, the notices and stipulations outlined above are likely to result in a 95-96% loss of leks across the significant amount of greater sage-grouse breeding habitat that is proposed for leasing in this sale. None of the NEPA documents to which the proposed leasing is tiered, provide an adequate analysis of the effectiveness of the mitigation measures proposed to protect greater sage-grouse from significant impacts associated with oil and gas development, particularly given the scientific consensus that these mitigation measures are inadequate. The BLM's conclusion that these mitigation measures will mitigate impacts of the oil and gas development authorized by this lease sale on greater sage-grouse to insignificance, is arbitrary and capricious.

It is also doubtful that the mitigation measures proposed to mitigate impacts to white-tailed prairie dog, black-tailed prairie dog, black-footed ferret and other special status species; will be effective.

Despite evidence that suggests mitigation measures may not mitigate impacts to insignificance, BLM provides little or no rationale for its assertion that assorted lease stipulations, notices and COAs will mitigate impacts to insignificance. The record is devoid of support for BLM's assertion that the lease stipulations and notices applied to the protested parcels, will mitigate impacts to special status species to insignificance.

e. **BLM Must Demonstrate That Mitigation Measures Will Actually Be Implemented**

NEPA requires that the "possibility of mitigation" should not be relied upon as a means to avoid further environmental analysis. *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*; see *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002). The Tenth Circuit found that the "Forty Questions" are "persuasive authority offering interpretive guidance" on NEPA. *Id.*

Many of the lease notices and stipulations applied to protect special status species at issue here contain language that allows them to be waived, but the conditions under which they may be waived are not clearly spelled out in the lease stipulations, leaving the public with little certainty regarding whether and under what circumstances the mitigation measures will actually be implemented. It is unclear when exactly the mitigation measures will be required, and under what specific circumstances they might be waived.

f. **BLM Must Appropriately Deal With Expert Comments**

The BLM does not address the current expert opinions in the NEPA documents on which it relies. Failure to disclose and thoroughly respond to differing scientific views violates NEPA. The agency is required to perform an environmental analysis that includes this information prior to approving any proposed action, in this case the lease sale. See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 334, 354 (1989) (EIS should reflect critical views of others to whom copies of the draft were provided and respond to opposing views); *Seattle Audubon Society v. Lyons*, 871 F.Supp. 1291, 1381

(W.D. Wash. 1994) (An EIS must “disclose scientific opinion in opposition to the proposed action, and make a good faith, reasoned response to it.”). The BLM has not appropriately dealt with expert comments on the potential impacts of the proposed leasing and the inadequacy of mitigation measures proposed to protect special status species.

In the ‘Affected Resources’ section of this protest, we have provided BLM with a number of documents that contain expert recommendations for management of oil and gas development in habitat for white-tailed prairie dogs and greater sage-grouse. BLM’s leasing of the protested parcels absent adequate NEPA analysis, and with the inadequate lease notices and stipulations that have been proposed to protect these species from significant impacts from future oil and gas development on these parcels, is contrary to the expert recommendations outlined in these various documents. In addition, we have provided BLM with information on the inadequacy of mitigation measures proposed for the species at issue here at numerous instances in the past, including information developed by experts on these species. BLM has failed to appropriately deal with these expert recommendations and comments, in the NEPA documents to which the proposed leasing is tied.

#### **g. BLM Must Use Adequate Science**

The BLM must use adequate science in their environmental analysis. The BLM must “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” 40 C.F.R. § 1502.24; 40 C.F.R. § 1500.1(b); *see also* The Data Quality Act; BLM Information Quality Guidelines, [http://www.blm.gov/nhp/efoia/data\\_quality/guidelines.pdf](http://www.blm.gov/nhp/efoia/data_quality/guidelines.pdf).

The BLM is ignoring the best available science on the impacts of oil and gas development on special status species, and the adequacy of proposed mitigation measures, with respect to special status species, including greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species.

### **B. Federal Land Policy and Management Act**

#### **1. Unnecessary and Undue Degradation**

The BLM has a duty under the Federal Land Policy and Management Act (“FLPMA”) to prevent unnecessary and undue degradation to the lands under its management. “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.” 43 U.S.C. § 1732(b). “The court in *Mineral Policy Center v. Norton* [found] that in enacting FLPMA, Congress’s intent was clear: Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary . . . is undue or excessive.”) *Mineral Policy Center v. Norton*, 292 F.Supp.2d 30, 43 (D.D.C. 2003).

Leasing the protested parcels will result in unnecessary and undue degradation to special status species and their habitats, including greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species; and nominated Areas of Critical Environmental Concern and Citizen's Proposed Wilderness Areas.

## 2. Minimize Adverse Effects

The BLM must minimize the adverse effects on special status species, including greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, and black-footed ferret; and on sensitive lands within nominated Areas of Critical Environmental Concern and Citizens Proposed Wilderness Areas, in order to comply with FLPMA. "[T]he using department shall . . . minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved. 43 U.S.C. §1732(d)(2)(a). "If there are significant environmental effects that cannot be mitigated, an EIS must be prepared even if there is no unnecessary or undue degradation of the public lands." *Kendall's Concerned Area Residents*, 129 IBLA 130, 138 (1994); 42 U.S.C. § 4332(2)(C) (1988). "If there is unnecessary or undue degradation, it must be mitigated." *Kendall's Concerned Area Residents*, at 138; see 43 CFR 3809.2-1(b). "If unnecessary or undue degradation cannot be prevented by mitigating measures, BLM is required to deny approval of the plan." *Kendall's Concerned Area Residents*, at 138; see 43 CFR § 3809.0-3(b); *Department of the Navy*, 108 IBLA 334, 336 (1989); see 43 U.S.C. § 1732(b) (1988); 43 CFR § 3809.0-5(k).

The BLM has failed to disclose significant environmental effects on greater sage-grouse, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret, and other special status species; and on nominated Areas of Critical Environmental Concern and Citizen's Proposed Wilderness Areas; that cannot be mitigated. These impacts must be disclosed in an Environmental Impact Statement. In addition, the BLM has failed to disclose unnecessary and undue degradation that may result from oil and gas development authorized by the leasing of the protested parcels, or to attach lease notices and stipulations that will mitigate these impacts.

## 3. BLM Has Failed to Protect Sensitive Species as Required

The BLM recently revised Section 6840 of the BLM Manual. The new regulations under Section 6840 of the BLM Manual are illegal, and should be revoked. The previous version should be re-instated. BLM is failing to protect special status species under the requirements outlined in both the current and previous versions of Section 6840 of the BLM Manual. We outline BLM's failures under the previous version of Section 6840 below:

Instruction Memorandum 97-118, issued by the national BLM office, governs BLM Special Status Species management and requires that actions authorized, funded, or carried out by BLM do not contribute to the need for any species to become listed as a

candidate, or for any candidate species to become listed as threatened or endangered. It recognizes that early identification of BLM sensitive species is advised in efforts to prevent species endangerment, and encourages state directors to collect information on species of concern to determine if BLM sensitive species designation and special management are needed.

If Sensitive Species are designated by a State Director, the protection provided by the policy for candidate species shall be used as the minimum level of protection. BLM Manual 6840.06. The policy for candidate species states that the "BLM shall carry out management, consistent with the principles of multiple use, for the conservation of candidate species and their habitats and shall ensure that actions authorized, funded, or carried out do not contribute to the need to list any of these species as threatened/endangered." BLM Manual 6840.06. Specifically, BLM shall:

- (1) Determine the distribution, abundance, reasons for the current status, and habitat needs for candidate species occurring on lands administered by BLM, and evaluate the significance of lands administered by BLM or actions in maintaining those species.
- (2) For those species where lands administered by BLM or actions have a significant affect on their status, manage the habitat to conserve the species by:
  - a. Including candidate species as priority species in land use plans.
  - b. Developing and implementing rangewide and/or site-specific management plans for candidate species that include specific habitat and population management objectives designed for recovery, as well as the management strategies necessary to meet those objectives.
  - c. Ensuring that BLM activities affecting the habitat of candidate species are carried out in a manner that is consistent with the objectives for those species.
  - d. Monitoring populations and habitats of candidate species to determine whether management objectives are being met.
- (3) Request any technical assistance from FWS/NMFS, and any other qualified source, on any planned action that may contribute to the need to list a candidate species as threatened/endangered.

BLM Manual 6840.06. Despite this clear guidance, there is little evidence that BLM is fulfilling these obligations. Specifically, BLM failed to: 1) conduct surveys and/or inventories necessary to determine the distribution and abundance of Sensitive Species; 2) failed to assess the reasons for the current status of Sensitive Species; 3) failed to evaluate the potential impacts of leasing and subsequent oil and gas activities on Sensitive Species; 4) develop conservation strategies for Sensitive Species and ensure that the activities in question are consistent with those strategies; 5) monitor populations and habitats of Sensitive Species; and 6) request appropriate technical assistance from all other qualified sources; for any of the sensitive species at issue here. This failure has compromised BLM's NEPA analyses of the likely impacts of oil and gas development

authorized by the leasing of the protested parcels, on special status species, including greater sage-grouse, Colorado butterfly plant, white-tailed prairie dog, black-tailed prairie dog, and black-footed ferret.

**a. BLM failed to adequately consider sensitive species in its NEPA documents to which the leasing is tiered**

BLM Manual § 1622.1 refers to "Fish and Wildlife Habitat Management" and contains specific language requiring the BLM in the RMP process to, among other things:

- 1) Identify priority species and habitats . . .
- 2) [E]stablish objectives for habitat maintenance, improvement, and expansion for priority species and habitats. Express objectives in measurable terms that can be evaluated through monitoring.
- 3) Identify priority areas for HMPs [Habitat Management Plans] . . .
- 4) Establish priority habitat monitoring objectives . . .
- 5) Determine affirmative conservation measures to improve habitat conditions and resolve conflicts for listed, proposed, and candidate species.

BLM Manual § 1622.11(A)(1) – (A)(3). The RMPs and other NEPA documents to which this leasing is tiered do not meet these obligations, and BLM did not take appropriate steps to remedy these failings before initiating this lease sale.

As a result, oil and gas development authorized by the leasing of the protested parcels will contribute to the need to list the greater sage-grouse, Colorado butterfly plant, white-tailed prairie dog, black-tailed prairie dog, black-footed ferret and other special status species; and BLM is failing to meet its obligations with respect to special status species and wildlife in general.

**4. BLM has failed to adequately consider ACEC nominations**

The protested parcels include areas that have been nominated for designation as Areas of Critical Environmental Concern ("ACEC"). CNE nominated several areas included in this lease sale as ACECs to protect white-tailed prairie dog habitat, and a variety of species associated with white-tailed prairie dog habitat. (See Exhibit 1 and the documents listed in the 'Affected Resources' section of this protest for details). These areas were nominated as ACECs because of their relevance and importance as key habitat for white-tailed prairie dog and black-footed ferret and because of their value as recovery habitat for black-footed ferret. Here we incorporate by reference white-tailed prairie dog ACEC nominations, and all the references they contain. The BLM Manual is clear that Field Managers are required to determine whether nominated areas meet the relevance and significance criteria for ACEC designation and then decide whether interim management is necessary. The BLM did not respond to all of our ACEC nominations, and has not considered the impacts of oil and gas leasing and development on the resources for which these ACECs would be designated. We incorporate all of our

comments on and protests of the relevant Resource Management Plans by reference. By not protecting this habitat, the BLM is contributing to the need to list the white-tailed prairie dog, and other special status species associated with white-tailed prairie dog colonies and is in violation of FLPMA and the BLM Manual.

NEPA regulations require that, while BLM is in the process of an EIS, such as during revision or amendment of a RMP, the agency must not take any action concerning a proposal that would "[l]imit the choice of reasonable alternatives." 40 C.F.R. § 1506.1. See also 40 C.F.R. § 1502.2(f) (while preparing environmental impact statements, federal agencies "shall not commit resources prejudicing selection of alternatives before making a final decision"). BLM has historically interpreted this NEPA regulation to require that proposed actions that could prejudice selection of any alternatives under consideration "should be postponed or denied" in order to comply with 40 C.F.R. § 1506.1, and the Land Use Planning Handbook previously contained this direction. Another section of this same regulation directs that while BLM is preparing a required EIS "and the [proposed] action is not covered by an existing program statement," then BLM must not take any actions that may "prejudice the ultimate decision on the program." 40 C.F.R. § 1506.1(c). The regulation continues that "[i]nterim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives." *Id.* (emphasis added).

Granting valid and existing rights in these parcels before ACEC designation is fully considered and management prescriptions are developed could both adversely impact the environment and limit the choice of reasonable alternatives for the management of these areas. These parcels should be withdrawn until the nominated ACECs are evaluated and management prescriptions are developed.

ACECs may be nominated even when plan revision is not in progress, and a preliminary evaluation should take place after receiving such a nomination. The District Manager may determine that either a plan amendment or temporary management are required.

If an area is identified for consideration as an ACEC and a planning effort is not underway or imminent, the District Manager or Area Manager must make a preliminary evaluation on a timely basis to determine if the relevance and importance criteria are met. If so, the District Manager must initiate either a plan amendment to further evaluate the potential ACEC or provide temporary management until an evaluation is completed through resource management planning. Temporary management includes those reasonable measures necessary to protect human life and safety or significant resource values from degradation until the area is fully evaluated through the resource management planning process. BLM Manual 1613.21.E (emphasis added).

The public has an opportunity to submit nominations or recommendations for areas to be considered for ACEC designation. Such recommendations are actively solicited at the beginning of a planning effort. However, nominations may be made at any time and must receive a preliminary evaluation to determine if they meet the relevance and importance criteria, and, therefore, warrant further consideration in the planning process....BLM Manual 1613.41 (emphasis added).

The presence of oil and gas leases should have no bearing on whether an area meets the criteria for ACEC designation, but may prejudice the development of ACEC management prescriptions. BLM Manual 1613.22.A states:

Identify Factors Which Influence Management Prescriptions.... These factors are important to the development of management prescriptions for potential ACEC's. Factors to consider include, but are not limited to, the following:....

8. Relationship to existing rights. What is the status of existing mining claims or pre-FLPMA leases? How will existing rights affect management of the resource or hazard?

CNE strongly believes that temporary management is required to preserve the values of these areas as potential ACECs. Instead of approving leasing of key wildlife habitat -- and opening the floodgates for a wave of new APDs on these sensitive lands, the BLM should focus on evaluating our ACEC nominations in a timely fashion and managing exploration and development under *existing* leases.

It simply makes no sense for the BLM to waste its opportunity to designate ACECs that could help conserve white-tailed prairie dogs, and various special status species associated with white-tailed prairie dog colonies. Not only is this poor judgment, it is also a violation of NEPA, FLPMA, and the BLM Manual.

BLM presently has the opportunity to plan for rational, environmentally sound development of energy resources in the nominated ACECs while protecting other uses of these lands—as required by law. Allowing leasing prior to ACEC evaluation and RMP revision will sacrifice this opportunity – without taking a hard look at the consequences. BLM and the public will have lost the chance to prevent the haphazard, poorly planned development that has characterized other federal lands in the Rockies. As an irretrievable commitment of resources, leasing will severely limit the range of management prescriptions.

BLM has violated FLPMA and the BLM manual by failing to consider our ACEC nominations. BLM must not issue leases within these nominated ACECs, as this will limit the range of alternatives that can be considered for these areas in the next RMP revision.

### C. Endangered Species Act

## 1. Consultation

Under the Endangered Species Act ("ESA"), the BLM must consult with FWS before offering parcels for lease because several species listed under the Endangered Species Act, including (but not limited to) black-footed ferret, may be jeopardized by oil and gas development authorized through leasing of the protested parcels. In addition, the protested parcels contain non-block cleared areas where black-footed ferrets may be present but surveys have not been done to determine whether they are present, potential black-footed ferret reintroduction sites, and important recovery habitat for black-footed ferrets within prairie dog colonies, including several white-tailed prairie dog colonies that CNE has nominated as Areas of Critical Environmental Concern.

The ESA consultation process is triggered when the surface agency is notified of the pending lease sale. *Connor v. Buford*, 848 F.2d 1441, 1452 (1988). In *Connor*, the BLM could not issue oil and gas leases until the Fish and Wildlife Service ("FWS") analyzed consequences of all stages of the leasing plan in the Biological Opinion ("BO"). *Id.* at 1455. ESA's consultation requirement is not met by "incremental steps" and by mere notification of the potential presence of endangered species. *Id.* at 1452-58; The court held that "agency action [for purposes of developing a biological opinion] . . . entails not only leasing but leasing and all post-leasing activities through production and abandonment." *Id.* at 1453. Contrary to the BLM position that relies upon the *Wyoming Outdoor Council v. Bosworth*, the Tenth Circuit stated that the critical stage for environmental analysis is the leasing stage, not the APD stage. *Pennaco Energy v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004).

The BLM and FWS have not conducted adequate analysis of the impacts of the proposed leasing on listed species in any programmatic biological assessment or biological opinion. As a result, the leasing of the protested parcels may jeopardize listed species.

In addition, the BLM and FWS must conduct site-specific consultation at the leasing stage that considers not only direct impacts to species on lease parcels, but also indirect and cumulative impacts to listed species and their habitat both on lease parcels and on adjacent lands. The BLM and FWS must consider not only impacts to survival of the species, but also impacts to recovery. The BLM and FWS have failed to meet these requirements under the ESA with respect to black-footed ferret, and any other listed species that may occur within the protested parcels (See BLM's sale notice for disclosure of potential for ESA listed species within the protested parcels).

### D. BLM Has the Discretion Not to Lease

Under the statutory and regulatory provisions authorizing this lease sale, the BLM has full discretion whether or not to offer the lease parcels for sale. The Mineral Leasing Act ("MLA"), 30 U.S.C. § 226(a), provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil and gas deposits may be leased by the Secretary." (emphasis added). The Supreme Court has concluded that this "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 380 U.S. 1, 4 (1965); see also *Wyoming ex rel. Sullivan v. Lujan*, 969 F.2d 877 (10<sup>th</sup> Cir.

1992); *McDonald v. Clark*, 771 F.2d 460, 463 (10<sup>th</sup> Cir. 1985) ("While the [Mineral Leasing Act] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory."); *Burglin v. Morton*, 527 F.2d 486, 488 (9<sup>th</sup> Cir. 1975).

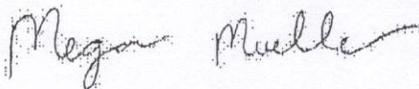
Submitting a leasing application vests no rights to the applicant or potential bidders. The BLM retains the authority not to lease. "The filing of an application which has been accepted does not give any right to lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary whether or not to issue leases for the lands involved." *Duesing v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), *cert. den.* 383 U.S. 912 (1966); *see also Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9<sup>th</sup> Cir. 1988); *Pease v. Udall*, 332 F.2d 62 (9<sup>th</sup> Cir. 1964); *Geosearch, Inc. v. Andrus*, 508 F. Supp. 839 (D.C. Wyo. 1981).

The arguments laid out in detail above demonstrate that exercise of the discretion not to lease the protested parcels, is appropriate and necessary. Withdrawing the protested parcels from the lease sale until BLM has met its legal obligations to conduct adequate NEPA analysis, and meet its legal obligations under the Administrative Procedure Act, Endangered Species Act, Federal Land and Policy Management Act, and the BLM Manual, is a proper exercise of BLM's discretion under the MLA. The BLM has no legal obligation to lease the disputed parcels and is required to withdraw them until the agencies have complied with applicable law.

## V. CONCLUSION & REQUEST FOR RELIEF

CNE and BCA therefore request that the BLM withdraw the protested parcels from the June Sale.

Sincerely,



Megan Mueller  
Staff Biologist  
Center for Native Ecosystems

Erik Molvar  
Executive Director  
Biodiversity Conservation Alliance

## Exhibit 1



Exhibit 1

Serial Number	Field Office	Rare and Imperiled Species and/or Areas of High Conservation Value in Protested Parcel	Additional Information
WY-0906-005	NEWCASTLE	within 4 miles of an occupied greater sage-grouse lek	Wind Creek
WY-0906-006	NEWCASTLE	within 4 miles of an occupied greater sage-grouse lek	Cap'n Bob
WY-0906-009	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Bishop
WY-0906-009	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Whitetail Creek
WY-0906-009	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Flora
WY-0906-011	CASPER	within 4 miles of an occupied greater sage-grouse lek	Red Hills
WY-0906-011	CASPER	within 4 miles of an occupied greater sage-grouse lek	Steckley Road
WY-0906-011	CASPER	within 4 miles of an occupied greater sage-grouse lek	East Steckley Road
WY-0906-013	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Hansen Lakes
WY-0906-014	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Enyard
WY-0906-014	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Yellowhammer
WY-0906-015	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Trail Creek
WY-0906-016	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Trail Creek
WY-0906-018	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Tuttle Draw
WY-0906-021	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Dry Fork I
WY-0906-021	BUFFALO	within 4 miles of an occupied greater sage-grouse lek	Dry Fork II
WY-0906-025	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	1874081
WY-0906-027	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	1974122
WY-0906-028	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	1874081
WY-0906-030	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	1976241
WY-0906-031	CASPER	within 4 miles of an occupied greater sage-grouse lek	Cheyenne Divide 1
WY-0906-031	CASPER	within 4 miles of an occupied greater sage-grouse lek	Dry Fork 1
WY-0906-033	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	1976241
WY-0906-036	CASPER	within 4 miles of an occupied greater sage-grouse lek	Antelope Springs
WY-0906-037	CASPER	within 4 miles of an occupied greater sage-grouse lek	Antelope Springs
WY-0906-038	CASPER	within 4 miles of an occupied greater sage-grouse lek	E. Ryan Hill 1
WY-0906-038	CASPER	within 4 miles of an occupied greater sage-grouse lek	Oregon Trail 1
WY-0906-039	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Lone Haystack
WY-0906-039	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	2284074
WY-0906-040	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	ID Airstrip

Exhibit 1

Serial Number	Field Office	Rare and Imperiled Species and/or Areas of High Conservation Value in Protested Parcel	Additional Information
WY-0906-040	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Rankin
WY-0906-040	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Corral Creek
WY-0906-041	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Deadman Creek
WY-0906-042	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Fox Farm
WY-0906-043	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Red Ridge
WY-0906-043	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Sandhole
WY-0906-043	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	North Lamont
WY-0906-044	LANDER	within 4 miles of an occupied greater sage-grouse lek	North Lamont
WY-0906-044	LANDER	within 4 miles of an occupied greater sage-grouse lek	Sandhole
WY-0906-044	LANDER	within 4 miles of an occupied greater sage-grouse lek	Red Ridge
WY-0906-044	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Sandhole
WY-0906-044	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	North Lamont
WY-0906-044	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Red Ridge
WY-0906-045	LANDER	within 4 miles of an occupied greater sage-grouse lek	North Lamont
WY-0906-045	LANDER	within 4 miles of an occupied greater sage-grouse lek	Sandhole
WY-0906-045	LANDER	within 4 miles of an occupied greater sage-grouse lek	Rocky Draw
WY-0906-045	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	North Lamont
WY-0906-045	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Sandhole
WY-0906-045	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Rocky Draw
WY-0906-045	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Conners
WY-0906-046	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Red Ridge
WY-0906-046	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Sandhole
WY-0906-046	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	North Lamont
WY-0906-047	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Rocky Draw
WY-0906-047	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	North Lamont
WY-0906-047	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Conners
WY-0906-048	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Sandhole
WY-0906-048	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Red Ridge
WY-0906-048	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	North Lamont
WY-0906-048	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Rocky Draw

Exhibit 1

Serial Number	Field Office	Rare and Imperiled Species and/or Areas of High Conservation Value in Protested Parcel	Additional Information
WY-0906-049	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Sandhole
WY-0906-049	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Rocky Draw
WY-0906-049	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Red Ridge
WY-0906-049	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	North Lamont
WY-0906-051	WORLAND	within 4 miles of an occupied greater sage-grouse lek	Monument Hill
WY-0906-051	WORLAND	within 4 miles of an occupied greater sage-grouse lek	Zimmerman Buttes 2
WY-0906-051	WORLAND	within 4 miles of an occupied greater sage-grouse lek	South Dave Jones
WY-0906-056	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-064	WORLAND	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-065	WORLAND	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-070	CODY	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-071	ROCK SPRINGS	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-072	ROCK SPRINGS	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-073	ROCK SPRINGS	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-074	ROCK SPRINGS	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-075	CODY	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-076	ROCK SPRINGS	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-078	ROCK SPRINGS	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-079	PINEDALE	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-079	ROCK SPRINGS	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-080	KEMMERER	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-081	KEMMERER	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-082	KEMMERER	within 4 miles of an occupied greater sage-grouse lek	
WY-0906-083	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	2383102
WY-0906-083	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	2483144
WY-0906-084	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Dry Ditch
WY-0906-084	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	ID Airstrip
WY-0906-084	RAWLINS	within 4 miles of an occupied greater sage-grouse lek	Rankin
WY-0906-026	RAWLINS	greater sage-grouse core area	Bosler Junction
WY-0906-034	BUFFALO	greater sage-grouse core area	Powder River

Exhibit 1

Serial Number	Field Office	Rare and Impeniled Species and/or Areas of High Conservation Value in Protested Parcel	Additional Information
WY-0906-035	BUFFALO	greater sage-grouse core area	Powder River
WY-0906-036	BUFFALO	greater sage-grouse core area	Powder River
WY-0906-036	CASPER	greater sage-grouse core area	Powder River
WY-0906-037	CASPER	greater sage-grouse core area	Powder River
WY-0906-038	CASPER	greater sage-grouse core area	Hanna
WY-0906-039	RAWLINS	greater sage-grouse core area	Hanna
WY-0906-040	RAWLINS	greater sage-grouse core area	Saratoga
WY-0906-041	RAWLINS	greater sage-grouse core area	Hanna
WY-0906-043	RAWLINS	greater sage-grouse core area	Hanna
WY-0906-046	RAWLINS	greater sage-grouse core area	Hanna
WY-0906-048	RAWLINS	greater sage-grouse core area	Hanna
WY-0906-049	RAWLINS	greater sage-grouse core area	Hanna
WY-0906-064	WORLAND	greater sage-grouse core area	N Hot Springs County
WY-0906-065	WORLAND	greater sage-grouse core area	SE of Cody
WY-0906-070	CODY	greater sage-grouse core area	SE of Cody
WY-0906-071	ROCK SPRINGS	greater sage-grouse core area	NE Rock Springs
WY-0906-072	ROCK SPRINGS	greater sage-grouse core area	NE Rock Springs
WY-0906-073	ROCK SPRINGS	greater sage-grouse core area	NE Rock Springs
WY-0906-074	ROCK SPRINGS	greater sage-grouse core area	NE Rock Springs
WY-0906-075	CODY	greater sage-grouse core area	SE of Cody
WY-0906-076	ROCK SPRINGS	greater sage-grouse core area	S Rock Springs
WY-0906-078	ROCK SPRINGS	greater sage-grouse core area	South Pass
WY-0906-079	ROCK SPRINGS	greater sage-grouse core area	South Pass
WY-0906-080	KEMMERER	greater sage-grouse core area	Sage
WY-0906-081	KEMMERER	greater sage-grouse core area	Sage
WY-0906-082	KEMMERER	greater sage-grouse core area	Sage
WY-0906-083	RAWLINS	greater sage-grouse core area	Hanna
WY-0906-084	RAWLINS	greater sage-grouse core area	Hanna
WY-0906-079	PINEDALE	greater sage-grouse winter habitat	
WY-0906-025	RAWLINS	greater sage-grouse winter habitat	

Exhibit 1

Serial Number	Field Office	Rare and Imperiled Species and/or Areas of High Conservation Value in Protested Parcel	Additional Information
WY-0906-026	RAWLINS	greater sage-grouse winter habitat	
WY-0906-028	RAWLINS	greater sage-grouse winter habitat	
WY-0906-030	RAWLINS	greater sage-grouse winter habitat	
WY-0906-033	RAWLINS	greater sage-grouse winter habitat	
WY-0906-083	RAWLINS	greater sage-grouse winter habitat	
WY-0906-079	ROCK SPRINGS	greater sage-grouse winter habitat	
WY-0906-064	WORLAND	greater sage-grouse winter habitat	
WY-0906-065	WORLAND	greater sage-grouse winter habitat	
WY-0906-012	CASPER	Grassland potential black-footed ferret reintroduction area and black-tailed prairie dog habitat	
WY-0906-019	CASPER	Grassland potential black-footed ferret reintroduction area and black-tailed prairie dog habitat	
WY-0906-041	RAWLINS	Holton Ranch Complex nominated white-tailed prairie dog ACEC	
WY-0906-043	RAWLINS	Pathfinder Complex and Shamrock Hills Complex nominated white-tailed prairie dog ACECs	
WY-0906-044	LANDER	Pathfinder Complex and Shamrock Hills Complex nominated white-tailed prairie dog ACECs	
WY-0906-044	RAWLINS	Pathfinder Complex and Shamrock Hills Complex nominated white-tailed prairie dog ACECs	
WY-0906-045	LANDER	Pathfinder Complex and Shamrock Hills Complex nominated white-tailed prairie dog ACECs	
WY-0906-045	RAWLINS	Pathfinder Complex and Shamrock Hills Complex nominated white-tailed prairie dog ACECs	
WY-0906-046	RAWLINS	Pathfinder Complex and Shamrock Hills Complex nominated white-tailed prairie dog ACECs	
WY-0906-047	RAWLINS	Pathfinder Complex and Shamrock Hills Complex nominated white-tailed prairie dog ACECs	
WY-0906-048	RAWLINS	Pathfinder Complex and Shamrock Hills Complex nominated white-tailed prairie dog ACECs	

Exhibit 1

Serial Number	Field Office	Rare and Imperiled Species and/or Areas of High Conservation Value in Protested Parcel	Additional Information
WY-0906-049	RAWLINS	Pathfinder Complex and Shamrock Hills Complex nominated white-tailed prairie dog ACECs	
WY-0906-064	WORLAND	15 Mile Complex nominated white-tailed prairie dog ACEC	
WY-0906-071	ROCK SPRINGS	Baxter Basin Complex nominated white-tailed prairie dog ACEC	
WY-0906-050	WORLAND	Manderson Complex nominated white-tailed prairie dog ACEC	
WY-0906-019	CASPER	Black-tailed prairie dog habitat	
WY-0906-031	CASPER	Black-tailed prairie dog habitat	
WY-0906-038	CASPER	White-tailed prairie dog habitat	
WY-0906-055	RAWLINS	Adobe Town WSA	Citizen's Proposed Wilderness
WY-0906-057	WORLAND	Sheep Mt. WSA	Citizen's Proposed Wilderness
WY-0906-064	WORLAND	Bobcat Draw Badlands WSA	Citizen's Proposed Wilderness