



March 3, 2011

Via Facsimile 307-775-6203

Don Simpson, State Director
Bureau of Land Management (BLM)
Wyoming State Office
5353 Yellowstone Road
Cheyenne, Wyoming 82003-1828

Re: Protest of May 3, 2011 Competitive Oil and Gas Lease Sale

Parcels WY-1105-003, WY-1105-004, WY-1105-005, WY-1105-006, WY-1105-010, and WY-1105-011 (6 parcels)

Dear Director Simpson:

The Wyoming Wildlife Federation (WWF), pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, protest the Bureau of Land Management's lease sale offerings of the above-listed parcels in Wyoming scheduled to be offered at the May 3, 2011 Competitive Oil and Gas Lease Sale. WWF requests that the protested parcels be withdrawn from sale at this time due to the presence of high quality big game habitat within the above lease parcels. WWF members visit and recreate on or near the parcels proposed for leasing. Our members' interests in the public lands and the wildlife resources that depend on those lands for habitat will be adversely affected if the sale of these parcels proceeds as proposed.

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

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

The Wyoming Wildlife Federation (WWF), established in 1937 and with current standing membership of over 5,000, is Wyoming's oldest and largest statewide sportsmen-based conservation organization. Our mission is to work for hunters, anglers, and other wildlife enthusiasts to protect and enhance habitat, to perpetuate quality hunting and fishing, to protect citizens' rights to use public lands and waters, and to promote ethical hunting and fishing.

WWF has a well-established history of participation in BLM planning and management activities. Members of our organizations have used BLM-administered lands throughout Wyoming for fishing, hunting, wildlife viewing, and other activities. They will continue to use these areas in the future if these lands are not irreparably damaged by industrial use. Mineral development within quality big game habitat will harm our members' interests and their continued use of those areas.

Conserve Quality Habitat for Big Game

According to the BLM Competitive Lease Sale Notice data and our review of mule deer, elk and pronghorn range data, the 6 parcels listed above fall within or adjacent to elk, mule deer, and pronghorn migration routes, crucial winter range, and/or spring, summer, and fall habitat. BLM has specified timing stipulations for these parcels which allows no surface use from November 15 through April 30. While these standard timing stipulations may help to alleviate disruption of winter big game activity, do not address loss and degradation of habitat caused by development. Recent research (discussed below) suggests they are ineffective at protecting mule deer populations impacted by development.

Winter is a critical time for wild ungulates; therefore, crucial winter range for the most abundant big game species (pronghorn, mule deer, and elk) is often the focus of management and a criterion for analyzing the impacts of resources management on big game. Research has shown that timing limitations may not be achieving their desired results.¹ These lease parcels, if sold, will be subjected to mineral development that will

¹ The Wyoming Game and Fish Department considers anything more than four pads per section in crucial ranges for both mule deer and pronghorn to constitute "high" or "extreme" impacts to these habitats requiring mitigation measures in addition to seasonal restrictions. WGFD Recommendations at 11.

inevitably have a negative impact on the big game and their crucial ranges. This is of particular concern as associated human activity may negate the effectiveness of timing restrictions on drilling activities as a means of mitigation (Sawyer *et al.* 2006).² Sawyer *et al.* (2006) recommends that mitigation measures seeking to minimize disturbance to mule deer on winter range consider all human activity across the entire project area and not be restricted to the development of wells or to crucial winter ranges. Predictive maps of mule deer identifies, "deer use was lowest in areas with clusters of well pads" (Sawyer *et al.* 2010), which is associated to direct habitat loss. The BLM should not focus solely on timing limitations in crucial winter ranges as the primary mitigation measure for big game.

WWF suggests that timing limitations alone are insufficient to conserve big game populations once energy development exceeds a certain level. Likewise, we assert that their effectiveness further decreases when exceptions are granted to industry, allowing them to enter and conduct activities on these crucial lands during restricted seasons. Because BLM regularly grants exceptions to winter stipulations, the effectiveness of timing limitations to mitigate impacts from surface disturbing activities is unknown.³

The BLM has a duty to protect the diversity of all native wildlife on public lands.⁴ Habitat fragmentation, connectivity and other factors affecting biological diversity are inherently landscape-level considerations. Protecting biological diversity can only be dealt with appropriately at the programmatic or planning level. This is the only way to ensure biological diversity is preserved and that ecosystem attributes are not compromised piece by piece by individually small but cumulatively significant site-

² The RFD projects that spacing in the Moxa Arch/Green River Basin geologic area will range from 4 to 8 wells per section. Spacing for coalbed methane production will be 4 to 6 wells per section. Other unconventional gas resources would require 40-acres spacing (8 wells per section). Kemmerer RFD at 7-10 to 7-11.

³ Moreover, timing limitations impose no limit on human disturbances once oil and gas development enters the production phase. This further undermines their effectiveness. See comments of A. William Alldredge, Ph.D. on the Pinedale RMP DEIS

⁴ FLPMA requires public land management to protect ecological and other values, and also requires that they be managed for multiple use and sustained yield. 43 U.S.C. §§ 1701(a)(7)-(8). NEPA requires BLM to fulfill its trustee obligation for future generations, assure productive surroundings, avoid environmental degradation, preserve important natural aspects of our national heritage, and enhance the quality of renewable resources. 42 U.S.C. §§ 4331(b)(1)-(6). CWA establishes the objective of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. 33 U.S.C. § 1251. ESA establishes the purpose of conserving the ecosystems upon which threatened and endangered species depend. 16 U.S.C. § 1531(b). BLM's livestock grazing standards and guidelines establish measures of ecological health applicable not only to livestock grazing, but to resource management generally. See 43 C.F.R. sub pt. 4180. Read together, these and other legal standards establish that BLM must ensure the ecosystems it manages are fully protected so as to enhance biological diversity.

specific projects. The project level is simply too small a scale for adequate exploration of impacts to the health of large ecosystems.

Recreation

On August 16, 2007, President Bush signed Executive Order 13443, which directs federal agencies to "[m]anage wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning." Executive Order 13443, *Facilitation of Hunting Heritage and Wildlife Conservation*, § 2(c) (Aug. 16, 2007). The Executive Order further requires that agencies "[e]valuate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public." *Id.* § 2(a). See also Bureau of Land Management, Memorandum from Ron Wenker, Acting Director, to State Directors Re: Review of Parcels Prior to Lease Sale (Feb. 13, 2009).

If the parcels being offered at the Lease Sale are ultimately explored or developed for fluid mineral production, wildlife, wildlife habitats, and hunting participation will be affected. Impacts associated with oil and gas development on big game habitat (including crucial winter range and parturition areas) and migration are well documented in scientific literature. Hunting opportunities will be substantially reduced and not enhanced if the sale and inevitable development of these leases take place.

Over 50 million U.S. citizens hunt and fish, according to data from state game and fish agencies. In 2006, 87 million Americans enjoyed some variety of recreational outdoor activity relating to fish and wildlife. One of the fastest growing outdoor activities is wildlife watching and according to a US Fish and Wildlife survey, 716,000 people participated in some variety of this (USFWS 2006 National Survey of Fishing, Hunting, and Wildlife Associated Recreation). The total of hunting and fishing recreation days in Wyoming in 2008 was 3,683,371. Based on the number of recreation days and average expenditure per day, hunters, anglers and trappers expended approximately \$685 million in pursuit of their sport (WGFD Annual Report 2008). Non-consumptive users provided about \$420 million through wildlife watching, taking photographs, and hiking, which is \$1 billion dollars to the state as income for 2008 by outdoor enthusiasts (WGFD Annual Report 2008).

The importance of hunting to residents and nonresidents of Wyoming cannot be overestimated. Hunting and fishing continue to provide a valuable and sustainable economic return to the state of Wyoming. Many retail businesses would not be able to

survive with the income from hunters, anglers and other recreationists. Counties and communities have vested interests in the renewable economic opportunities these resources supply.

The review so far by the Sporting Conservation Council, the federal advisory committee convened to address the facilitation of hunting heritage and wildlife conservation, indicates significant concerns: "With energy activities in the West increasing, concerns about maintaining game/wildlife species, populations and habitats at the wildlife-energy interface are also increasing. Given the magnitude of present and anticipated energy development in the West, it is doubtful that game/wildlife species and associated habitat values can be maintained without increased interagency collaboration, reducing on-site habitat impacts, and developing landscape-scale efforts to enhance habitats off-site." (Sporting Conservation Council, Draft White Paper: Oil and Gas Development and Wildlife Conservation, May 7, 2008).

In a Rocky Mountain survey, from Theodore Roosevelt Conservation Partnership in 2007, showed 86% of the public favored limiting or banning energy development on certain public lands that are unique and have special fish and wildlife management resources that offer different or unique hunting and fishing opportunities.

Conclusion

Wyoming Wildlife Federation respectfully requests the leases mentioned in this document be withdrawn from the BLM Competitive Oil and Gas Lease Sale of May 3, 2011 indefinitely. Thank you for your consideration and time as you decide on these matters and review the protests received.

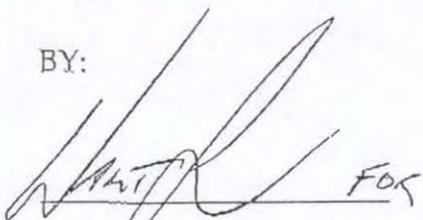
REQUEST FOR RELIEF

For the foregoing reasons, we request that you withdraw the protested oil and gas leases located within quality big game habitat from the May 3, 2011 lease sale. We also offer our ability to meet with you and agency staff to discuss this matter further.

Respectfully submitted on this 3rd day of March 2011.

On Behalf of the Wyoming Wildlife Federation

BY:

A handwritten signature in black ink, appearing to read "Joy Bannon", is written over a horizontal line. To the right of the signature, the word "FOR" is written in capital letters.

Joy Bannon
Wyoming Wildlife Federation
P.O. Box 1312
Lander, Wyoming 82520
(307) 335-8633 (telephone)
(307) 335-8690 (fax)
joybannon@wyomingwildlife.org