



**Wyoming Outdoor Council**  
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**RECEIVED**  
**OCT 14 2010**  
BY:

October 13, 2010

2010 OCT 14 AM 9:00  
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DOI-BLM  
CHEYENNE WYOMING

**Via Federal Express**

Mr. Don Simpson, State Director  
Bureau of Land Management  
5353 Yellowstone Road  
Cheyenne, WY 82003

**RE: PROTEST OF CERTAIN PARCELS TO BE OFFERED AT BLM'S  
NOVEMBER 2, 2010 COMPETITIVE OIL & GAS LEASE SALE**

Dear Mr. Simpson:

In accordance with 43 CFR §§ 4.450-2 and 3120.1-3, the Wyoming Outdoor Council protests the following parcels being offered at the Bureau of Land Management's (BLM) November 2, 2010, competitive oil and natural gas lease sale. In this protest we protest the sale of lease parcels WY-1011-050, -051, -061, -103, -104, and -105 which are located in the Newcastle and Rawlins Field Offices.

**I. THE PARTY TO THIS PROTEST.**

The **Wyoming Outdoor Council** (WOC) is a non-profit conservation organization with approximately 1,300 members in Wyoming, other states and abroad. The Wyoming Outdoor Council is dedicated to the protection and enhancement of Wyoming's environment, communities and quality of life. It has members that live in the Newcastle and Rawlins Field Offices where the protested parcels are located. Wyoming Outdoor Council members utilize land and water resources within and near these areas for hiking, fishing, camping, recreational and aesthetic purposes. The Wyoming Outdoor Council is actively involved in BLM oil and gas activities throughout Wyoming and participates in all aspects of BLM oil and gas projects by involving its staff and members in submitting comments and attending public meetings. The Wyoming Outdoor Council's long-standing commitment to environmentally sound oil and gas leasing and development throughout Wyoming stems over many years. Consequently, the Wyoming Outdoor Council and its members would be adversely affected by the sale of the lease parcels at issue here, and it has an interest in this lease sale.

**II. AT RISK: WILDLIFE, OPEN SPACES, AND CLEAN AIR AND WATER.**

Oil and gas activities on the public lands at issue have escalated in the past several years. BLM is approving record numbers of large oil and gas development projects in Wyoming. Many of these lands provide critical habitat for a number of species, ranging from mule deer to severely imperiled species, such as Greater sage-grouse in the sagebrush country. They serve as quiet, serene places of natural beauty and solitude, and as such, they provide excellent recreational opportunities for hiking, birding, wildlife viewing, hunting, fishing, backpacking, and enjoyment of open spaces.

Explosive oil and gas development on many of these lands threatens all of the above resources, which BLM has a mandatory duty to protect for "multiple use." Oil and gas development has already caused, and will continue to lead to, fragmented habitat and surface disturbances through well pad construction, oil and gas well rigs, increased vehicular traffic, miles of roads, pipelines and power lines, and noise from generators and compressor stations. All of these associated activities serve to disrupt habitat, destroy nesting and brooding grounds, and disturb wildlife. These activities can significantly impact elk, mule deer, pronghorn antelope, and sage-grouse, as well as many other resident species, and impair natural characteristics, such as opportunities for solitude, and opportunities for primitive or unconfined recreation. Many of these lands serve as crucial winter range and parturition areas for elk, pronghorn antelope, and mule deer. Rare species find some of their last secure refuges on these lands.

While the sale of a lease does not necessarily create immediate disturbances, as BLM understands, if a lease is not subject to a "No Surface Occupancy" stipulation, the lessee receives contractually-enforceable rights and the agency makes an irreversible and irretrievable commitment of resources. 43 C.F.R. § 3101.1-2; *Pennaco Energy, Inc. v. Department of the Interior*, 377 F.3d 1147 (10<sup>th</sup> Cir. 2004). In other words, once a lease is sold, the ability to mitigate impacts is reduced, putting sensitive resources which have yet to be properly considered through site-specific NEPA analysis at risk of significant and potentially unacceptable harm. Because it represents an irretrievable and irreversible commitment of resources, the leasing stage is extremely critical. Given this level of importance, and particularly due to the legal violations and other concerns that will occur if the protested lease parcels are sold, the Wyoming Outdoor Council is filing this Protest and requests that BLM remove the protested parcels from the upcoming sale.

### **III. PARCELS -103, -104, AND -105 SHOULD NOT BE OFFERED FOR SALE AT THIS TIME.**

We protest the sale of parcels WY-1011-103, -104, and -105 because of the high likelihood that development will harm a number of important resources. These parcels are presented in Exhibits 1 and 2. First, these parcels are adjacent to or in the near vicinity of the Battle Mountain Research Natural Area which is designated in the current Medicine Bow National Forest Land and Resource Management Plan. Second, these parcels have been given a VRM Class II designation in the Rawlins RMP. Third, these parcels are located within important habitat for elk, mule deer, Greater sage-grouse, Sharp-tailed grouse, and bald eagles, among other species. Finally, the BLM lands that lie within these parcels form part of a larger block of public land that is extremely important to backcountry recreation users. In our view,

each of these values individually warrant against offering these parcels for sale, but when these values are aggregated they far outweigh the potential value of oil and gas and should be protected by not offering parcels -103, -104, and -105 at this time.

**A. Proximity to and potential to harm ecological processes that occur within the Battle Mountain Research Natural Area.**

Research Natural Areas (RNAs) have been designated by the U.S. Forest Service (FS) to form a long-term network of areas for research, education, and to preserve biological diversity.<sup>1</sup> According to the Forest Service, “RNAs are selected to preserve a spectrum of relatively pristine areas that represent a wide range of natural variability within natural ecosystems and environments...and areas that have special or unique characteristics of scientific importance.”<sup>2</sup> In addition, “RNAs will be managed to maintain natural conditions by allowing ecological processes to prevail with minimal human intervention.”<sup>3</sup> The FS should only “[a]llow uses [within an RNA] that maintain or improve the ecological characteristics for which the RNA was designated.”<sup>4</sup> As one of only six<sup>5</sup> small RNAs in the entire Medicine Bow National Forest, the Battle Mountain RNA is obviously important.

Development of parcels -103, -104, and -105 would likely undermine the values that the FS has sought to protect. Because parcel 103 extends across the south face of Battle Mountain, any development will likely interfere with natural processes that occur across Battle Mountain because natural connections and processes are not severed by jurisdictional boundaries. For example, we know that oil and gas development displaces elk and mule deer,<sup>6</sup> and given the close proximity of this parcel to the Battle Mountain RNA, it is reasonable to conclude that oil and gas activities, especially production activities, would displace or disrupt elk and mule deer use not only on this parcel, but also on adjacent FS lands. The reduction of ungulate grazing and browsing, caused by this “human intervention” may in turn lead to interruptions of other natural processes, the dynamics of which science has yet to discover. While we can only speculate as to what interruptions would occur within the RNA as a result of oil and gas development within parcels -103, -104, and -105, we do know that the RNA was designated because of its natural character and the need to have places maintained in their natural condition for baseline scientific study.

Failure of the BLM to consider and help protect important values on nearby lands in Utah ultimately played a pivotal role in the formation of the new leasing reforms. With the widespread leasing of important areas across Wyoming and the need to maintain the ecological integrity of a variety of areas in the face of climate change, we ask that BLM to support the FS’s Battle Mountain RNA designation by removing parcels -103, -104, and -105 from the November, 2010 lease sale. We believe this is required by and would be consistent with BLM’s new oil and gas leasing reform policy.

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<sup>1</sup> 2004 Medicine Bow National Forest, Land and Resource Management Plan, 2-29.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2-31 to 32.

<sup>6</sup> See *Supra* Footnotes 9-10.

**B. VRM Class II designation indicates important visual values that will be harmed by oil and gas development.**

According to the current Rawlins Resource Management Plan (RMP), parcels -103, -104, and -105, were given a Visual Resource Management (VRM) Class II designation. This designation is quite restrictive and guides the BLM to “maintain the existing character of the landscape” and even though it does allow “management activities to be seen,” they “should not attract the attention of the casual observer.”<sup>7</sup> We believe oil and gas wells as well as associated infrastructure and activity would attract the attention of the casual observer, especially on the south slope of Battle Mountain. Well pads, roads, and activities would all be very visible to recreationists who use these lands as well as to those who observe this mountain from the south. In our view, to protect and maintain the character of this landscape, BLM should not offer these parcels for sale, or should attach a no surface occupancy (NSO) stipulation to protect this magnificent area.

**C. Potential to harm numerous important wildlife habitats.**

Parcels -103, -104, and -105 host elk and mule deer crucial winter ranges, bald eagle roost sites, Sharp-tailed grouse habitat, and are within a Greater sage-grouse core area, among other wildlife values. These parcels are critical for the survival of these species in this area and should not be offered at the November, 2010 lease sale.

We were party to an appeal filed with the Interior Board of Land Appeals of the BLM’s denial of our Protest filed against the June 6, 2006 lease sale. In its April 2008 Decision,<sup>8</sup> the Board inquired into whether BLM had complied with the Memorandum of Understanding between BLM and the Wyoming Game and Fish Department (WGFD) regarding lease parcels in big game crucial winter range and parturition areas. The BLM is required to have a rational basis for its decision to issue leases in crucial wildlife habitat, and that basis must be supported by the agency’s compliance with applicable laws. While the Board held that failure of BLM to follow the directives contained in Instruction Memorandum No 2004-110 Change 1 was not, standing alone, proof of the violation of law or discretionary policy, it was probative of whether BLM had a rational basis for its decision. The Board found that the appeal record presented no evidence of compliance with the Memorandum of Understanding.

We protest lease parcels -103, -104, and -105 because BLM has again failed to comply with the Memorandum of Understanding and therefore has not provided a rational basis for its decision to offer lease parcels in areas with big game crucial winter range and parturition areas. Until such time as BLM complies with the Memorandum of Understanding it has no rational basis for its decision and the decision is arbitrary and capricious.

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<sup>7</sup> 2008 BLM Rawlins Resource Management Plan, A25-1.

<sup>8</sup> IBLA 2007-136 (174 IBLA 174), decided April 4, 2008.

We strongly protest the offering of lease parcels WY-1011-103, -104, and -105 for sale; at the minimum, these parcels should be offered with a NSO stipulation. NSO provides the best protection for big game. Recent studies on the impacts of oil and gas development and production on big game in Wyoming show that the impacts have been significant.<sup>9</sup> Not only have impacts to big game been significant, but they have occurred in spite of the application of winter timing limitations, demonstrating that these stipulations alone do not provide adequate protections for big game.

A further noteworthy factor is that timing limitations apply only during oil and gas development, not during the production phase. It has been well documented, especially in elk<sup>10</sup>, that human presence and activity in an area causes these animals to be displaced. Without an NSO stipulation or timing stipulations on production activities that prevent human activity during the winter, these animals will likely avoid using these crucial areas. It is therefore imperative that stipulations adequate to protect these species be applied at the leasing stage. *See Center for Native Ecosystems, IBLA 2003-352, November 22, 2006.*

Attached to these parcels is a timing limitation stipulation prohibiting drilling between November 15 and April 30 for "protecting big game crucial winter ranges." These are, however, not total prohibitions on drilling during the stressful winter period. Exceptions to the stipulations are often granted when a lessee requests it. *See, for example, <http://www.wy.blm.gov/pfo/wildlife/exceptions.php>* (Pinedale Field Office winter range stipulation exceptions) which shows that **123** exceptions were granted for the winter of 2006-2007. Similar statistics are available for other Wyoming Field Offices, including the Rawlins Field Office. Just as important, these stipulations do not limit operational and production aspects of oil and gas development. *See, for example, Jack Morrow Hills EIS at A5-3.*

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<sup>9</sup> Berger, J., K. Murray Berger and J. Beckmann. 2006. Wildlife and Energy Development: Pronghorn of the Upper Green River Basin – Year 1 Summary. Wildlife Conservation Society, Bronx, NY. Berger, K., J. Beckmann, J. Berger. 2006. Wildlife and Energy Development: Pronghorn of the Upper Green River Basin – Year 2 Summary. Wildlife Conservation Society, Bronx, NY.

Sawyer, H., R. Neilson, D. Strickland and L. McDonald. Oct. 2005. Sublette Mule Deer Study (Phase II): 2005 Annual Report. Sawyer, H., R. Neilson, D. Strickland and L. McDonald. 2006. Sublette Mule Deer Study (Phase II): 2006 Annual Report. Sawyer, H., R. Neilson, F. Lindzey and L. McDonald. Winter Habitat Selection of Mule Deer Before and During Development of a Natural Gas Field.

Powell, J.H. 2003. Distribution, habitat use patterns, and elk response to human disturbance in the Jack Morrow Hills, Wyoming. MS Thesis, Univ. of Wyoming, 52 pp.

Sawyer, H., and R. Nielson. 2005. Seasonal distribution and habitat use patterns of elk in the Jack Morrow Hills Planning Area, Wyoming. Cheyenne: WEST, Inc., 28 pp.

<sup>10</sup> Lyon, L.J. 1983. Road density models describing habitat effectiveness for elk. *Journal of Forestry* 81:592-595; Edge, W.D. and C.L. Marcum. 1985. Movements of Elk in Relation to Logging Disturbances. *Journal of Wildlife Management* 49(4):926-930; Grover, K.E., and M.J. Thompson. 1986; Rowland, M.M., M.J. Wisdom, B.K. Johnson, and J.G. Kie. 2000. Elk distribution and modeling in relation to roads. *Journal of Wildlife Management* 64:672-684. Factors influencing spring feeding site selection by elk in the Elkhorn Mountains, Montana. *Journal of Wildlife Management* 50:466-470; Witmer, G.W., and D.S. DeCalesta, 1985. Effect of forest roads on habitat use by Roosevelt elk. *Northwest Science* 59:122-125; Sawyer, H., R.M. Nielson, F.G. Lindzey, L. Keith, and J.H. Powell, and A.A. Abraham. 2007. Habitat Selection of Rocky Mountain Elk in a Nonforested Environment. *Journal of Wildlife Management* 71(3):868-874.

The WGFD has a formal policy relative to disturbance of crucial habitats, including crucial winter ranges.<sup>11</sup> Crucial habitat is habitat “which is the determining factor in a population’s ability to maintain and reproduce itself . . . over the long term.” WGFD further describes big game crucial winter ranges as vital habitats. Vital habitats are those which directly limit a community, population, or subpopulation, and restoration or replacement of these habitats may not be possible. The WGFD has stated that there should be “no loss of habitat function” in these vital/crucial habitats, and although some modification may be allowed, habitat function, such as the location, essential features, and species supported must remain unchanged. Mitigation Policy at 5.

Furthermore, the WGFD released the recommended minimum standards to sustain wildlife in areas affected by oil and gas development.<sup>12</sup> Their policy recognized the ineffectiveness of winter range stipulations standing alone as currently applied. Recommendation Policy at 6. In all cases, Wyoming’s new policy recommends going beyond just the winter drilling timing limitations, which BLM currently applies to lease parcels on crucial winter range. In addition to the winter timing limitations, the Recommendations Policy includes a suite of additional standard management practices. Recommendations Policy at 9-11, 52-58. These additional management practices include planning to regulate the pattern and rate of development, phased development, and cluster development, among many other provisions. Recommendations Policy at 52. We would note that such measures are completely in alignment with provisions in BLM’s new oil and gas leasing policy.

The timing limitation stipulation applicable to the crucial winter range parcels is not in accord with the State of Wyoming’s policies and plans regarding the protection of wildlife. The timing stipulation, standing alone, does not ensure protection of habitat function. There is no guarantee, or even the likelihood, that the location, essential features, and species supported on the crucial winter range will remain “unchanged.”

Popular and scientific literature makes it clear that there will be loss of function if significant exploration and development occurs on the leaseholds. *See* the studies referenced in Footnote 9 above. These studies document the negative effects of oil and gas drilling on big game winter ranges and winter range use, as well as on big game migration routes, even when winter timing stipulations are in effect.

The findings in the scientific and popular literature have been confirmed in recent BLM NEPA documents. The Green River EIS/RMP/ROD is replete with documentation of the importance of crucial winter ranges, and their ongoing loss, despite the stipulation required by BLM. Green River EIS/RMP at 347-349 (“ . . . oil and gas development in Nitchie Draw causing forage loss and habitat displacement;” “Displaced wildlife move to less desirable habitat where animals may be more adversely stressed . . .;” “Long-term maintenance and operations activities in crucial wildlife habitats would continue to cause displacement of wildlife from crucial habitats, including . . . crucial big game winter habitats;” “Surface disturbing activities would continue to cause long-term loss of wildlife habitat,” etc.). The Jack Morrow Hills EIS

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<sup>11</sup> Wyoming Game and Fish Department. April 1998. Policy No. VII H, Mitigation.

<sup>12</sup> Wyoming Game and Fish Department. Recommendations for Development of Oil and Gas Resources within Crucial and Important Wildlife Habitats.

also documents the importance of crucial winter ranges, particularly to elk, and the sensitivity of wildlife on winter ranges not only to drilling during the winter period, but also due to ongoing displacement and disturbance of wildlife from oil and gas development. Jack Morrow Hills EIS at 4-61 to 4-64, 4-80 to 4-88. The Rawlins Draft RMP further documents the negative effects of oil and gas drilling on big game when on winter ranges. Rawlins RMP Draft EIS at 3-131 to 3-136.

Given this evidence and the simple fact that each well pad converts 3-5 acres of crucial winter range to bare ground for extended periods of time, there is no rational basis for BLM to claim that it meets Wyoming's mitigation policy. It is impossible for crucial winter ranges to remain "unchanged" in terms of the location, essential features, and species supported, even if drilling does not take place during the timing stipulations.

The Federal Land Policy and Management Act (FLPMA) requires BLM to "coordinate the land use inventory, planning, and management activities of [public lands] with the land use planning and management programs of . . . the States and local governments . . . by, among other things, considering the policies of approved State and tribal resource management programs." 43 USC § 1712I(9). BLM must give special attention to "officially approved and adopted resource related plans." 43 CFR § 1601.0-5(g). BLM must remain apprised of State land use plans, assure they are considered, and resolve to the extent practical, inconsistencies between state and federal plans. 43 USC § 1712I(9).

There is no indication that BLM's winter timing stipulation is based on consideration of Wyoming's Mitigation Policy, or its new programmatic Recommendations Policy. *See* Footnotes 11 and 12. It is apparent there has been no attempt to resolve inconsistencies between what BLM's stipulation provides and what Wyoming's mitigation policy requires. There are certainly inconsistencies. BLM's timing stipulation attempts to prohibit drilling during limited periods, yet this prohibition is frequently waived. Wyoming's Recommendations Policy specifically seeks to fill gaps left by the timing stipulation, by requiring a number of standard management practices on crucial winter ranges in all cases. These recommendations are standing policy which WGFDF hopes will be applied in every instance of leasing in crucial winter range.

The inconsistencies are even more apparent when one considers the fact that BLM's timing stipulation does not regulate the production phase. Until BLM considers and attempts to resolve these inconsistencies, it cannot allow the sale of parcels -103, -104, and -105 to go forward. To do so would be a violation of NEPA and FLPMA.

The various provisions in the WGFDF Recommendations Policy for oil and gas development establish "sideboards" as to what actions need to be taken to prevent unnecessary or undue degradation. BLM has not considered these standards from the perspective of its FLPMA-imposed requirement to prevent unnecessary or undue degradation. BLM is not meeting its duty to take "any" action that is necessary to prevent unnecessary or undue degradation. 43 USC § 1732(b). Once again, this failure is most apparent where application of the elk, mule deer, and bald eagle timing stipulations do not regulate ongoing operations such as production. In addition, according to the USFWS, "Greater sage-grouse populations are negatively affected by energy development activities . . . even when mitigative measures are

implemented."<sup>13</sup> Accordingly, BLM should craft mitigation measures that reflect current science rather than relying on outdated measure such as the 0.25 mile surface occupancy restrictions that are attached to these lease sale parcels.

BLM has an independent duty under FLPMA to take any action necessary to prevent unnecessary or undue degradation, in addition to its NEPA duty to coordinate its activities with the State of Wyoming and comply with the MOU. Since BLM has reduced its ability to require restrictions in the future by not imposing sufficient stipulations at the leasing stage, the effect of this failure to require adequate restrictions at the leasing stage violates FLPMA by permitting unnecessary or undue degradation when oil and gas development commences.

IM 2004-110 Change 1 provides that State Offices "are to consider temporarily deferring oil, gas and geothermal leasing on federal lands with land use plans that are currently being revised or amended." Specific consideration for deferral is to be given to certain categories of land "that are designated in the preferred alternative or draft or final RMP revisions or amendments as: (1) lands closed to leasing; (2) lands open to leasing under no surface occupancy; (3) lands open to leasing under seasonal or other constraints with an emphasis on wildlife concerns; or (4) other potentially restricted lands." There is no indication that the Wyoming State Office has given any consideration to deferring leasing on parcels -103, -104, and -105, even though the Rawlins Resource Management Plan (RMP) is currently being amended as part of a statewide effort to reconcile BLM policy with Wyoming State sage-grouse policy. BLM IM-2010-071 explicitly mentions that BLM may "analyze one or more alternatives [in an RMP] that would exclude priority habitat from energy development." We urge BLM not to prejudice the upcoming sage-grouse amendment for the Rawlins RMP and remove parcels -103, -104, and -105 from the November lease sale.

#### **D. Battle Mountain's high backcountry value demands removal of parcels WY-1011-103, -104, and -105 from the November lease sale.**

Parcels -103, -104, and -105 and the adjacent Forest Service lands that comprise Battle Mountain are known to many recreationists in Wyoming because of the excellent opportunities for solitude and backcountry adventure. With the proliferation of OHVs and development in Wyoming, places like Battle Mountain are becoming increasingly rare and priceless. The ultimate result of leasing these parcels could be a new network of roads which would shatter the backcountry values that draw people to this area. Because so few large blocks of unroaded land remains in Wyoming we urge BLM to remove parcels WY-1011-103, -104, and -105 from the November lease sale.

### **III. PARCELS -050, -051 AND -061 SHOULD NOT BE OFFERED FOR SALE AT THIS TIME.**

Parcels -050, -051, and -061 are located in the Thunder Basin National Grassland. Exhibits 3 and 4. These parcels contain various stipulations intended to protect Greater sage-grouse, raptors, paleontological values, and historic trails. However, these parcels do not contain measures that would protect many other species of concern that may occur in this area.

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<sup>13</sup> 75 Fed. Reg. 13910, 13942 (March 23, 2010).

The WGFD has recognized and designated this area as a Key Nongame Wildlife Area (KNWA). Exhibits 4 and 5. The key to Exhibit 5 is interpreted as follows: green indicates already leased parcels, black indicates producing leases, red are parcels proposed for sale at the November lease sale, and the tan area is the KNWA recognized and designated by WGFD.

This area has been designated a KNWA by the WGFD because it provides important habitat for a large complex of black-tailed prairie dog colonies and associated grassland species. It is a potential reintroduction site for the highly endangered black-footed ferret. Species of concern that occur within this KNWA and their Species of Greatest Conservation Need (SGCN) rating are:

Bald eagles (2A), bobolink (2C), Brewer's sparrow (2C), burrowing owl (3B), chestnut-collared longspur (2C), dickcissel (2C), ferruginous hawk (3A), grasshopper sparrow (2C), lark bunting (2C), long-billed curlew (2B), McCown's longspur (2C), merlin (2B), mountain plover (3B), short-eared owl (2C), Swainson's hawk (3B), upland sandpiper (3B), black-tailed prairie dog (2B), hispid pocket mouse (2B), hoary bat (3B), little brown myotis (3A), olive-backed pocket mouse (2B), plains harvest mouse (2B), plains pocket gopher (2C), plains pocket mouse (2B), prairie vole (2B), sagebrush vole (3B), silky pocket mouse (2B), and vagrant shrew (2B).

This is a vast array of sensitive species. Many of these species are also BLM special status species. Given this wide array of sensitive species, it is incumbent on BLM to properly stipulate these parcels prior to offering them for sale. Yet as currently stipulated these parcel provide no recognition for the vast majority of these species, or protection for them. This is unacceptable and these parcels should not be offered for sale until this problem is rectified.

The KNWA designation is an officially recognized WGFD status and designation. Consequently the BLM is obligated to recognize this designation and take steps to abide by it. See 43 C.F.R. Part 24 (Department of Interior Regulations governing state-federal relationships in wildlife management). Yet as currently stipulated there would be no particular protection for the large number of species that have been listed as being of concern by the State, which violates BLM's obligation to comply with state wildlife management goals to the extent possible. Moreover, failure to recognize and seek to protect several of these species which are recognized as special status by BLM fails to meet the requirements of BLM's special status species manual. BLM Manual 6840—Special Status Species Management. So again, these parcels should not be leased until they are stipulated so as to ensure protection of these numerous species of conservation concern.

#### **IV. ALL OF THE PROTESTED LEASE PARCELS SHOULD NOT BE OFFERED FOR SALE AT THIS TIME BECAUSE TO DO SO RUNS COUNTER TO BLM'S OIL AND GAS LEASE REFORM DIRECTION.**

We believe that offering the parcels under protest—parcels -050, -051, -061, -103, -104, and -105—for sale as currently configured would run counter to BLM's new oil and gas leasing policy expressed in Instruction Memorandum (IM) 2010-117.

At a minimum the general leasing provisions found in IM 2010-117 apply here. The IM was specific that, "This policy is effective upon issuance." *Id.* at 14. Thus, BLM should be seeking to abide by this new policy at this time, even if it feels it cannot fully implement it until next May (as the state office apparently feels). The general leasing provisions cover a wide range of needs relative to leasing, such as providing for site-specific visits and greatly enhanced public participation prior to leasing. We will not belabor whether BLM must or should comply with all of these provisions at this time. But we note this. The new policy provides a number of "other considerations" that should be taken into account prior to leasing. *Id.* at 9. It is our view that these "other considerations" can be made *now*, with no need to wait until next May, and when they are considered it is apparent that leasing parcels -050, -051, -061, -103, -104, and -105 at this time is not advised. Again, IM 2010-117 was "effective upon issuance."

One other "other consideration" is whether in undeveloped areas, non-mineral values are greater than mineral development values. Given the very high wildlife values associated with these parcels we believe there is little chance the mineral values exceed non-mineral values. The extraordinary values of parcels -103, -104, and -105 were explained above, such as proximity to the Research Natural Area. Another consideration is whether access roads to isolated parcels—as these seem to be—would have unacceptable impacts on important resource values. Another consideration is whether leasing would have unacceptable impacts on resource values in areas managed by other federal agencies, and as noted below, three of these parcels are located within the Thunder Basin National Grassland and the others were located immediately adjacent to the Medicine Bow National Forest, and the Research Natural Area. Given the important "other" values present in these areas, which BLM can consider now and need not wait until next May to consider, we believe it is inappropriate to lease these parcels at this time, until BLM's new oil and gas leasing review process has been applied to these parcels. It does not appear that the environmental assessments prepared for this lease sale in the Newcastle and Rawlins Field Offices provided analysis of these "other considerations." In particular there is no consideration of the relative mineral versus non-mineral values except perhaps by implication or default. Until these "other considerations" are made in an explicit fashion, these parcels should not be offered for lease sale so as to ensure that the highly significant scenic, natural, recreational, and wildlife values associated with these parcels are adequately protected.

Fundamentally the BLM in Wyoming should be taking a "go slow" approach until it has been able to fully put in places measures for implementation of the oil and gas leasing reform IM. The whole premise of the new IM is that leasing will be done in a careful and thoughtful manner, and that a rush to lease is no longer appropriate. This new basis for leasing has been recognized in Utah, where BLM has postponed all lease sales until May 2011 so that it will be

able to fully implement the new IM. We urge the BLM in Wyoming to consider a similar go slow approach, at least relative to these six lease parcels.

**V. CONCLUSION AND REQUEST FOR RELIEF.**

For the foregoing reasons the Wyoming Outdoor Council requests that the protested parcels not be offered for sale at the November 2, 2010 Competitive Oil and Gas Lease Sale.

Respectfully submitted,

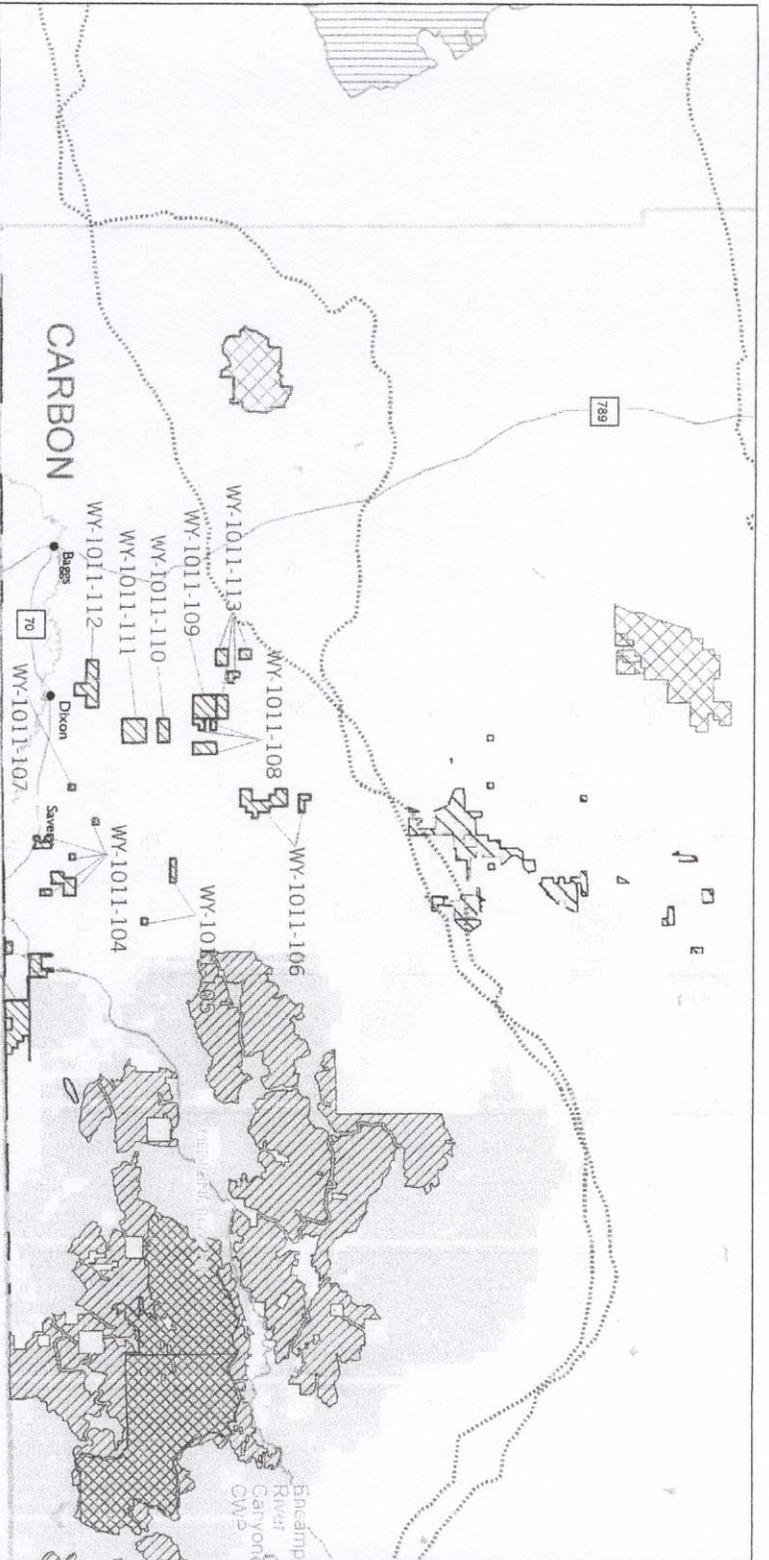
A handwritten signature in cursive script, appearing to read "Bruce Pendery", is written over a horizontal line.

Bruce Pendery,  
Staff Attorney for the Wyoming Outdoor Council

2010 OCT 14 AM 9:00  
RECEIVED  
DOI-BLM  
CHEYENNE WYOMING

RECEIVED  
DOI-BLM  
CHEYENNE WYOMING  
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Exhibit 1



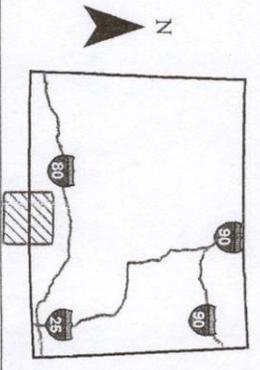
**Baggs Area  
Lease Parcels**

Federal Lease Sale  
Wyoming BLM, November 2, 2010

Downloaded from BLM on Sept. 17, 2010

- Lease Parcels
- Designated Wilderness Area
- BLM Wilderness Study Area
- Citizens' Wilderness Proposal Area
- USFS Roadless Area
- BLM ACEC
- National Wildlife Refuge
- USFS NRR/ANASIA
- State Wildlife Habitat Area
- National Historic Trails
- National Wild & Scenic River
- Land Ownership & Administration**
- Bureau of Land Management
- Department of Defense
- Indian Reservation
- NPS NRA/Historic Site
- NPS National Park or Monument
- USFS National Forest
- USFS National Grassland
- Wyoming State Land
- Wyoming State Park

Data Sources: BCA, BLM, NPS, SDVC, USFS, USGS



**Baggs Area  
Lease Parcels**

Federal Lease Sale  
Wyoming BLM, November 2, 2010

Lease Parcels  
Downloaded from BLM on Sept. 17, 2010

**Big Game Crucial Range &  
Parturition Areas**

-  Antelope Crucial Range
-  Antelope Parturition
-  Elk Crucial Range
-  Elk Parturition
-  Mule Deer Crucial Range
-  Mule Deer Parturition

**Big Game Migration Corridors\*\***

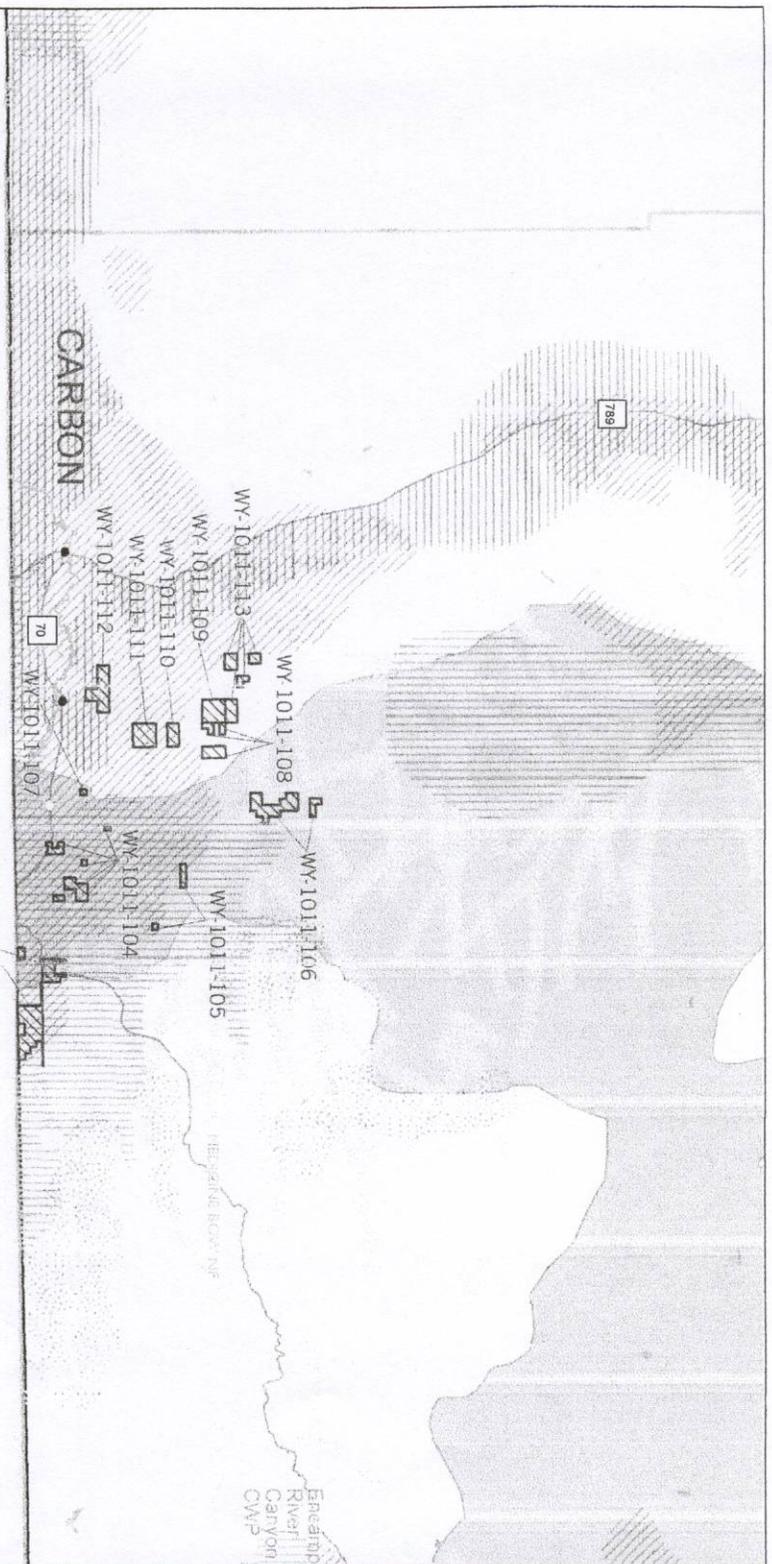
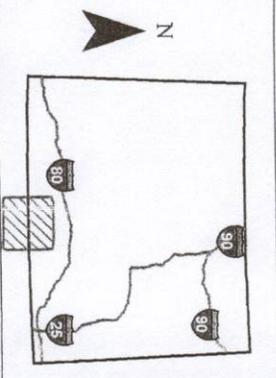
\*\*This data layer is intended to illustrate general regions that encompass clusters of corridors rather than specific locations of individual corridors.

**Sage Grouse Core Areas**

Data Sources: BCA, BLM, NPS, SDVC, USFS, USGS



NAD 1983 UTM Zone 13N



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Exhibit 2

# Thunder Basin NGL Area Lease Parcels

Federal Lease Sale  
Wyoming BLM, November 2, 2010

Downloaded from BLM on Sept. 17, 2010

- Lease Parcels
- Wilderness quality & wildlife habitat areas**
- Designated Wilderness Area
- BLM Wilderness Study Area
- Citizens' Wilderness Proposal Area
- USFS Roadless Area
- BLM ACEC
- National Wildlife Refuge
- USFS NRR/RA/NASIA
- State Wildlife Habitat Area
- National Historic Trails
- National Wild & Scenic River
- Land Ownership & Administration**
- Bureau of Land Management
- Department of Defense
- Indian Reservation
- NPS NRA/Historic Site
- NPS National Park or Monument
- USFS National Forest
- USFS National Grassland
- Wyoming State Land
- Wyoming State Park

Data Sources: BCA, BLM, NPS, SDVC, USFS, USGS

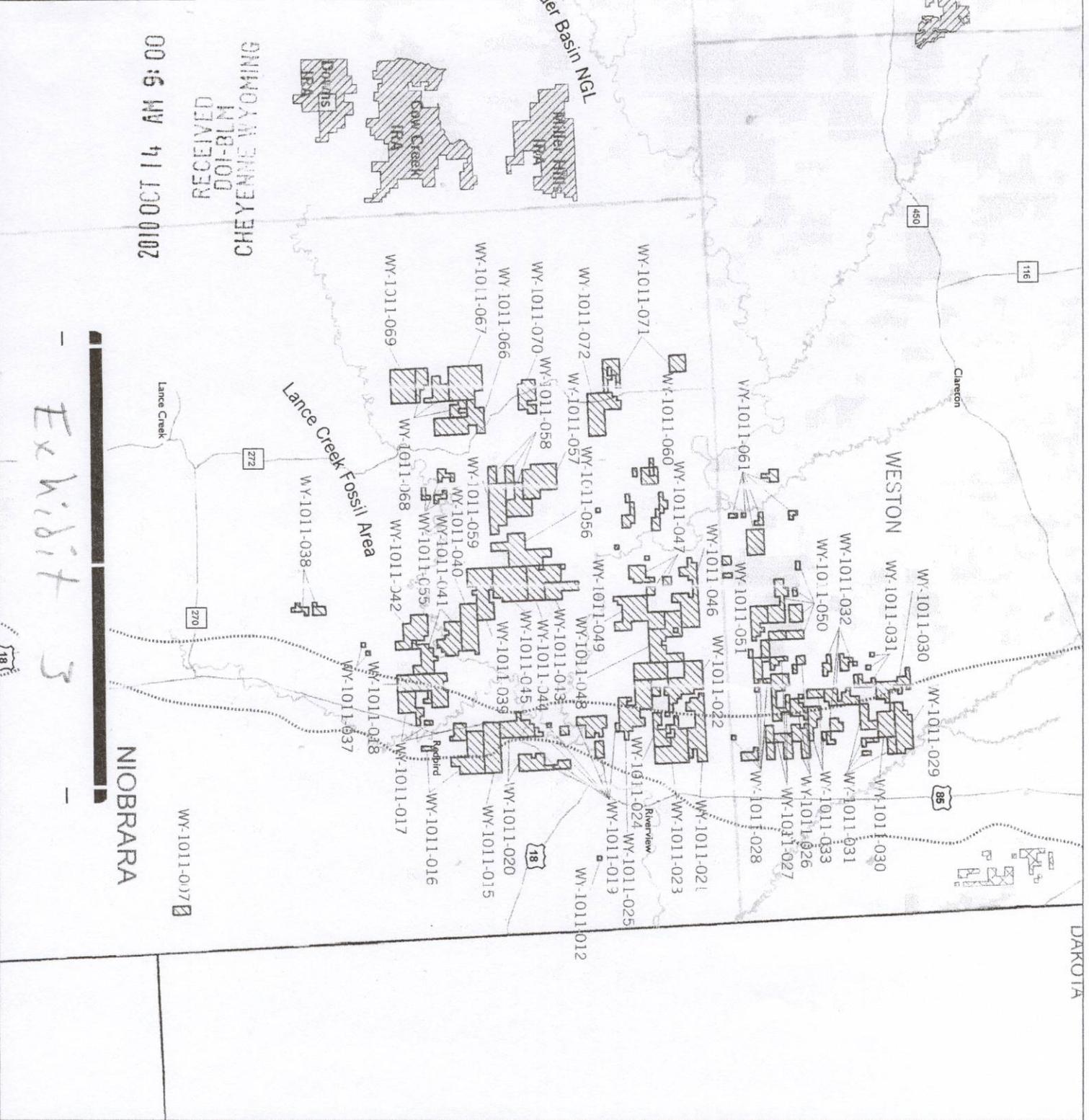
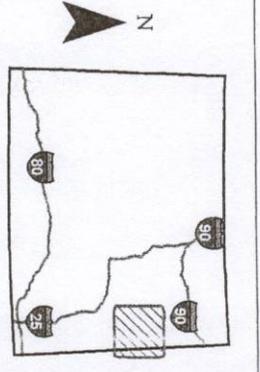
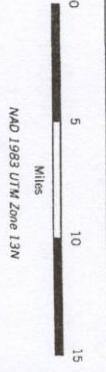




Exhibit 5

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