



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. Box 1828

Cheyenne, Wyoming 82003-1828

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

DEC 14 2010

## **CERTIFIED - RETURN RECEIPT REQUESTED**

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## **DECISION**

### **NOVEMBER 2010 OIL AND GAS SALE PROTEST OF 156 PARCELS PROTESTS DISMISSED IN PART 94 PARCELS TO BE ISSUED, 62 NOMINATIONS DEFERRED**

We received six protests to the offering of all 156 parcels on the November 2, 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), Kemmerer (KFO), Lander (LFO), Newcastle (NFO), Rawlins (RFO), Rock Springs (RSFO) and Worland (WFO) Field Offices. Wyoming Outdoor Council (WOC); Wyoming Outdoor Council and The Wilderness Society (referred to as TWS); Center for Native Ecosystems (CNE); Biodiversity Conservation Alliance (BCA), Natural Resources Defense Council (NRDC), and Western Watersheds Project (referred to as BCA); Trout Unlimited (TU); and Wyoming Wildlife Federation (referred to as WWF); and Wyoming Outdoor Council (WOC), The Wilderness Society, and Greater Yellowstone Coalition (referred to as GYC) filed protests to this competitive oil and gas lease sale. The State Director elected to include all but 62 of the protested parcels in the competitive sale while the merits of the protests are considered.

#### **DECISION:**

The following 62 parcels were deferred prior to the November 2010 competitive oil and gas sale pending further NEPA analysis: 067, 068, 070, 071, 072, 079, 089, 092, 093, 096, 097, 098,

104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, and 155. The remaining 94 parcels will be issued.

### **Discussion:**

**1. BCA, TWS, GYC, and WOC argue that oil and gas development has led to and will continue to lead to fragmented wildlife habitats. BCA, TWS, GYC, and WOC argue 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.**

**CNE argues that the BLM has not conducted site-specific analysis of leasing; that the leasing analysis done at the planning stage was only to decide whether lands should be open or closed to leasing. Protesters argue that the BLM incorrectly defers site-specific analysis to the project level or development stage.**

BLM Response: The BLM has the responsibility to manage the public lands in accordance with the Federal Lands Policy and Management Act (FLPMA). FLPMA requires the BLM to manage the public lands and resources under the concept of multiple use and sustained yield.

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

FLPMA requires the BLM to develop and maintain Resource Management Plans (RMP). During preparation of the RMP, and prior to issuing any oil and gas leases, the BLM performs an environmental analysis under NEPA which discloses anticipated impacts that can result from leasing and subsequent oil and gas development on the environment, including the public lands and its resources. As a result, the BLM develops appropriate mitigation and protection

measures, such as lease stipulations, before the BLM issues any oil and gas lease. FLPMA does not require the BLM to analyze every aspect of a transaction to make sure any actions by the BLM will protect the long-term viability of the public lands. Nevertheless, the BLM has prepared an environmental assessment (EA) of the impacts of the lease sale and we disagree with the protesters' argument that the BLM has not performed sufficient NEPA analysis to disclose the potential impacts of oil and gas development before issuing an oil and gas lease.

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

**2. BCA argues that the BLM has given rights to develop minerals on split estate lands without taking steps to fully protect the rights and interests of the surface owner. BCA further argues Wyoming's rural heritage and lifestyle are threatened by the sale of the subject lease parcels. WOC argues BLM should attach a lease stipulation that requires the operator to comply with Washington Office (WO) Instruction Memorandum (IM) No. 2003-131, Permitting Oil and Gas on Split Estate Lands and Guidance for Onshore Oil and Gas Order No. 1.**

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

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

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

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

Prior to performing any surface-disturbing activities, the mineral lessee is required to contact the surface owner and (1) secure written consent or a waiver from the surface owner in the form of a surface owner agreement, or (2) provide payment to the surface owner for damages to crops and tangible improvements; or (3) provide a bond for the benefit of the surface owner to obtain payment for damages to crops and tangible improvements (Section 9 of the Stock Raising Homestead Act of December 29, 1916 (SRHA)). An APD cannot be considered complete or approved without proof that one of the three requirements listed above has been satisfied.

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

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 Washington Office on April 2, 2003. This IM states that, in the case of split-estate lands, one bond (3104 Bond) is required for the oil and gas operations performed under 43 CFR 3160, and a second bond (3814 Bond) is required to satisfy Section 9 of the SRHA, if no agreement between the surface owner and lessee or operator can be reached (43 CFR 3814).

WO IM No. 2003-131 states the BLM will not consider an APD administratively or technically complete until the Federal lessee or the operator complies with Onshore Oil and Gas Order No. 1. Compliance with Onshore Oil and Gas Order No. 1 requires the Federal mineral lessee or its operator to enter into good-faith negotiations with the private surface owner to reach an agreement for the protection of surface resources and reclamation of the disturbed areas, or payment in lieu thereof, to compensate the surface owner for loss of crops and damages to

tangible improvements, if any. The BLM will not approve an APD until the operator has complied with all of the requirements in Onshore Oil and Gas Order No. 1, as well as the requirements in WO IM No. 2003-131. It is not necessary to attach a lease stipulation that requires the lessee to comply with applicable laws, regulations, and the BLM policy.

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

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

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

The notice of sale can also be found at <http://www.wy.blm.gov/minerals/minerals.html>. The notice of sale has been on this website for every oil and gas lease sale we have conducted since August 1998. For the past 15 years, approximately three weeks prior to the date of the sale, a press release is prepared and sent to the general media. The notice of sale appears in the Cheyenne and Casper, Wyoming newspapers, and sometimes in the Billings, Montana, newspaper. The sale is announced on several Wyoming radio and TV stations. The notice of the sale is mailed out to all those who subscribe to receiving the notice. This subscription includes WOC and BCA. In addition, the BLM provides a copy of the notice of sale to anyone who requests a copy.

**3. BCA and TWS argues that the BLM cannot offer parcels in citizens' proposed wilderness areas because to do so would violate Washington Office Instruction Memorandum (WO IM) No. 2004-110 Change 1, Fluid Mineral Leasing and Related Planning and National Environmental Policy Act (NEPA) Processes and Best Management Practices. Specifically, BCA argues these parcels are located in citizens' proposed wilderness areas (CPW), but there is no indication that the BLM has evaluated the application of Best Management Practices (BMPs) to these parcels as required by the subject WO IM. BCA also argues these areas have special values. Even if the BLM does not recommend them for wilderness designation, the parcels should not be leased. The BLM has arrived at flawed and internally conflicting determinations about the presence of wilderness character in these areas. The BLM needs to lease these parcels with NSO**

**stipulations so the wilderness character will not be irretrievably destroyed. BCA and TWS protest the following parcels: WY-1011-142 (Kinney Rim North CWP, RSFO), 138, 140, and 141 (Kinney Rim North and South CWPs, RFO).**

BLM Response: Parcels 138, 140, 141, and 142 were deferred prior to the November 2010 oil and gas competitive sale pending further NEPA analysis.

However, we do not concur with the protestor's wilderness characteristics arguments as explained below.

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

WO IM No. 2004-110, Change 1, does not forbid leasing in CPW areas. The BLM did evaluate application of BMPs to those parcels in conformity with WO IM No. 2004-110, Change 1.

The WO IM No. 2004-110, Change 1, states in part: "Using BMPs either as stipulations or conditions of approval can significantly mitigate impacts from oil, gas, or geothermal development when they are appropriately applied to new or existing leases consistent with lease rights granted." The subject IM also states in part: ". . . the appropriate offices shall evaluate the application of BMPs (see also WO IM No. 2004-194). Often, BMPs applied either as stipulations or conditions of approval, are more effective in mitigating impacts to wildlife resources than stipulations such as timing limitations or seasonal closures."

WO IM No. 2004-194, Integration of Best Management Practices into Application for Permit to Drill Approvals and Associated Rights-of Way, establishes policy that the BLM Field Offices consider BMPs in NEPA documents to mitigate anticipated impacts to surface and subsurface resources. BMPs are innovative, dynamic, and economically feasible mitigation measures applied on a site-specific basis to reduce, prevent, or avoid adverse environmental or social impacts. BMPs not incorporated in the lease agreement (stipulations), may be considered and evaluated through the NEPA process and incorporated into an APD as a COA.

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

The IBLA, in, Wyoming Outdoor Council, et al., 171 IBLA 153, 168. (March 29, 2007) held that WO IM No. 2004-110, Change 1 places no limitation on the authorized officer's discretion as to whether BMPs will be applied in any given case. IBLA goes on to state, the subject IM not only

expressly preserves the BLM's discretionary authority in matters involving application of BMPs to a given lease but further makes clear that the appropriate time for the requisite evaluation of BMPs is at the APD, or site-specific stage of development.

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

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

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

**Kinney Rim CPW:** The Kinney Rim North WSA is located in the RSFO area. The Kinney Rim North area was originally reviewed in 1980 for wilderness characteristics and BLM determined these lands were not suitable for further wilderness study. In February 2002, BCA submitted to the BLM a "Citizens' Wilderness Inventory" for several areas in southern Wyoming including the Kinney Rim North. The RSFO reviewed the inventory information provided by the BCA by comparing it to existing databases and conducting field reviews. The evaluation noted those

areas within the Kinney Rim North CPW were either located in the railroad grant checkerboard area or there was already significant development. The checkerboard lands were dropped from wilderness consideration because the lands did not meet the minimum size criteria and would be impossible to manage as wilderness. The rest of the CPW land was noted to be influenced by man's past and current activities in the form of livestock improvements and oil and gas development, and therefore, precludes wilderness consideration. The RSFO notified BCA by letter dated January 2, 2003, that the public lands in Kinney Rim North CPW area do not have wilderness characteristics.

The Kinney Rim South area, located in the RFO, was originally reviewed for wilderness characteristics by the BLM in 1980. At that time, the BLM determined these lands were not suitable for further wilderness consideration. In February 2002, the BCA submitted to the BLM a "Citizens' Wilderness Inventory" for several areas in Southern Wyoming, including the Kinney Rim South area. The RFO reviewed the information provided by BCA by comparing BCA's information to existing databases and conducted field reviews. The RFO completed an inventory area evaluation for Kinney Rim South. The RFO concluded that the imprints of man are noticeable throughout much of the area in the form of livestock improvements and oil and gas development. In a letter dated March 19, 2003, to BCA, the RFO evaluation determined the public lands within the Kinney Rim South area do not have wilderness characteristics.

In summary, the Kinney Rim South area has been analyzed many times in the past for wilderness characteristics. The RFO recently reviewed the BCA's proposed wilderness designation during their RMP revision. The BLM determined the subject lands do not warrant a wilderness designation because of the lack of wilderness characteristics.

November 2010 oil and gas competitive sale parcels 138, 140, 141, and 142 are located in the Rawlins or Rock Springs FOs Kinney Rim North and South CPWs. Discussion of wilderness characteristics is found in Section 3.3 of the Previously Sold Lease Parcels EA prepared by the FOs.

**4. BCA, WWF, TWS, GYC, and WOC protested a portion of or all of the following 49 parcels because the parcels are located in big game crucial winter range, big game migration routes, and parturition areas: WY-1011-034, 035, 036, 052, 053, 064, 088, 091, 092, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 115, 116, 117, 118, 123, 126, 127, 128, 133, 134, 135, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, and 155. These parcels are located in CFO, CyFO, LFO, RFO, RSFO, and WFO. BCA argues that offering the subject parcels is a violation of FLPMA because the BLM is required to consider and resolve inconsistencies between the BLM actions and State plans, as well as to prevent unnecessary or undue degradation of the public lands. BCA argues that although the subject crucial winter range parcels contain a stipulation prohibiting drilling between November 15 and April 30, and a stipulation prohibiting drilling between May 1 and June 30 for parturition, this is not a total prohibition on drilling during all of the stressful winter period and the BLM almost invariably grants lease stipulation exceptions. BCA argues that the BLM has violated NEPA because the BLM has not**

**stipulated the parcels to protect crucial migration routes and has not considered the new environmental information (crucial migration routes and mule deer use of winter range during development) in a pre-leasing NEPA document where impacts will occur from offering oil and gas parcels for sale. BCA, WOC, TWS, and GYC argue that the BLM has also violated NEPA by failing to consider NSO and No-Leasing alternatives for lands with special characteristics, such as crucial winter ranges and migration routes, and to determine whether leasing is appropriate for these parcels. NSO stipulations provide the only real protection for big game and habitat integrity. Several of the groups argue there is new and significant information on the impacts of oil and gas development available that the BLM has not considered and analyzed under NEPA and in the RMPs. WWF argues new information gained from studies and from Wyoming Game and Fish Department (WGFD) data has not been analyzed in existing documents and should be analyzed before BLM issues new leases. CNE considers this new information ‘significant’ thus triggering a new NEPA analysis.**

**GYC argues if BLM would stipulate parcel 155 with a NSO, then the protest would be unnecessary. The nominator agrees to the NSO so the BLM should take this action requested by GYC.**

BLM Response: The protest is incorrect in its characterization of FLPMA’s requirements. Section 202 of FLPMA (Title 43, USC §1712), states:

when developing and revising land use plans, the Secretary of the Interior shall “to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning and management activities . . . with the land use planning and management programs of other Federal departments and agencies and of the States and local Governments within which the lands are located.”

The Secretary is also required to assist in resolving, to the extent practical, any inconsistencies between Federal and non-Federal plans.

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

parturition area, the WGFD will forward their concerns to the BLM. The BLM did coordinate with the WGFD (as specified in FLPMA), reviewed their recommendations, applied appropriate comments, and met with WGFD on August 11, 2010.

In Wyoming Outdoor Council, et al., 171 IBLA 108, 121, (February 20, 2007), IBLA states: “In establishing that the BLM’s failure to impose the WGFD’s policies, plans, and guidelines, on leases covering the crucial winter range parcels amounts to a violation of section 302(b) of FLPMA, appellants would have to show, at a minimum, that issuance of the leases without incorporating WGFD’s policies, plans, and guidelines would result in adverse impacts to resource values of the parcels.” BCA, GYC, and WWF have not demonstrated that offering these parcels for sale would result in adverse impacts to big game species and their habitat, and thus cause unnecessary and undue degradation to the parcels. GYC cannot guarantee that the nominator will be the high bidder for Parcel 155 even if the nominator has agreed to the NSO stipulation requested by GYC. If the ultimate high bidder wishes to develop the parcel without surface occupancy, they can always do so, but BLM has done the analysis to show that this parcel does not require a NSO stipulation.

Therefore, consistent with the subject IBLA decision, offering the subject parcels does not result in a violation of FLPMA.

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

Exceptions are granted only when relevant factors described above merit such a decision. Many times the lessee informally meets with the BLM to discuss possible exceptions. As a result, a lessee may withdraw from any further consideration an exception request because the exception criteria cannot be met. However, if the exception criteria can be met, the lessee will formally

request an exception. The formal exceptions are tracked whereas the informal requests are not. This is why it appears the BLM grants a high percentage of formal exception requests. To date, the BLM Wyoming has never granted a wildlife lease stipulation modification or waiver.

The regulations at 43 CFR 3162.5-1(a) state in part:

“The operator shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality. In that respect, the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan...Before approving any APD, the authorized officer shall prepare an environmental record of review or an environmental assessment, as appropriate.”

The BLM Wyoming attaches timing and surface use COAs to APDs, developed in coordination with the WGFD to protect big game habitat, including parturition habitat.

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

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

Parcels 092, 104, 105, 106, 107, 108, 110, 111, 112, 113, 115, 116, 117, 118, 123, 126, 127, 128, 133, 134, 135, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, and 155 were deleted prior to the November 2010 competitive oil and gas sale pending further NEPA analysis.

Parcels 034, 035, 036, 052, 053, 064, 088, 091, 102, and 103 will be issued.

**5. BCA, WWF, GYC, and CNE argue offering parcels for sale located in areas with active RMP revisions does not comply with WO IM 2004-110, Change 1. The protested parcels are located in the CyFO, KFO, LFO, RFO, and WFO areas. The protested parcels are: 016, 021, 022, 026, 027, 028, 029, 030, 031, 032, 033, 039, 040, 045, 050, 051, 061, 067, 068, 070, 071, 072, 085, 089, 092, 095, 096, 097, 098, 099, 100, 101, 103, 104, 105, 106, 107, 108,**

109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, 127, 128, 131, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, and 155.

**BCA argues that in accordance with the subject IM, specific consideration for lease sale deferral is to be given to certain categories of land that are “. . . designated in the preferred alternative of draft or final RMP revisions, or amendments as lands closed to leasing, lands open to leasing under no surface occupancy, lands open to leasing under seasonal or other constraints with an emphasis on wildlife concerns, or other potentially restricted lands.”**

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

**WWF argues significant new information exists regarding the economic benefits of hunting and fishing since the BLM field offices analyzed their RMPs. The BLM must analyze the new significant information regarding the economic benefits of hunting, fishing and wildlife-associated recreation. Current lease sales are being proposed under a RMP that fails to take into account or consider alternatives based on the significant new research demonstrating the effects of natural gas development on mule deer.**

**TWS argues that since parcels can be deferred for RMP revisions under WO IM 2004-110, Change 1, then logically parcels should also be deferred for the sage-grouse amendments and for MLPs proposed by environmental groups.**

BLM Response: All the subject parcels protested by BCA, CNE, TWS, and WWF in the November 2010 oil and gas parcel list are available and eligible for oil and gas leasing in accordance with the existing CFO, CyFO, KFO, LFO, NFO, PFO, RFO, RSFO, and WFO RMPs. The KFO issued their RMP ROD on May 2010. The RFO ROD was signed in December, 2008. The PFO signed their ROD in November 2008. The CFO ROD was signed in December, 2007. CyFO, LFO, and WFO began their revision process in August 2008, and are currently preparing their DEIS. The other FO currently revising its RMP is 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 land use plan when it decides to prepare a new plan. IBLA recognized that acceptance of protestor’s position would seriously impair the BLM’s ability to perform its land management responsibilities.

The IBLA also pointed out in their order dated July 31, 2002, that neither the BLM Handbook (H-1601-1), Land Use Planning, nor WO IM No. 2001-191, Processing of Applications for

Permit to Drill, Site-Specific Permits, Sundry Notices, and Related Authorizations on Existing Leases, and Issuing New Leases During Resource Management Plan Development, absolutely preclude issuance of oil and gas leases while the underlying RMP is being amended. Rather, the BLM Handbook states existing decisions remain in effect during the amendment process and directs the BLM to review all proposed implementation actions through the NEPA process to determine whether the approval of a proposed action would harm resource values and limit the choice of reasonable alternatives in the land use plans being re-examined.

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

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

Prior to offering for sale any of the parcels, the Field Offices prepared environmental assessments for the November 2010 oil and gas competitive sale to analyze whether the decision to issue leases for these parcels remained appropriate.

52 parcels that were protested under this argument were deferred prior to the November 2010 competitive oil and gas sale pending further NEPA analysis: 067, 068, 070, 071, 072, 089, 092, 096, 097, 098, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, 127, 128, 131, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, and 155. The remaining 23 protested parcels will be issued: 016, 021, 022, 026, 027, 028, 029, 030, 031, 032, 033, 039, 040, 045, 050, 051, 061, 085, 095, 099, 100, 101, 103,

**6. BCA, WWF, WOC, and CNE argue the BLM should apply a No Surface Occupancy (NSO) stipulation to areas in all parcels within 3 miles of a Greater sage-grouse lek. CNE also argues that, although the Fish and Wildlife Service (FWS) decided not to list the Greater sage-grouse under the Endangered Species Act (ESA), the BLM should not offer oil and gas leases in Greater sage-grouse crucial habitat until the BLM analyzes how its oil and gas program is affecting the Greater sage-grouse and Greater sage-grouse habitat. CNE requests that all lease parcels with sage-grouse habitat contain stipulations that fully comply with and adhere to the Sage-Grouse Habitat Management Guidelines for Wyoming (adopted July 24, 2007), the Greater sage-grouse core area protection EO 2010-4, and the “Recommendations for Development of Oil and Gas Resources within Important Wildlife Habitats.” CNE argues there are too many exemptions, exceptions, and loopholes that will**

render the BLM's guidance issued in 2010 ineffective at stopping further population declines. CNE also argues several biologically important areas were excluded from the Governor's core areas map, which leaves many habitat areas with minimal to no protection from oil and gas development. The following parcels were protested because the parcels are located in potential Greater sage-grouse lek/breeding, nesting and winter habitat: WY-1011-015, 016, 017, 021, 022, 023, 024, 026, 027, 028, 029, 030, 031, 032, 033, 039, 040, 045, 046, 050, 051, 061, 067, 068, 070, 071, 072, 079, 085, 086, 087, 088, 089, 092, 093, 094, 095, 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 118, 119, 120, 121, 122, 124, 125, 126, 127, 129, 130, 134, 136, 138, 154, 155, and 156. BCA is asking that these parcels be withdrawn because they contain important habitats and some parcels are in the 75 percent population core areas. If the BLM does not withdraw the parcels, BCA argues that a 3 mile NSO should be placed on all parcels containing leks and that all lease parcels with sage grouse leks, nesting, breeding, brood-rearing and winter habitats contain stipulations which fully comply with and adhere to the Sage-Grouse Habitat Management Guidelines for Wyoming adopted July 24, 2007.

In addition to the above groups, WWF argues the BLM has substantial and new information about the current condition of habitat and wildlife populations including big game as well as Greater sage-grouse. The BLM has not considered the new information in the environmental analyses for the current RMPs and has not analyzed in any applicable NEPA document the policy recommendations from the Greater sage-grouse Implementation Team to the Governor. WWF argues leasing should not continue where there are ongoing sage-grouse RMP revisions. The protesting groups argue that the BLM must take into account new information from the State of Wyoming (the Governor, WGFD, and the Greater sage-grouse Implementation Team). Some of the protestors argue the existing RMPs do not contain any analysis of the substantial post-2000 research and thinking regarding effects of energy development on Greater sage grouse.

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

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

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

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

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

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

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

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

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

Several of the parcels protested under this argument were deferred prior to the November 2010 sale pending further NEPA analysis: 067, 068, 070, 071, 072, 079, 089, 092, 093, 096, 097, 098, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 118, 119, 120, 121, 122, 124, 125, 126, 127, 130, 134, 136, 138, and 155. The remaining protested parcels will be issued: 015, 016, 017, 021, 022, 023, 024, 026, 027, 028, 029, 030, 031, 032, 033, 039, 040, 045, 046, 050, 051, 061, 085, 086, 087, 088, 094, 095, 099, 100, 101, 102, 103, 129, 154, and 156.

**7. CNE points out that they have previously commented to the BLM WSO and individual BLM Wyoming Field Offices about the imperiled status of the white-tailed prairie dog, black-tailed prairie dog, and black-footed ferrets. CNE argues the BLM must re-examine and conduct new site-specific NEPA analysis of the oil and gas leasing program (including direct, indirect, and cumulative impacts; adequate range of alternatives; post-leasing developments; stipulations and mitigation measures and their effectiveness; and any new information) before issuing any new leases in white-tailed prairie habitats and citizen proposed ACECs. CNE argues temporary management (no leasing) is required to preserve the values of these areas such as the potential ACECs.**

**CNE argues that the BLM Wyoming Field Offices have ignored all of their white-tailed prairie dog ACEC nominations. CNE argues they made their ACEC nominations because of their relevance and importance as some of the largest white-tailed prairie dog complexes and because of their value as recovery habitat for the species. The BLM is violating NEPA, FLPMA and the BLM Manual by not using ACECs to help conserve sensitive habitats and species.**

**CNE protests the following parcels: white-tailed prairie dog habitat (WY-1011-117, 120, 121, and 122); black-tailed prairie dog habitat (003, 009, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 039, 040, 043, 044, 045, 046, 047,**

**048, 049, 050, 051, 056, 057, 058, 059, 060, 061, 067, 070, 071, and 072); and black-footed ferret potential reintroduction areas/potentially occupied habitat (015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 039, 040, 043, 044, 045, 046, 047, 048, 049, 050, 051, 056, 057, 058, 059, 060, 061, 067, 070, 071, and 072).**

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

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

In March 2008, WildEarth Guardians filed a complaint against the FWS for failure to complete a finding on their August 2007 petition to list the black-tailed prairie dog. In a July 2008 stipulated settlement, the FWS agreed to submit a finding on the petition by November 30, 2008, and a status review finding by November 30, 2009. The FWS has completed a status review of the black-tailed prairie dog and has determined it does not warrant protection as a threatened or endangered species under the ESA. The FWS assessed potential impacts to the black-tailed prairie dog including conversion of prairie grasslands to croplands, large-scale poisoning, and sylvatic plague and has determined that these impacts do not threaten the long-term persistence of the species. Black-tailed prairie dogs occupy approximately 2.4 million acres across its range. The estimated population of black-tailed prairie dogs in the U.S. is approximately 24 million.

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

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

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

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

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

In every existing RMP and during every RMP revision, the BLM Wyoming prepares an EIS that analyzes whether to allow oil and gas leasing. The BLM analyzes the direct, indirect and cumulative impacts of leasing. The BLM Wyoming has closed many areas of public land to leasing as a result of that analysis. In areas that are open to leasing, the BLM has developed appropriate mitigation measures (lease stipulations and APD COAs) in order to prevent or reduce adverse impacts and monitors the effectiveness of the mitigation. We disagree with the protesters' allegation that the BLM Wyoming needs to perform more NEPA analysis prior to leasing.

Parcels 067, 070, 071, and 072 were deferred prior to the November 2010 sale pending further NEPA analysis. All the other parcels protested under this argument will be issued.

**8. CNE argues the sale of the November 2010 lease parcels violates FLPMA. CNE argues that according to FLPMA: "In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." CNE argues that the BLM cannot proceed with the subject lease sale because there has been no determination whether special provisions may be necessary to prevent unnecessary or undue degradation; therefore, leasing would be arbitrary, capricious, and an abuse of discretion.**

BLM Response: The regulations at 43 CFR 3162.5-1(a) state in part: "The operator shall conduct operations in a manner which protects the mineral resources, other natural resources,

and environmental quality. In that respect, the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan . . . Before approving any APD, the authorized officer shall prepare an environmental record of review or an environmental assessment, as appropriate.”

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

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

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

The BLM Wyoming prepares the EIS that analyses the direct, indirect and cumulative impacts of leasing. The RMP will also address whether leasing will be allowed in the planning area, and if so, where it can occur. In areas that are open to leasing, the BLM has developed appropriate mitigation measures (lease stipulations and APD COAs) in order to prevent or reduce adverse impacts and monitors the effectiveness of the mitigation. As IBLA noted in Wyoming Outdoor Council et al., 171 IBLA 108, 121-22, where a leasing decision comports with the provisions of the governing RMPs, a disagreement with the BLM’s approach does not suffice to overturn a decision to offer parcels for lease, nor would it violate section 202(c)(9) or section 302(b) of FLPMA. Here, BLM Wyoming has taken appropriate measures to ensure that the decision to offer these parcels was consistent with the applicable RMPs. Given that decision to offer the parcels complies with the applicable RMPs, the BLM Wyoming’s oil and gas leasing program is neither arbitrary, capricious, nor an abuse of discretion.

**9. BCA 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 in its RMPs or in supplemental NEPA analyses. Issuing FONSI, therefore, is arbitrary and capricious. BLM is not fulfilling its guidance under Manuals 6840.06 and 1622.1 therefore oil and gas development authorized by the leasing of the protested parcels will contribute to the need to list sensitive species and other special status species.**

**CNE argues that the 2008 regulations under Section 6840 of the BLM Manual are illegal, inconsistent with ESA, and should be revoked.**

**CNE argues the T&E stipulation used by the BLM is insufficient. CNE argues before BLM can rely on controlled surface use stipulations as a mitigation measure, the BLM is required to adequately study whether any mitigation measure has a reasonable chance of mitigating a potentially significant impact and reasonably assess the likelihood that the impact will be mitigated to insignificance by the adoption of the measure. CNE argues that NEPA requires an analysis of the proposed mitigation measures and how effective they will be, in reducing the impacts to insignificance. CNE argues that the BLM has not conducted this analysis, therefore, the BLM's lease notices and stipulations are arbitrary and capricious.**

BLM Response: We disagree that the BLM Wyoming is failing to protect sensitive plant and animal species. The threatened & endangered (T&E) species stipulation that BLM attaches to every oil and gas lease protects all special status species. Specifically, the stipulation states in part: "The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened, endangered, or other special status species. The BLM may recommend modifications to exploration and development proposals to further its conservation and management objectives to avoid the 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>.

In accordance with the regulations at 43 CFR 3101.1-3, the authorized officer may require stipulations as conditions of lease issuance. Stipulations shall become part of the lease and shall supersede inconsistent provisions of the standard lease form. The BLM has determined that the CSU stipulation attached to these parcels is sufficient to protect T&E and special status species. The BLM will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the ESA. This is true whether a lease contains a T&E stipulation or whether CNE agrees that the T&E stipulation is worded "strongly" enough.

All stipulations are attached to a lease for valid reasons and are supported by the applicable RMP and NEPA analysis. Development of RMPs and stipulations is subject to considerable input and review from the public, including cooperators such as the WGFD. Lease stipulations are based on the best scientific information available at the time they are developed. The BLM monitors the effectiveness of its lease stipulations and if the stipulation is no longer required to achieve the

desired effect or outcome, the BLM may waive, modify, or approve an exception to an existing lease stipulation. *See*, 43 C.F.R. 3101.1-4. Upon a site specific analysis of a development proposal, the BLM has the authority to impose reasonable measures to minimize adverse impacts on other resource values, including restricting the siting or timing of lease activities. *See, e.g. Yates Petroleum Corporation*, 176 IBLA 144 (2008). The BLM may also add new stipulations for future lease offerings when the RMP is revised or amended. The BLM continues to monitor oil and gas stipulations and other mitigation measures in order to verify their effectiveness in reducing impacts.

The BLM recognizes that information notices have no legal consequence except to give notice of existing requirements and may be attached to a lease by the authorized officer, at the time of lease issuance, to convey certain operational, procedural, or administrative requirements (43 CFR 3101.1-3).

BLM does not have a Manual 1622 (nor is there a section 1622 in the 43 CFRs), which CNE refers to as “Fish and Wildlife Habitat Management” that contains specific language for BLM’s requirements for the RMP process. Manual 6840 is the Special Status Species Management Manual. This manual establishes the policy for management of species listed or proposed for listing pursuant to the ESA and Bureau sensitive species found on BLM-administered lands. The authorities for this manual come from the ESA of 1973 as amended; Sikes Act, Title II as amended; FLPMA, as amended; and several others (found at .03 in Manual 6840). As stated in response # 4 above, the protest is incorrect in its characterization of FLPMA’s requirements. Section 202 of FLPMA (Title 43, USC §1712), states when developing and revising land use plans, the Secretary of the Interior shall “to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning and management activities . . . with the land use planning and management programs of other Federal departments and agencies and of the States and local Governments within which the lands are located.” The Secretary is also required to assist in resolving, to the extent practical, any inconsistencies between Federal and non-Federal plans. Among other things, this coordination is intended to prevent the likelihood of future listing as argued by CNE of a number of state-listed species. Instruction Memorandum 97-118 is no longer in effect having been issued over ten years ago. CNE’s arguments that Manual 6840 is illegal, inconsistent with ESA or with the stated objectives of the special status species policy are without merit, as the BLM is in compliance with the requirements of the ESA.

The most current Wyoming BLM policy on sensitive species is WY-2010-027, entitled “Update of the Bureau of Land Management, Wyoming, Sensitive Species List-2010.” This policy states that the information sources reviewed in the sensitive species screening process included but were not limited to Wyoming Natural Diversity Database Species of Concern, WGFD Species of Special Concern, Wyoming partners in Flight Bird Conservation Plan, etc. Only four species were deleted from the 2001 list while 11 species were added to the list for 82 species total. Goals listed for the sensitive species policy are: to maintain vulnerable species and habitat components in functional BLM ecosystems; ensure sensitive species are considered in land

management decisions; prevent a need for species listing under ESA; and prioritize needed conservation work with an emphasis on habitat.

**10. BCA argues that parcels WY-1011-099 and 100 should be deferred from sale so stipulations for underground injection of wastewater can be attached to prevent degradation to the Class I (Clean Water Act) waters of the Miracle Mile (a blue-ribbon trout fishery) of Seminoe Reservoir. BCA also argues there is no mention or analysis in the Rawlins Leasing EA evaluating the magnitude of potential impacts of surface discharge of produced water into the Miracle Mile Class I water. This is in violation of NEPA's hard look requirements.**

BLM Response: Parcels 099 (T. 22 N., R. 84 W., Sections 12, 14, and 24.) and 100 (T. 24. N., R. 84 W., Sections 22, 24, 26, and 36) include stipulations intended to protect nesting Mountain Plover, wintering Greater sage-grouse, nesting Greater sage-grouse (parcel 099 only), nesting raptors, big game on crucial winter range (parcel 100 only), habitats of identified amphibian/reptile species, threatened, endangered or other special status species, VRM Class I and/or Class II (parcel 100 only), unique plant communities (parcel 100 only) and a coal lease stipulation for two coal leases (parcel 100 only).

As stated under Response 4 above, 43 CFR 3162.5-1(b) states in part: "The operator shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements." The current lease terms specify that the lessee shall conduct operations in a manner that minimizes adverse impacts to the land, air, water, to cultural, biological, visual, and other resources. The lessee shall take reasonable measures deemed necessary by the lessor to accomplish the intent of this section (Section 6 of the lease terms). The Wyoming BLM ensures that oil and gas lessees and operators comply with the above-described regulations and lease terms.

43 CFR 3162.5-1 f(a) states in part: "...the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws (including the Clean Water Act and the associated State of Wyoming Department of Environmental Quality permitting requirements), regulations, lease terms and conditions..."

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, including any potential impacts to Class I waters. Therefore, the BLM has determined this protest issue lacks merit and parcels 099 and 100 will be issued.

**11. CNE argues that leasing any of the parcels violates the ESA because: (1) ESA listed species may be present on several of the parcels; (2) the parcels have inadequate stipulations; (3) and the leases are being offered for sale without prior consultation with the**

**Fish and Wildlife Service (FWS). CNE argues that BLM should perform Section 7 ESA consultation with the FWS before the BLM issues a lease, rather than waiting to consult with the FWS when an APD is submitted, i.e., before the BLM makes an irretrievable commitment of resources.**

BLM Response: The BLM consults under Section 7 of the ESA with the FWS when the BLM prepares a RMP or a RMP revision. The BLM prepares a biological assessment (BA) and the FWS prepares a biological opinion (BO) once the BLM determines which lands will be available for leasing during preparation of a RMP or RMP revision. For instance, CFO has their BO in Appendix Z of the RMP ROD. KFO has their BO in Appendix T of the RMP ROD. PFO has their BO in Appendix 28 and RFO has their BO in Appendix 14.

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

By regulation, lease terms, lease stipulations, and BLM policy, the BLM may require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed species. The BLM will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the ESA.

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

In District Court, District of Columbia, Wyoming Outdoor Council v. Bosworth, Case No. 1-01CV02340(RMU) (2003), WOC argued lease issuance triggers the ESA's formal consultation requirement. Specifically, WOC argued the Forest Service (FS) and the BLM failed to formally consult with the FWS before issuing six oil and gas leases in Wyoming (two FS leases, four

BLM leases), therefore, the FS and the BLM violated the ESA. WOC pointed out that the FS and BLM were both aware that the Brent Creek area served as grizzly bear habitat and that lease issuance constituted an action that “may affect” grizzlies. WOC also argued that lease issuance threatens grizzlies because lease issuance is the irreversible and irretrievable point at which the lessee gains the legal right to undertake surface development, even if such development does not occur until years later. The District Court ruled that since WOC’s claims “. . . rest upon contingent future events that may not occur as anticipated, or indeed may not occur at all, the court concludes that the Wyoming Outdoor Council’s claims are not ripe.” The District Court dismissed WOC’s arguments and ruled that the irreversible commitment of resources does not occur at the point of lease issuance, but rather at the point when the BLM receives a site-specific proposal. The BLM is not required to consult at lease issuance, but rather at the APD stage.

**12. CNE argues the BLM cannot rely on Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) to lease nor did BLM analyze impacts of oil and gas development before issuing leases.**

BLM Response: The BLM’s policy, WO IM No. 2001-062, Documentation of Land Use Plan Conformance and National Environmental Policy Act (NEPA) Adequacy, is to perform a DNA to verify whether leasing certain lands has been previously analyzed in an existing NEPA document. The BLM performs a DNA (“the hard look”) to determine if BLM can rely on existing NEPA documents for the proposed action of leasing parcels for oil and gas. The RMP is the document that authorizes the land allocation (lands open or closed to leasing). The RMP/EIS analyses the impacts of oil and gas development (leasing) on all the other resources (Chapter 4, Environmental Consequences). The BLM also prepares environmental documents (tiered to the RMP) that are site-specific to oil and gas field development. The IM is clear that BLM can rely on a DNA to determine whether leasing certain lands is still appropriate and in accordance with the RMP. The BLM analyzed the potential impacts of oil and gas development (leasing) to all other resources prior to offering the parcels for sale. Prior to offering for sale any of the parcels, the Field Offices prepared environmental assessments for the November 2010 oil and gas competitive sale to analyze whether the decision to issue leases for these parcels remained appropriate.

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

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

Lands are nominated by an interested party to be included in the BLM Wyoming's competitive oil and gas lease sale. The sales are now held quarterly (4 sales per year) in Wyoming. The nominations are checked to ensure the lands described in the nomination are available and eligible for leasing. The field office manager will conduct an environmental assessment to determine if leasing the nominated lands is appropriate. If there is new information available since the RMP ROD was signed, and the field manager believes it is no longer appropriate to lease the land, the field manager will recommend to the Wyoming Deputy State Director, Division of Minerals and Lands, to remove the parcel from the sale list. In summary, the BLM Wyoming has a process in place to determine whether any nominated land should be leased based on the best and most recent information. That process is followed for all lease sales, including the November 2010 sale.

**14. The WWF argue the BLM has not considered the mandates of Executive Order 13443 in deciding to offer parcels at the November 2010 oil and gas competitive lease sale.**

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

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

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

BLM Wyoming is working cooperatively with the WGFD to implement EO 13443. The BLM Wyoming manages the habitat on public lands and the WGFD manages the wildlife. As indicated above (refer to our No. 6 response), the BLM and the WGFD entered into a MOU to guide this cooperative process. Appendix 5G of the BLM/WGFD MOU is entitled Oil and Gas Coordination Procedures. This appendix establishes the procedures and responsibilities that both the BLM and WGFD are expected to follow. These procedures and responsibilities include all aspects of the BLM's oil and gas program including the planning process, the leasing process, and the drilling and development process.

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

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

**15. WWF argues the BLM must analyze climate change impacts on fish and wildlife and their habitats not included in the BLM's previous analyses of impacts from oil and gas development on the sale parcels. New information is available regarding the impacts of climate change and the existing NEPA documents that BLM relied upon in conjunction with this lease sale do not address impacts from climate change and do not account for the severe drought encountered in Wyoming in the past decade.**

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. The BLM Wyoming has also completed the November 2010 competitive oil and gas sale EAs that addresses climate change within the context of offering these parcels for lease. While the BLM revises RMPs, it will continue to manage public lands according to existing land use plans, see Colorado Environmental Coalition, 161 IBLA 386 (2004). The BLM recently completed environmental analyses as described in the November 2010 EAs for November 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 FONSI 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.

**16. CNE argues that the November 2010 Wyoming lease sale does not comply with any of the mandates of IM 2010-117. If the parcels were not under review prior to May 17, 2010, CNE requests those parcels be withdrawn from sale as well as those parcels under review prior to May 17, 2010 in order to comply with the mandates of IM 2010-117. BCA argues BLM has not analyzed 'leases' on a case-by-case, site specific basis, before leasing, as leasing reform states. WOC argues that Parcels 050, 051, 061, 103, 104, and 105 should not be sold as currently configured because offering the parcels runs counter to BLM's new oil and gas leasing policy (IM 2010-117). WOC, GYC, and TWS also argue "a rush to lease is no longer appropriate."**

**TWS and GYC argue offering parcels 138, 139, 140, 141, 142, 152, and 155 as currently configured would run counter to IM 2010-117 because of the sage-grouse amendments, CWPs, and MLPs.**

BLM Response: We disagree with your argument that the November 2010 oil and gas competitive lease sale did not comply with any of the mandates of WO IM 2010-117.

All the subject parcels protested by CNE, BCA, WOC, and TWS in the November 2010 oil and gas parcel list are available and eligible for oil and gas leasing in accordance with the existing RMPs and EAs prepared by the FOs.

Wyoming BLM has prepared the implementation plan and the timeline for accomplishing the tasks outlined in this IM. The implementation plan was submitted on August 16, 2010 and has not been officially approved. All BLM states have until May of 2011 to implement all of the guidance in IM 2010-117 and Wyoming BLM intends to meet that schedule.

Wyoming BLM is currently addressing the backlog of deferred parcels. We have begun the leasing EA process with the August and November 2010 competitive sales. The first sale to include the public comment period is May 2011 competitive oil and gas sale parcels. The High Desert District EA comment period for the May 2011 sale opened on October 6, 2010 and closed on November 5, 2010.

The leasing EA contains the affected environment components occurring within each of the parcels offered in Section 3.1 as well as components common to all of the parcels. Environmental impacts are described under Section 4. Section 5 contains a description of mitigating measures and residual impacts. Maps showing location of the parcels are in the EA as are the sage-grouse and wilderness screening information. The draft EA is located in the online BLM NEPA documents found at: <http://www.blm.gov/wy/st/en/info/NEPA/og-ea.html>

Several of the parcels protested under this issue were deferred prior to the November 2010 competitive oil and gas sale pending further NEPA analysis: these deferred parcels include: 104, 105, 138, 139, 140, 141, 142, 152, and 155. The other parcels protested under this argument will be issued.

**17. CNE protests four parcels that overlap with designated Areas of Critical Environmental Concern: WY-1011-095, 096, 097 (Salt Creek Drainage ACEC) and 114 (Jep Canyon ACEC).**

BLM Response: All the subject parcels protested by CNE in the November 2010 oil and gas parcel list are available and eligible for oil and gas leasing in accordance with the existing CFO and RFO RMPs.

Parcel 095, 096, and 097 are located in T. 37 N., R 78 W, Natrona County, Wyoming. These parcels are located two townships south of the Salt Creek Management Area (approximately 12 miles south). Salt Creek is not an ACEC but a Management Area according to the CFO RMP ROD, Map 15. Consequently, parcel 095 will be issued. Parcels 096 and 097 were deferred prior to the November 2010 sale pending further NEPA analysis, not based on CNE's argument.

Parcel 114 is located in R. 18 N., R. 90 W., Carbon County, Wyoming. This parcel is located in the Jep Canyon Wildlife Habitat Management Area (WHMA). Jep Canyon is not an ACEC. This WHMA is open to oil and gas leasing with intensely managed surface disturbing and

disruptive activities for the maintenance, restoration and enhancement of crucial winter habitat for elk, raptor nesting habitat and the productivity of nesting raptor pairs. The WHMA is located on split estate land and there is an objective to pursue opportunities for partnership and cooperative management with the adjacent property owners. Parcel 114 was deferred prior to the November 2010 sale pending further NEPA analysis.

**18. WOC argues Parcels 103, 104, and 105 should be removed because they are near and have the potential to harm the ecological processes that occur within the Battle Mountain Research Natural Area.**

BLM Response: Parcels 104 and 105 were deferred prior to the November 2010 competitive oil and gas sale pending further NEPA analysis. Parcel 103 is located in T. 12 N, R. 88 W. For the most part, everything around the parcel that has oil and gas reserved to the Federal Government has been leased. No drilling has occurred near or on the lands that make up Parcel 103. Across the Little Snake River, south from Battle Mountain, oil and gas development has occurred in Colorado. Parcel 103 has four TLS stipulations and five CSU stipulations attached to it. These stipulations are protections for Greater sage-grouse, nesting raptors, big game, Bald Eagle roosting sites, amphibian/reptile habitats, threatened and endangered species and other special status species, and VRM.

Please see the discussion under Response No. 4 concerning your allegations that BLM has not coordinated with WGFD. We have also addressed your concerns about FLPMA requirements under Response No. 4. Given these factors, BLM considers it appropriate to lease Parcel 103 with the above described stipulations.

**19. WOC argues that Parcels 050, 051, and 061 are located in the Thunder Basin National Grassland and should not be offered for sale because of Greater sage-grouse, potential reintroduction site for the black-footed ferret and important habitat for species of concern. WGFD has designated the area as a Key Nongame Wildlife Area. BLM fails to stipulation for protection species listed as being of concern by the State, which violates BLM's obligation under 43 CFR Part 24. BLM has an obligation to comply with state wildlife management goals to the extent possible. WOC also argues that BLM fails to recognize and fails to seek protection of several of these species (recognized as special status by BLM). These parcels should not be leased until they are properly stipulated.**

BLM Response: Parcels 050, 051 and 061 are not located in the Thunder Basin National Grasslands. The parcels are private surface, not Forest Service surface, with federal minerals. The authority for the Secretary of the Interior to manage the lands and resources in public trust is 43 U.S.C. 1201. BLM's obligations under 43 CFR 24 are to cooperate with state agencies for the stewardship of fish and wildlife. The MOU with WGFD is supported by 43 CFR 24. Wyoming BLM works with WGFD for the benefit of the fish and wildlife when we share data cooperatively; invite them to participate with the oil and gas parcel list process, land use planning process, APD onsite and other activities. WGFD actively participates with BLM where BLM is manager of the habitat and WGFD is the manager of the animals. Wyoming

BLM recognizes fish and wildlife are dependent upon the habitat BLM is responsible for managing, therefore, logic demands cooperation with State agencies responsible for the management of the fish and wildlife. The MOU, and especially Appendix 5G, is integral to the attainment of the objective in 43 CFR 24. We will issue parcels 050, 051, and 061.

**Decision:**

The following 62 parcels were deferred prior to the November 2010 competitive oil and gas sale pending further NEPA analysis: 067, 068, 070, 071, 072, 079, 089, 092, 093, 096, 097, 098, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, and 155. The remaining 94 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 November 2010 sale and are, therefore, adverse parties who must be served with any pleadings.



Larry Claypool  
Deputy State Director  
Minerals and Lands

2 Attachments:

- 1 - Appeal Form (1842-1)
- 2 - November 2010 Oil and Gas Sale Results

cc:

State Offices  
Field Offices  
DSD (920)  
DSD (930)  
J. Weaver (923) e-mail of final and a letterhead copy  
S. Moberley (923)  
V. Mistarka (921) e-mail of final and a letterhead copy