United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Wyoming State Office
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Cheyenne, Wyoming 82003-1828

In Reply Refer To:
3100 (921 Mistarka)
August 2010 Protests

APR 21 2011

CERTIFIED – RETURN RECEIPT REQUESTED

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DECISION
AUGUST 2010 OIL AND GAS SALE PROTEST OF 64 PARCELS
PROTESTS DISMISSED IN PART
7 PARCELS DEFERRED BEFORE SALE
3 PARTIAL PARCELS DEFERRED/DELETED BEFORE SALE
2 PARCELS DEFERRED
62 PARCELS ISSUED

We received eleven (11) protests to the offering of 64 parcels on the August 3, 2010, competitive oil and gas lease sale located in the Bureau of Land Management (BLM) Wyoming State Office (WSO), Buffalo (BFO), Casper (CFO), Cody (CYFO), Lander (LFO), and Newcastle (NFO) Field Offices. Biodiversity Conservation Alliance (BCA); Greater Little Mountain Coalition (GLMC); Powder River Basin Resource Council (PRBRC); Wyoming Wildlife Federation, National Wildlife Federation, and Trout Unlimited (WWF); Sportsmen for Responsible Energy Development (SFRED); Upper Green River Alliance (UGRA); Alliance for Historic Wyoming (AHW); Judith B. Walker; Craig D. Thompson; and Michele and Rob Irwin; and Western Resource Advocates for National Audubon Society and Audubon Wyoming (Audubon) filed protests to this competitive oil and gas lease sale. The State Director elected to conduct the August 2010 sale while the merits of the protests are considered.

DECISION:

A portion of parcel WY-1008-075 was deleted prior to the August 2010 competitive oil and gas sale because of a conservation easement in the PFO. The remaining portion of parcel 075 will be issued. The following parcels were deferred prior to the August 2010 competitive oil and gas sale until the KFO can prepare correct stipulations in accordance with their new RMP: 073, 079, 080, 081, 082, and 083. These parcels will be offered on the next available KFO parcel lease sale. Parcel 068 was deferred prior to the August 2010 lease sale pending release of the RSFO Resource Management Plan (RMP) Draft Environmental Impact Statement (DEIS) for public review and comment. Portions of parcels 067 and 071 were deferred prior to the August 2010 lease sale pending release of the RSFO RMP DEIS for public review and comment. Parcels WY-1008-027 and 028 were deferred pending additional guidance on Secretarial Order No. 3310, *Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management* (SO 3310), dated December 22, 2010. All the other protested parcels will be issued.

<u>Discussion:</u>

1. BCA argues 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.

Audubon and PRBRC argue the BLM has not conducted site-specific analysis of leasing and that the BLM incorrectly defers site-specific analysis to the project level or development stage. BLM has not disclosed cumulative impacts such as wind power projects, uranium exploration along with extensive natural gas development. Audubon argues BLM must supplement its National Environmental Policy Act (NEPA) analysis before lease parcels can be issued and BLM has not considered an adequate range of alternatives nor new or revised mitigation measures and stipulations that protect sage-grouse. BLM cannot accurately disclose impacts from leasing because BLM cannot determine whether the necessary sage-grouse conservation measures (density of wells and 5% surface disturbance limit) can be applied after lease issuance. Audubon and PRBRC argues the 10th Circuit Court in its decision for *State of New Mexico v. Bureau of Land Management, 565 F.3d 683,* affirmed the requirement for pre-lease, site-specific NEPA analysis.

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, natural scenic, and 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 RMPs. During preparation of the RMP, and prior to issuing any oil and gas leases, the BLM performs an environmental analysis under the 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 10th 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.

BLM cannot and does not lease sensitive lands within wilderness study areas (WSAs) as alleged by CNE (The Wilderness Act, Public Law 88-577, Section 4(c)).

On December 23, 2010, Secretary Salazar, Department of the Interior, announced the issuance of Secretarial Order 3310 (SO 3310) directing BLM to designate appropriate areas with wilderness characteristics under its jurisdiction as "Wild Lands" and to manage them to protect their wilderness values. This designation is based on the input of the public and local communities through its existing land management planning process. The SO also directs the BLM to maintain a current inventory of public lands with wilderness characteristics, which will contribute to the agency's ability to make balanced, informed land management decisions, consistent with its multiple-use mission.

In accordance with SO 3310, BLM has undertaken a review of the previous inventories to determine whether or not conditions have changed, and whether or not issuance of leases for parcels in the August oil and gas competitive sale complies with SO 3310. Parcels WY-1008-027 and 028 in the CFO were deferred pending additional guidance on SO 3310. This information can be found in the Amended EA, Finding of No Significant Impact (FONSI) and Decision Record (DR) for the February, May, August 2010 lease parcel reviews for the Buffalo, Casper and Newcastle FOs: http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/0608-0510.html.

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. Wyoming's rural heritage and lifestyle are threatened by the sale of the lease parcels. BCA further argues BLM has exploited the leasing stage by disparaging it as little more than a paper transaction. BCA alleges many legal violations will occur on the date of the sale of the parcels protested in their document.

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 mineral 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).

Washington Office (WO) Instruction Memorandum (IM) No. 2009-184 establishes a BLM requirement to notify surface owners whenever split estate lands are included in an oil and gas Notice of Competitive Lease Sale. The notification provides basic information on Federal oil and gas leasing, the oil and gas development process, and the applicable oil and gas regulation as well as any special stipulations attached to parcels that include their lands. With the issuance of this IM, parties filing Expressions of Interest (EOI) to offer lands at a competitive oil and gas lease sale are required to provide the names and addresses of any surface owners where split estate lands are included in their EOI. If any new EOI with split estate lands does not include the name and address of the surface owner(s), the EOI will not be processed or listed in the competitive oil and gas sale until the required information is received.

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 use 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.

WO 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 WO 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 LUP (H-1710-1, NEPA Handbook, Chapter IV.4.A, and Preparing Environmental Assessments).

The notice of sale can also be found at http://www.blm.gov/wy/st/en/programs/energy/Oil_and_Gas/Leasing.html. The notice of sale has been on this website for every oil and gas lease sale BLM-Wyoming has conducted since August 1998. The August 2010 sale notice was posted for 45-days on June 18, 2010, in the BLM public rooms statewide. 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 and it is available online on the oil and gas leasing page at www.blm.gov/wy

The surface owner has many opportunities to participate in BLM's oil and gas leasing and development process. The surface owner's rights and interests are fully protected.

3. BCA, Audubon, PRBRC, GLMC, SFRED, and WWF, argue that the BLM has substantial and new information about Greater sage-grouse population and condition of habitat. Policy recommendations from the Greater sage-grouse Implementation Team to the Governor has not been analyzed in any NEPA document. BLM has not taken a hard look at the environmental impacts of leasing. BLM's oil and gas leasing screen for Greater sage-grouse and its application is an arbitrary and capricious exercise of agency authority. BLM is still leasing in key habitat and core population areas. BLM should apply a No Surface Occupancy (NSO) stipulation to parcels where there are areas within three miles of a Greater sage-grouse lek. Wyoming (WY) IM WY-2010-012 restrictions are not sufficient on-the-ground protection for leks. All parcels protested should be deferred from lease sale pending analysis under leasing reform of whether large-block unleased parcels inside of core areas and connectivity areas are being leased, especially parcels in unleased checkerboard ownership. BLM is not following its own sensitive species or Manual 6840 guidance. BLM has not considered comprehensive conservation techniques for high-value habitats. BLM has failed to comply with IM WY 2010-012 and 013 and leasing reform because DNAs do not show screening was done.

The following parcels were protested because the parcels are located in potential Greater sage-grouse core, lek/breeding, nesting and winter habitat: WY-1008-001, 002, 004, 005, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045, 046, 047, 048, 049, 050, 051, 052, 054, 056, 058, 060, 065, 067, 068, 069, 070, 071, 073, 076, 077, 078, 079, 080, 081, 082, and 083.

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.

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 (IM WY- 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 Wyoming Game and Fish Department (WGFD) to identify and refine important Greater sage-grouse seasonal habitat information.

All BLM Wyoming field offices have addressed Greater sage-grouse and Greater sage-grouse habitat issues 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. IM WY-2010-012 will require implementation of stricter sage-grouse protection measures, if necessary, based on site-specific analysis. IM WY-2010-013 requires the BLM to conduct a sage-grouse screen on every parcel prior to determining if the parcel can be offered for sale or deferred pending completion of RMP revisions or completion of the Sage-grouse plan amendment. BLM uses core maps (Version 3) developed by the Governor's Sage-grouse Implementation Team to conduct the sage-grouse screen. These core maps are 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 the Endangered Species Act (ESA)); and (3) reasonable measures (COAs) 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). 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).

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, there is great uncertainty as to whether, when, and where a well would be drilled on a lease.

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 to minimize adverse impacts to the Greater sage-grouse as described above.

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 (IM WY-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 August 2010 Competitive Oil and Gas Lease Sale EAs, BLM Wyoming has established a sage-grouse screen (IM WY-2010-013) that was performed on all of the August 2010 parcels. This screen was conducted by both the field offices and the WSO. Screening criteria include: is the parcel located in a sage-grouse core area; is the parcel located in suitable sage-grouse habitat; is the parcel a part of at least 11 square miles of contiguous, manageable, unleased federal minerals; and is the parcel being drained by non-federal wells. The BLM further considers population density, geography, and topography

As indicated above, parcels WY-1008-073, 079, 080, 081, 082, and 083 were deferred prior to the August 2010 competitive oil and gas sale until the KFO can prepare correct stipulations in accordance with their new RMP. These parcels will be offered on the next available KFO parcel lease sale. Parcel 068 was deferred prior to the August 2010 lease sale pending release of the RSFO RMP DEIS for public review and comment. Portions of parcels 067 and 071 were deferred prior to the August 2010 lease sale pending release of the RSFO RMP DEIS for public review and comment. Parcels WY-1008-027 and 028 were deferred pending additional guidance on SO 3310. Since BLM has already sold these two parcels, 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 additional field review to ascertain if these lands have wilderness characteristics has been completed:

- If the high bidder is not willing to wait, the BLM will not issue the lease and will refund the high bidder's payments.

- 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 the high bidder's payments.

- 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 the high bidder's payments.

- 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 high bidder's payments.

Once the additional field review to ascertain if these lands have wilderness characteristics has been completed, the BLM may decide that it is still appropriate to offer leases in the subject areas without any new stipulations.

The EAs and amended EAs provided the field managers 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 managers 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 LUP and that the existing NEPA documentation, along with the EAs fully covers the proposed action and constitutes the BLM's compliance with the requirements of NEPA.

4. BCA protested the following nine parcels because the parcels are located in big game crucial winter range and big game migration corridors: WY-0904-066, 067, 068, 069, 071, 075, 077, 079, and 080. BCA argues that BLM's lease stipulations are insufficient.

The WWF and UGRA protested some or all of the following 31 parcels: WY-1008-029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 044, 045, 047, 048, 049, 054, 065, 066, 067, 068, 069, 070, 071, 074, 075, 076, 077, 079, and 080. WWF states BLM timing limitation stipulations (TLS) are ineffective, especially when exceptions are granted to industry. WWF argues there is new significant scientific information and legal developments not available at the time of RMP revisions or amendments, so BLM is required to supplement their plans for mule deer (Sublette Mule Deer studies) and for Greater sage-grouse. UGRA argues parcel 074 is in crucial winter range and should be further protected.

BLM Response**:** As indicated above, a portion of parcel WY-1008-075 was deleted prior to the August 2010 competitive oil and gas sale because of a conservation easement in the PFO. The

following parcels were deferred prior to the August 2010 competitive oil and gas sale until the KFO can prepare correct stipulations in accordance with their new RMP: 079 and 080. These parcels will be offered on the next available KFO parcel lease sale. Parcel 068 was deferred prior to the August 2010 lease sale pending release of the RSFO RMP DEIS for public review and comment. Portions of parcels 067 and 071 were deferred prior to the August 2010 lease sale pending release of the RSFO RMP DEIS for public review and comment.

Upon review, we note that BCA actually protested nine parcels from the BLM's April 2009 lease sale. Therefore, we will not respond to BCA's big game protest arguments.

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 five months prior to the sale. All eight WGFD field offices have approximately two to three weeks to review the list. The WGFD field offices will coordinate with their respective BLM field offices 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 help 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) by reviewing and responding to the WGFD recommendations. The coordination with WGFD is documented in the FO DNAs.

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, such as those 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 BLM Wyoming ensures that oil and gas lessees and operators comply with the above-described regulations and lease terms.

The original leasing EAs and the amended leasing EAs provided the field managers 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 managers 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 LUP and that the existing NEPA documentation, along with the August 2010 Competitive Oil and Gas Lease Sale EAs fully covers the proposed action and constitutes the BLM's compliance with the requirements of NEPA.

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. WWF, GLMC, and SFRED argue Little Mountain has designated big game crucial winter range, big game migration corridors, sensitive fisheries habitat, and critical habitat for sage-grouse. The parcels need a landscape scale review to best manage the area for cumulative impacts. Rapid pace of development precludes BLM from managing these resources as required by FLPMA. BLM needs close coordination with WGFD for comprehensive habitat management planning. Parcels protested are WY-1008-067, 068, 070, and 071. WWF argues the value of wildlife-associated recreation and hunting brings important economic benefits to communities. Recreation and wildlife are important commodities among American citizens. Little Mountain is a place that hosts such significance and value. Even while the demand for wildlife recreation is increasing, certain wildlife populations are decreasing such as Greater sage-grouse and mule deer. BLM did not properly or thoroughly consider the direct, indirect and associated impacts that occur within the parcel area.

BLM Response: The Little Mountain area is located south of Rock Springs and borders Colorado to the south. Additionally, the WGFD and RSFO have requested these parcels be removed from the sale so that further NEPA/planning analysis can occur in the WGFD's Little Mountain Ecosystem (LME) boundary. The LME boundary is defined as all lands bounded by Wyoming Highway 430 on the east, Interstate Highway 80 on the north, and Flaming Gorge Reservoir on the west, and the Wyoming-Colorado state line on the south. The BLM has coordinated with the Wyoming Governor's Office and the WGFD to develop a screen for leasing oil and gas parcels in the Little Mountain area based, in part, on the boundaries as defined by the GLMC. Within the area available for leasing there are 332 federal oil and gas leases and 34 active wells on public lands. There are four federal oil and gas units in the area: South Baxter Basin, Salt Wells, Joyce Creek and Rubicon. An additional 28 active wells are located on private and state lands. However, there presently is no drilling in T. 15 and 16 N., R. 103 W. where the four parcels protested are located.

Again, as indicated above, parcel 068 was deferred in its entirety and portions of parcels 067 and 071 were deferred prior to the August 2010 lease sale, pending further NEPA/planning analysis in the Little Mountain area and release of the RSFO RMP DEIS for public review and comment.

6. BCA argues that since BCA has petitioned Fish and Wildlife Service (FWS) to list the Wyoming pocket gopher that BLM should not approve or conduct any activity that could harm the Wyoming pocket gopher or its habitat. BCA protests the following parcels and requests that no leases are issued: WY-1008-041, 042, 043, 044, 045, 046, 047, 048, 049, and 052. BCA states that the Wyoming pocket gopher is one of the rarest mammals in North America and not enough is known about the pocket gopher to confidently assess the spatial dynamic of the population. BCA argues relevant stipulations do not exist.

BLM Response: There are several species of pocket gophers in Wyoming and the western states. All look very similar, making it difficult to distinguish specimens to species. Reliable

identification has to involve chromosomal analysis (i.e., karyotyping to count chromosome number), with supporting information from geographic location, pelage characters, and overall morphology.

The Wyoming pocket gopher is a small (6.5 to 7.5" long), lighter-colored species with very strong front limbs with long nails used for digging, small ears and eyes, and fur-lined cheek pouches used to carry food. The pocket gophers are fossorial, living most of their lives in burrow systems and underground tunnels. Very little is known about the Wyoming pocket gopher and assumptions about its distribution, ecology, and status are based on a few museum records and anecdotal reports from about 30 years ago. Distribution of the species is believed to be Sweetwater and Carbon Counties, Wyoming and maybe into the very northern part of Colorado.

BCA petitioned the FWS on February 10, 2009, for the listing of the Wyoming pocket gopher. On April 14, 2010, FWS completed their status review of the Wyoming pocket gopher and determined the gopher did not warrant protection as a threatened or endangered species under the ESA. This finding was made after a thorough review of all the available scientific and commercial information regarding the status of the Wyoming pocket gopher and potential impacts to the species. FWS encourages project planners to analyze project areas for potential effects to the Wyoming pocket gopher. FWS also asks the public to continue to submit to them any new information that becomes available concerning the status of, or threats to, the Wyoming pocket gopher or its habitat.

BLM Wyoming uses the Controlled Surface Use (CSU) for Threatened, endangered or other special status species for protection of the Wyoming pocket gopher. The Wyoming pocket gopher is on BLM's sensitive species list.

Further information may be found at the following internet sites:

http://uwadmnweb.uwyo.edu/wyndd/info.asp?p=7531
http://www.fws.gov/wyominges/Pages/Species/Findings/WYPocketGopher_201004.html
http://www.fws.gov/mountain-prairie/species/mammals/wypocketgopher/wypocketgopher.html
http://www.blm.gov/style/medialib/blm/wy/wildlife/animal-assessmnts.Par.9300.File.dat/WyomingPocketGopher.pdf

All protested parcels will be issued.

7. Audubon, PRBRC, WWF, GLMC, and SFRED argues offering parcels for sale located in areas with active RMP revisions and amendments does not comply with NEPA. The protested parcels are WY-1008-001, 002, 004, 005, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 044, 045, 046, 047, 048, 049, 052, 054, 065, 066, 067, 068, 069, 070, 071, 073, 074, 075, 076, 077, 079, and 080. Council for Environmental Quality (CEQ)

regulations prohibit taking any action that could have an environmental impact or limit the choice of reasonable alternatives. Additional leasing in sage-grouse habitat may foreclose alternatives that would have been available had leasing not occurred. Leasing should not occur until the new information and impact analysis are completed. BLM needs to closely coordinate with the WGFD for comprehensive habitat management planning. New information regarding climate change and economic impacts requires additional NEPA analysis. The protested parcels are located in BFO, CFO, KFO, LFO, NFO, PFO, RFO, RSFO, and WFO.

BLM Response: All the subject parcels protested in the August, 2010, oil and gas parcel list are available and eligible for oil and gas leasing in accordance with the existing FOs' RMPs. FOs currently revising their RMPs include: WFO, CYFO, LFO, 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 the BLM must suspend an action that is in conformance with an existing LUP 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 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 LUPs being re-examined.

IM WY-2010-012 directs the BLM Wyoming on the alternatives to consider when doing the RMP amendments to standardize and enhance the protections for sage-grouse through adaptive management. This includes new stipulations, disturbance limits, habitat conservation, enhanced restoration and reclamation practices. The policy is consistent with the BLM National Sage-grouse Habitat Conservation Strategy, the Governor's Sage-grouse Implementation Team's Core Population Area Strategy and the Wyoming Governor's Executive Order (EO) 2010-4 as well as the WO IM 2010-049 issued for the 2010 wildfire season and WO IM 2010-071 that provides suggested sage-grouse habitat management considerations for energy development on BLM administered lands and activities.

The CEQ regulations do not require postponing or denying a proposed action covered by the EIS for the existing LUP in order to preserve alternatives during the preparation of a new LUP 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 field offices prepared EAs for the August 2010 oil and gas competitive sale to analyze whether the decision to issue leases for these parcels remained appropriate. Based on this analysis, the BLM once again concluded that the decision to offer these parcels for lease and issue leases remains appropriate.

The EAs and the amended EAs provided the field managers 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 managers 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 August 2010 Competitive Oil and Gas Lease Sale EAs fully covers the proposed action and constitutes the BLM's compliance with the requirements of NEPA.

As indicated above, a portion of parcel WY-1008-075 was deleted because of a conservation easement in the PFO. Parcel 068 was deferred in its entirety and portions of parcels 067 and 071 were deferred prior to the August 2010 lease sale, pending further NEPA/planning analysis in the Little Mountain area and release of the RSFO RMP DEIS for public review and comment. The following parcels were deferred prior to the August 2010 competitive oil and gas sale until the KFO can prepare correct stipulations in accordance with their new RMP: 073, 079, and 080.

As indicated above, Parcels 027 and 028 were deferred pending additional guidance on SO 3310. Since BLM has already sold these two parcels, we will defer issuing a lease as described above (see Response No. 4).

These protests as well as past protests continue to repeat identical issues of BLM's failure to suspend an action that is in conformance with an existing LUP when BLM decides to prepare a new plan. These issues have been previously raised and rejected, and BLM's decision affirmed by IBLA in *Wyoming Outdoor Council, et al*. (IBLA 2002-303), dated July 31, 2002. Therefore, BLM will not address these identical arguments raised in this protest or in any future protest responses.

8. Audubon and CNE argue the BLM is failing to protect sensitive species as required. CNE argues the BLM has not adequately addressed or developed mitigation to protect sensitive species or other special status species in its RMPs or in supplemental NEPA analyses.

<u>BLM Response</u>: We disagree that the BLM Wyoming is failing to protect sensitive plant and animal species. The threatened and endangered (T&E) species stipulation that BLM attaches to every oil and gas lease protects all special status species (this includes sensitive 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. The 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, that stipulation, the lease terms (Section 6), and the regulations at 43 CFR 3162.5-1(a) give the BLM 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 ESA. In addition, the BLM has participated in substantial special status species research and conservation efforts. The BLM has sponsored the preparation of species assessments that document the distribution, habitat, and threats to sensitive species. Please see the following internet page for more information: http://www.blm.gov/wy/st/en/programs/Wildlife.html.

9. WWF argues the BLM has not considered the mandates of Executive Order 13443 in deciding to offer parcels at the August 2010 oil and gas competitive lease sale. WWF argues significant new information exists regarding the economic benefits of hunting and fishing.

BLM Response: BLM disagrees with this argument. Executive Order 13443 (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 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 Response 5), 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.

Recreational use of the available parcels and the surrounding areas is typically for hunting, fishing, camping, sightseeing, driving for pleasure, off-highway vehicle use, and other recreational activities. In the national survey of fishing, hunting and wildlife associated recreation for activities in 2006, expenditures from fishing and hunting significantly increased. In Wyoming, more than 320,000 people participated in fishing and hunting activities in 2006. Additionally, 716,000 people participated in some form of wildlife watching activity (USFWS 2006 National Survey of Fishing, Hunting, and Wildlife Associated Recreation). The total of hunting and fishing recreation days in Wyoming in 2008 was 3,683,371. Based on the number of recreation days and average expenditure per day, hunters, anglers and trappers expended approximately $685 million in pursuit of their sport (WGFD Annual Report 2008). Non-consumptive users provided about $420 million through wildlife watching, wildlife photography, etc. In total, wildlife associated recreation accounts for over $1 billion dollars in income to the state for the year 2008 (WGFD Annual Report 2008). Fishing, hunting, and wildlife watching opportunities in Wyoming continues to be a thriving business.

Neither the WO nor the Wyoming IMs require the BLM to suspend leasing during implementation of the subject EO 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. Protestors have not shown the decision to offer the parcels for lease will affect hunting opportunities on any parcel.

10. UGRA argues leasing the following two protested parcels would violate the National Historic Preservation Act (NHPA): WY-1008-074 and 075. Leasing and developing these two parcels will leave a lasting and shameful BLM legacy because these parcels are adjacent to or directly on the historically, significant Lander Trail. Both UGRA and AHW argue this is an area of unmarked, suspected immigrant graves and violating the graves would be to violate the sanctity of their final resting place. Leasing impacts will change the setting and character of the trail eligible for the National Register of Historic places and will degrade the viewshed.

BLM Response: NHPA is a procedural statute designed to ensure an agency identifies and considers significant cultural resources in its decision-making process. 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 (SHPO) and BLM Wyoming 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, the 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 Final EIS (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 the 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. These two parcels all contain the CSU stipulation to protect the historical and visual values for the historical trails of concern and Lease Notices 1, 2, 3, and a special lease notice concerning the Lander Road. The National Historic Trails viewshed map for T. 29 N, R. 114 W, shows that there are areas around the Lander Road where facilities, etc. could be located and not seen to moderately seen. Therefore, there are ways the oil and gas companies can mitigate their operations to alleviate or lessen visual impacts.

As indicated above, a portion of WY-1008-075 was deleted because of a conservation easement in the PFO. Parcel WY-1008-074 and the remaining portion of 075 will be issued.

11. WWF, UGRA, SFRED, and BCA argue the BLM must remove the parcels pending up-to-date analyses to fix inadequate environmental review and setback stipulations to protect sensitive coldwater fisheries. BCA states the Miracle Mile, Seminoe Reservoir, has been designated a Class I water by the State of Wyoming, DEQ and BLM need to attach a stipulation to these parcels requiring any surface discharge effluent must meet or exceed the background water quality of the reservoir. With leasing, there is a potential to import aquatic invasive species into the local streams and the Green River. Parcels protested are WY-1008-029, 030, 031, 032, 033, 034, 035, 044, 074, 075, and 079

BLM Response: 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. While the BLM revises RMPs, it will continue to manage public lands according to existing LUPs, see Colorado Environmental Coalition, 161 IBLA 386 (2004). Those plans currently in revision can be commented on when they are released in Draft for public review and comment. The BLM recently completed environmental analyses as described in the August 2010 EAs for August 2010 lease sale. These EAs provide additional disclosure and analysis of the environmental impacts associated with the BLM's decision to issue leases. The BLM also issued FONSIs and DRs for this lease sale. These documents also provide additional disclosure and analysis of the environmental impacts associated with the BLM's decision to issue leases. For more information, please see the respective EAs, Sections 3.1 and 4.0-4.1.

Water depletions from activities such as oil and gas are handled for individual projects and considered during the NEPA process. Water is used for drilling operations, hydrostatic testing of pipelines, and dust abatement. Produced water during oil and gas activities is evaluated during the NEPA process to determine potential connections between the producing geologic formation and the surface waters. Methods for making this determination can include isotopic analysis, water quality data, and/or groundwater modeling. Through the Wyoming Pollutant Discharge Elimination System (WYPDEA) permit system, point source discharges to tributaries of Class I waters must meet limits that are established to protect and maintain the existing Class I water quality. DEQ has established these limits and the information can be found http://deq.state.wy.us/wqd/index.asp.

The BLM has applied strict lease stipulations that allow restrictions or prohibition on part of a lease for protection of sensitive fish species and their watersheds. The current lease terms within Section 6 of the lease 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 of the lease form. BLM is a partner in the Conservation Agreements for the Colorado River cutthroat trout and the Bonneville cutthroat trout and takes the responsibilities seriously for enhancing and managing trout habitat for the long-term survival of these fish.

A portion of WY-1008-075 was deleted because of a conservation easement in the PFO. The remaining portion of WY-1008-075 and the other protested parcels will be issued.

12. WWF argues leasing in sage-grouse habitat and mule deer winter range without a NSO stipulation will improperly constrain the alternatives available to BLM in revising the Green River/Rock Springs and Wind River/Big Horn Basin RMPs.

BLM Response: All the subject parcels in the August 2010 oil and gas parcel list are available and eligible for oil and gas leasing in accordance with the existing RSFO and WFO RMPs.

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 LUP when it decides to prepare a new plan. IBLA recognized that acceptance of the protestor's position would seriously impair 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 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 LUPs 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 the 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 CEQ regulations do not require postponing or denying a proposed action covered by the EIS for the existing LUP in order to preserve alternatives during the preparation of a new LUP 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.

13. WWF and PRBRC argue that the August 2010 Wyoming lease sale does not comply with the requirements of WO IM No. 2010-117 on oil and gas leasing reform. Those parcels should be withdrawn from sale until the mandates of WO IM No. 2010-117can be completed and implemented.

BLM Response: The August 2010 competitive lease sale was held on August 3, 2010. WO IM No. 2010-117 was issued on May 17, 2010. The subject IM required BLM Wyoming to submit a Leasing Reform Implementation Plan by August 16, 2010. Wyoming timely submitted their implementation plan which was approved by Washington on February 16, 2011. BLM Wyoming will fully implement the new Leasing Reform policy beginning with the May 2011 lease sale.

14. WWF and UGRA protested new information for climate change, air quality emission analyses and ozone violations. WWF argues BLM must analyze the impacts arising out of new information not previously available when the original NEPA documents were drafted. WWF and UGRA argue air quality is degraded with increased road dust, diesel emissions, and ozone violations. New air quality emission analyses need to be completed and incorporated. Hydrogen Sulfide (H2S) is a concern to UGRA because of human health and safety. UGRA argues H2S is not mentioned by the lease sale notice nor does it require any Environment, Health and Safety plans be prepared. In 1979, a sour gas well owned by American Quasar blew out releasing deadly H2S gas and the potential for another accidental release should require lease sale notification to prospective bidders and additional, site-specific analysis should be conducted prior to leasing.

BLM Response: One of the many regulations, oil and gas operators must abide with is Onshore Order No. 6, Hydrogen Sulfide Operations. This document can be found on the internet at http://www.blm.gov/style/medialib/blm/wy/programs/energy/og/ogdocs.Par.0578.File.dat/onshoreorder6.pdf. This document is authorized by 43 CFR 3164.1 and supplements the operating

regulations and is binding on the operators of all Federal and Indian (except Osage Tribe) oil and gas leases issued. The purpose of this Order is to protect public health and safety and those personnel essential to maintaining control of the well. The Order identifies the uniform national requirements and minimum standards of performance that BLM expects from the operators when conducting operations involving oil or gas where H2S is known or could reasonably be expected.

Wyoming has also completed the August 2010 EAs that addresses climate change. While BLM revises RMPs, it will continue to manage public lands according to existing LUPs, see *Colorado Environmental Coalition*, 161 IBLA 386 (2004). The BLM recently completed environmental analyses as described in the August 2010 EAs. These EAs provide additional disclosure and analysis of the environmental impacts associated with the BLM's decision to issue leases for the August 2010 parcels.

We appreciate WWF and UGRA's recommendations relating to climate change. The protests allege any deficiencies or irregularities in the notice of lease sale or supporting documentation. The protests fail to identify any specific effect of climate change that will result from leasing the protested parcels. Further, the protests fail 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. NEPA Does Not Require that the BLM Evaluate Potential Climate Change Impacts in an EIS Before Leasing the Protested Parcels.

WWF's primary objection to issuance of the leases in the August 2010 sale is the BLM's failure to consider and analyze in an EIS the potential climate change impacts associated with offering the parcels for sale. WWF contends that the BLM must defer leasing until the BLM has analyzed these impacts in an additional or supplemental EIS. UGRA contends BLM must withdraw the parcels from the sale; impose federal sanctions on all kinds of human activities; and designate Sublette County a non-attainment zone for ozone.

WWF and UGRA imply that the BLM has failed to comply with its obligations under NEPA and the regulations through broad allegations and suggestions. They have not supported such claims, however, with respect to the specific parcels offered in the August 2010 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 CEQ regulations which the Supreme Court has held are entitled to substantial deference, requires Federal agencies to supplement either DEISs or FEISs 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 August 2010 EAs, we find that WWF and UGRA'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 an EA for each parcel nominated for lease to determine whether offering the parcel conforms to the existing LUP and whether the environmental analysis completed for the plan is adequate to support the lease decisions. Each of the relevant the BLM field offices in this case completed the existing NEPA analyses covering the parcels offered at the August 2010 sale and determined that the analyses sufficiently assessed the environmental consequences of leasing the parcels. The field offices used the EAs to make and document that assessment. In addition, the BLM also used the EAs to verify conformance with the approved LUP, address new information related to climate change and other issues, and provide the rationale for issuing parcels sold during the August 2010 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 parcels in question.

As the August 2010 EAs point out, 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 green house gas (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 August 2010 EAs.

B. Protestors' Recommendations for Addressing Climate Change Do Not Require that Oil and Gas Leasing be Deferred.

The protest recommends that the BLM take action through the NEPA process to analyze impacts before issuing leases for the protested parcels. We have reviewed the recommended action in the protest and find that it concerns NEPA issues that have been addressed in the August 2010 EAs. Mere lease issuance, in other words, does not preclude BLM from imposing the types of requirements on lease operations 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 WWF that NEPA provides a useful mechanism to analyze the phenomena of climate change associated with oil and gas leasing. The BLM is currently addressing these issues in environmental analyses associated with new RMPs and plan amendments in Wyoming.

DECISION: A portion of parcel WY-1008-075 was deleted prior to the August 2010 competitive oil and gas sale because of a conservation easement in the PFO. The remaining portion of parcel 075 will be issued. The following parcels were deferred prior to the August 2010 competitive oil and gas sale until the KFO can prepare correct stipulations in accordance with their new RMP: 073, 079, 080, 081, 082, and 083. These parcels will be offered on the next available KFO parcel lease sale. Parcel 068 was deferred prior to the August 2010 lease sale pending release of the RSFO RMP DEIS for public review and comment. Portions of parcels 067 and 071 were deferred prior to the August 2010 lease sale pending release of the RSFO RMP DEIS for public review and comment. Parcels WY-1008-027 and 028 were deferred pending additional guidance on SO 3310. All the other protested 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 August 2010 sale and are, therefore, adverse parties who must be served with any pleadings.

Larry Claypool

Larry Claypool
Deputy State Director,
Minerals and Lands

2 Attachments:
1 - Appeal Form (1842-1)
2 –August 2010 Oil and Gas Sale Results

cc:
State Offices
Field Offices
DSD (920)
DSD (930)
J. Weaver (923)
S. Moberley (923)
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