



# 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)  
May 2011 Protests

**MAY 02 2011**

### **CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Erik Molvar  
Biodiversity Conservation Alliance  
For Natural Resources Defense Council  
Western Watersheds Project  
Center for Native Ecosystems  
P. O. Box 1512  
Laramie, Wyoming 82073

Joy Bannon  
Wyoming Wildlife Federation  
P. O. Box 1312  
Lander, Wyoming 82520

### **DECISION**

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### **PARCEL WY-1105-008 WAS DEFERRED PRIOR TO SALE PROTEST DISMISSED ALL OTHER PARCELS WILL BE OFFERED FOR SALE**

We received two protests to the offering of seven parcels on the May 3, 2011, competitive oil and gas lease sale located in the Bureau of Land Management (BLM) Wyoming State Office (WSO), Kemmerer (KFO) and Rawlins (RFO) Field Offices. Biodiversity Conservation Alliance, Natural Resources Defense Council, Western Watersheds Project and Center for Native Ecosystems (BCA) and Wyoming Wildlife Federation (WWF) filed protests to this competitive oil and gas lease sale. The State Director elected to include all but one (WY-1105-008) of the protested parcels in the competitive sale while the merits of the protests are considered.

### **DECISION:**

Parcel WY-1105-008 was deferred prior to the May 2011 competitive oil and gas sale. This parcel was deferred pending additional Washington Office (WO) guidance on Secretarial Order 3310. The remaining parcels will be offered for sale at the May 3, 2011 Competitive Oil and Gas Sale.

**Discussion:**

**1. BCA argues that oil and gas development has led to and will continue to lead to fragmented wildlife habitats. BCA argues all of the associated oil and gas activities will disrupt habitats, destroy nesting and brooding grounds, and disturb wildlife. BCA argues that if a lease is not subject to a “No Surface Occupancy” (NSO) stipulation, the lessee receives contractually enforceable surface use rights and BLM has made an irretrievable and irreversible commitment of resources. WWF argues that FLPMA requires public land management to protect ecological and other values and that these values be managed for multiple use and sustained yield.**

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

FLPMA requires the BLM to develop and maintain Resource Management Plans (RMPs). During preparation of the RMP, and prior to issuing any oil and gas leases, the BLM performs an environmental analysis under the National Environmental Policy Act (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*, 10<sup>th</sup> 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 mineral lessee cannot engage in any surface-disturbing activities before review and approval of an APD. This includes environmental and technical reviews. Therefore, a surface owner's interests and use of the surface will not be affected until the conclusion of these reviews. Surface owners are invited to participate in the onsite pre-drill inspections where most of the information to conduct the environmental analysis is gathered. In this manner, the surface owner can participate in development of the surface-use plan, reclamation requirements, and conditions of approval (COAs).

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

**During the EA process outlined in WO IM No. 2010-117, the surface owner is notified twice during the NEPA compliance process. The first time the surface owner is notified is during the preparation of the EA. They are given the opportunity to review the EA and make comments during the comment period. The second notification is when the final sale notice is posted for public review. The surface owners receive individual letters on both of these occasions.**

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.

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, was issued by the BLM WO on April 2, 2003. This IM states that, in the case of split estate lands, one bond (3104

Bond) is required for the oil and gas operations performed under 43 CFR 3160, and a second bond (3814 Bond) is required to satisfy Section 9 of the SRHA, if no agreement between the surface owner and lessee or operator can be reached (43 CFR 3814).

WO IM No. 2003-131 states the BLM will not consider an APD administratively or technically complete until the Federal lessee or the operator complies with Onshore Oil and Gas Order No. 1. Compliance with Onshore Oil and Gas Order No. 1 requires the Federal mineral lessee or its operator to enter into good-faith negotiations with the private surface owner to reach an agreement for the protection of surface resources and reclamation of the disturbed areas, or payment in lieu thereof, to compensate the surface owner for loss of crops and damages to tangible improvements, if any. The BLM will not approve an APD until the operator has complied with all of the requirements in Onshore Oil and Gas Order No. 1, as well as the requirements in WO IM No. 2003-131. It is not necessary to attach a lease stipulation that requires the lessee to comply with applicable laws, regulations, and the BLM policy.

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

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

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

The notice of sale can also be found at [http://www.blm.gov/wy/st/en/programs/energy/Oil\\_and\\_Gas/Leasing.html](http://www.blm.gov/wy/st/en/programs/energy/Oil_and_Gas/Leasing.html). The notice of sale has been on this website for every oil and gas lease sale BLM-Wyoming has conducted since August 1998. The May 2010 sale notice was posted on March 26, 2010, in the BLM public rooms statewide. The 90-day posting period complies with WO IM No. 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews. The notice of sale appears in the Cheyenne and Casper, Wyoming newspapers, and sometimes in the Billings, Montana, newspaper. The sale is announced on several Wyoming radio and TV stations. The notice of the sale is mailed out to all those who subscribe to receiving the notice. This subscription includes WOC and BCA. In addition, the BLM provides a copy of the notice of sale to anyone who requests a copy and it is available online on the oil and gas leasing page at [www.blm.gov/wy](http://www.blm.gov/wy).

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

**3. BCA protests parcel WY-1105-008, because it is located in the Kinney Rim South Citizen Wilderness Proposal (CWP). BCA argues BLM is committed to re-inventory because of Secretarial Order (SO) 3310 and Federal Land Policy and Management Act of 1976 (FLPMA). BCA also argues the EA completed by BLM Wyoming does not discuss Kinney Rim South unit nor does it discuss impacts to Kinney Rim South potential wilderness. BCA argues the sale of the May 2011 lease parcels violates FLPMA. BCA argues that according to FLPMA, BLM is required to inventory all roadless areas on public lands over 5000 acres under its jurisdiction and to identify lands which have wilderness characteristics as described in the Wilderness Act of 1964. Therefore, because BLM has failed to fulfill its FLPMA responsibilities by not maintaining current inventories, the result is unnecessary or undue degradation of public lands in the Kinney Rim South CWP.**

BLM Response: BLM has elected to defer this parcel prior to the lease sale. BCA's protest is moot and will not be addressed.

**4. BCA protested the following six parcels because the parcels are located in big game crucial winter range and parturition areas: WY-1105-003, 004, 005, 008, 010, and 011. These parcels are located in KFO and RFO. 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 BLM has not complied with the Memorandum of Understanding (MOU) between BLM and Wyoming Game and Fish Department (WGFD) (IBLA 2007-136 (174 IBLA 174)). Therefore, all the protested parcels must be withdrawn from the April 2009 lease sale. BCA argues that although the subject crucial winter range parcels contain a stipulation prohibiting drilling between November 15 and April 30 (TLS), and a stipulation prohibiting drilling between May 1 and June 30 (TLS) for parturition, this is not a total prohibition on drilling during all of the stressful winter periods and the BLM almost invariably grants lease stipulation waivers. BCA argues that the BLM has violated NEPA because the BLM has not considered the new environmental information in a pre-leasing NEPA document where impacts will occur from offering oil and gas parcels for sale. BCA argues that the BLM has also violated NEPA by failing to consider NSO stipulation. NSO stipulations provide the only real protection for big game and habitat integrity. Recent studies show impacts of oil and gas developments and production on Wyoming big game have been huge and are occurring even with the application of winter timing limitations.**

**WWF argues BLM should withdraw parcels from sale due to the presence of high quality big game habitat such as migration corridors, crucial winter range as well as spring, summer and fall habitat. BLM has full discretion over whether a parcel should be offered.**

**WWF also argues timing limitation stipulations are ineffective at protecting mule deer population impacted by energy development once it exceeds a certain level.**

BLM Response: BCA continues the practice of simply repeating previous protests, without even checking to update the date of the sale or the specific parcel numbers. If the date of the lease sale is incorrect, we cannot assume the parcel numbers are correct or that the protest issue is viable.

We agree that the BLM has discretion whether to lease public lands. The Secretary of the Interior is vested by the Mineral Land 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.

Lands are nominated by an interested party for inclusion in a BLM Wyoming competitive oil and gas lease sale. The nominations are checked to ensure the lands described in the nomination are available and eligible for leasing. If the nominated lands are available and eligible for leasing, the District Manager will form an interdisciplinary parcel review team (IDPR Team) to review lease sale parcels and ensure compliance with NEPA and other legal and policy requirements. The team will conduct site visits to validate existing data or gather new information. An EA is prepared to consider the information gained through the site visit and information gathering process, analyze the environmental impacts, and to ensure compliance with WO IM-2010-117. There is also a 30-day public comment period and the BLM will update the EA taking into consideration any comments received. The District Manager may decide it is no longer appropriate to lease the land and 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. The leasing reform process went into effect with the May 2011 sale.

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...  
“(9) 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 MOU (WY-131) with the WGFD (currently in revision). In accordance with the terms of the subject MOU, specifically Appendix 5G, the WSO will transmit a copy of every preliminary notice of competitive oil and gas lease sale list to the WGFD. The

preliminary notice is sent to the WGFD approximately five months prior to the sale. All eight WGFD Field Offices have approximately two to three weeks to review the list. The WGFD Field Offices will coordinate with their respective BLM Field 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. The BLM Wyoming uses WGFD data to help stipulate the oil and gas lease parcels. In accordance with the subject MOU, if the WGFD has concerns about any parcel located in a big game crucial winter range, or along a big game migration route, or in a parturition area, the WGFD will forward their concerns to the BLM. The BLM did coordinate with the WGFD (as specified in FLPMA) by reviewing and responding to the WGFD recommendations. The coordination with WGFD is documented in the FO DNAs.

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

Exceptions are granted only when relevant factors, such as those described above merit such a decision. Many times the lessee informally meets with the BLM to discuss possible exceptions. As a result, a lessee may withdraw from any further consideration an exception request because the exception criteria cannot be met. However, if the exception criteria can be met, the lessee will formally request an exception. The formal exceptions are tracked whereas the informal requests are not. This is why it appears 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 BLM Wyoming ensures that oil and gas lessees and operators comply with the above-described regulations and lease terms.

The leasing EA provided the field managers the opportunity to review whether the environmental impacts associated with oil and gas leasing and development operations have been adequately analyzed in the appropriate RMP/EIS and other applicable NEPA documents. The field managers attached stipulations that are in accordance with the existing RMP. The BLM concluded offering the parcels for leasing, with appropriate stipulations and mitigation measures, conforms to the applicable LUP and that the existing NEPA documentation fully covers the proposed action and constitutes the BLM’s compliance with the requirements of NEPA.

FLPMA gives the BLM authority and responsibility to manage the public land 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.

As indicated above, parcel WY-1105-008 was deferred prior to the May 2011 competitive oil and gas sale pending additional Washington Office guidance on Secretarial Order 3310. Otherwise, this protest argument lacks merit.

**5. BCA argues offering parcels for sale, located in areas with active RMP amendments, does not comply with WO IM 2004-110, Change 1. The protested parcels are located in the RFO. The protested parcels are WY-1105-004 and 0006. BCA argues that there is no indication that BLM gave any consideration to deferring the parcels in sage-grouse core areas during the sage-grouse plan amendment process.**

BLM Response: All the subject parcels protested by BCA in the May 2011 oil and gas parcel list are available and eligible for oil and gas leasing in accordance with the existing RFO RMP.

Similar protest arguments were rejected in the IBLA Order dated July 31, 2002, *Wyoming Outdoor Council, et al.* (IBLA 2002-303). The Order cites *Sierra Club Legal Defense Fund, Inc.*, 124 IBLA 130, 140 (1992), wherein the Board rejected the argument that the BLM must suspend an action that is in conformance with an existing LUP when it decides to prepare a new plan. IBLA recognized that acceptance of protestor's position would seriously impair the BLM's ability to perform its land management responsibilities.

Prior to offering for sale any of the parcels, the RFO prepared an EA for the May 2011 oil and gas competitive sale to analyze whether the decision to issue leases for these parcels remained appropriate. Based on this analysis, the RFO concluded that the decision to offer these parcels for sale and issue leases remains appropriate.

As indicated above, this protest argument has been made many times in the past. IBLA has already rejected this argument. The BLM will not offer for sale any parcel that conflicts with the preferred alternative in a draft plan amendment or draft plan revision. Therefore, both parcels will be offered for sale.

**6. BCA protests the sale of all lease parcels in core areas. BCA argues parcel-by-parcel NEPA analysis should occur. NSO stipulations must be placed on all lease parcels with sage-grouse leks. The following parcels were protested because the parcels are located in potential Greater sage-grouse lek/breeding, nesting and winter habitat: WY-1105-004 and 006. BCA is asking that these parcels be withdrawn because they are in sage-grouse core areas. BCA argues that the restrictions identified in IM No. WY-2010-012 are insufficient to protect sage-grouse leks. The Timing Limitation Stipulation (TLS) applied for sage-grouse is ineffective and violates the BLM sensitive species policy. It is arbitrary and capricious and abuse of discretion under Administrative Procedures Act (APA). BCA argues BLM should do its best to keep unleased areas of public land in Core Areas unleased, regardless of mineral ownership patterns.**

**BCA also 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.**

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

Existing BLM policy protects the Greater sage-grouse and its habitat during all critical times of the year. The BLM has issued an updated sage-grouse policy (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.

All BLM Wyoming Field Offices have addressed Greater sage-grouse and Greater sage-grouse habitat issues in their respective RMPs. All BLM Field Offices have identified timing restrictions to protect the Greater sage-grouse mating season, Greater sage-grouse nesting and early brooding season, as well as the Greater sage-grouse crucial winter season. The BLM also requires that oil and gas development avoid leks, nesting/early brooding habitat, and winter habitat. WY IM No. 2010-012 will require implementation of stricter sage-grouse protection measures, if necessary, based on site-specific analysis. WY IM No. 2010-013 requires the BLM to conduct a sage-grouse screen on every parcel prior to determine if the parcel can be offered for sale or deferred pending completion of RMP revisions or completion of the Sage-grouse plan amendment. The BLM uses core maps (Version 3) developed by the Governor's Sage-grouse implementation team to conduct the sage-grouse screen. These core maps are posted on the WGFD website: [http://gf.state.wy.us/wildlife/wildlife\\_management/sagegrouse/index.asp](http://gf.state.wy.us/wildlife/wildlife_management/sagegrouse/index.asp).

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

The current lease terms specify that the lessee shall conduct operations in a manner that minimizes adverse impacts to the land, air, water, to cultural, biological, visual, and other resources. The lessee shall take reasonable measures deemed necessary by the lessor to accomplish the intent of these terms (Section 6). The BLM regulations at 43 CFR 3162.1(a) also state "The operating rights owner or operator, as appropriate, shall comply with applicable laws and regulations; with lease terms, Onshore Oil and Gas Orders, Notices to Lessee's (NTL's); and with other orders and instructions of the authorized officer. These include, but are not limited to conducting all operations in a manner . . . which protects other natural resources and environmental quality . . ." See also 43 CFR 3162.5-1(a).

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

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

Existing BLM policy protects the Greater sage-grouse and its habitat during all critical times of the year. The BLM has issued an updated sage-grouse policy (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 May 2011 Competitive Oil and Gas Lease Sale EAs, the BLM Wyoming has established a sage-grouse screen (WY IM No. 2010-013) that was performed on all of the May 2011 parcels. This screen was conducted by both the field offices and the WSO. Screening criteria include: is the parcel located in a sage-grouse core area; is the parcel located in suitable sage-grouse habitat; is the parcel a part of at least 11 square miles of contiguous, manageable, unleased Federal minerals; and is the parcel being drained by non-Federal wells. The BLM further considers population density, geography, and topography. Both parcels will be offered for sale.

**7. WWF argues the BLM has not considered the mandates of Executive Order 13443 in deciding to offer parcels at the August 2010 oil and gas competitive lease sale. WWF argues 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 Wyoming.**

BLM Response: The BLM disagrees with this argument. 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.

The 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.

The BLM Wyoming is working cooperatively with the WGFD to implement EO 13443. The BLM Wyoming manages the habitat on public lands and the WGFD manages the wildlife. As indicated above (refer to Response 5), the BLM and the WGFD entered into a MOU to guide this cooperative process. Appendix 5G of the BLM/WGFD MOU is entitled Oil and Gas Coordination Procedures. This appendix establishes the procedures and responsibilities that both the BLM and WGFD are expected to follow. These procedures and responsibilities include all aspects of the BLM's oil and gas program including the planning process, the leasing process, and the drilling and development process.

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

Neither the WO nor the Wyoming IM requires the BLM to suspend leasing during implementation of the subject EO process. The BLM Wyoming will continue to manage the public lands based on multiple-use and sustained yield and in compliance with the EO. The EO did not withdraw lands from the operation of the MLA nor does the EO provide for a private right of action to enforce it. Protestors have not shown the decision to offer the parcels for lease will affect hunting opportunities on any parcel.

**8. BCA argues that the May 2011 Wyoming lease sale does not comply with any of the mandates of WO IM 2010-117. BCA argues BLM has not analyzed 'leases' on a case-by-case, site-specific basis, before leasing, as leasing reform requires.**

BLM Response: No specific parcels were protested by BCA.

We disagree with your argument that the May 2011 oil and gas competitive lease sale does not comply with any of the mandates of WO IM 2010-117.

The BLM Wyoming has prepared the leasing reform implementation plan as required by the WO IM No. 2010-117. The Wyoming implementation plan was submitted to the WO on August 16, 2010. The WO approved Wyoming's plan on February 16, 2011. The BLM Wyoming May 2011 sale is the first sale that fully complies with the requirements of WO IM 2010-117. The BLM Wyoming conducted an EA, including a 30-day public comment period, that examined all the parcels on a case-by-case basis.

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 EA is located in the online BLM NEPA documents found at: <http://www.blm.gov/wy/st/en/info/NEPA/og-ea.html>

#### **Decision:**

Parcel WY-1105-008 was deferred prior to the May 2011 competitive oil and gas sale pending additional Washington Office (WO) guidance on Secretarial Order 3310. The remaining parcels will be offered for sale at the May 3, 2011 Competitive Oil and Gas Sale.

#### **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 May 2011 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 – May 2011 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

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS**

**DO NOT APPEAL UNLESS**

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

**IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED**

- A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
- 1. NOTICE OF APPEAL.....**
- 2. WHERE TO FILE**
- NOTICE OF APPEAL..... Bureau of Land Management  
5353 Yellowstone Road, Cheyenne, WY 82009 or P. O. Box 1828, Cheyenne, WY 82003
- WITH COPY TO SOLICITOR... U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region, 755 Parfet St., #151, Lakewood, CO 80215
- 3. STATEMENT OF REASONS** Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).
- WITH COPY TO SOLICITOR..... U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region, 755 Parfet St., #151, Lakewood, CO 80215
- 4. ADVERSE PARTIES.....** Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
- 5. PROOF OF SERVICE.....** Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
- 6. REQUEST FOR STAY.....** Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). 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 Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) 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 the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.