



# 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)  
August 2011 Protests

August 1, 2011

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

Erik Molvar  
Biodiversity Conservation Alliance  
For Natural Resources Defense Council  
Californians for Western Wilderness  
P. O. Box 1512  
Laramie, Wyoming 82073

Mike Chiropolos  
Western Resource Advocates  
For Audubon  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302

Bruce Pendery  
Wyoming Outdoor Council,  
Greater Yellowstone Coalition  
444 East 800 North  
Logan, Utah 84321

### **DECISION**

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### **PROTEST DISMISSED ALL PARCELS WILL BE OFFERED FOR SALE**

We received three protests (on 41 parcels) to the offering of 74 parcels on the August 2, 2011, competitive oil and gas lease sale located in the Bureau of Land Management (BLM) Wyoming State Office (WSO), High Plains District (HPD): Newcastle (NFO), Buffalo (BFO), and Casper (CFO), and Wind River/Big Horn Basin (WR/BHB): Lander (LFO), Worland (WFO), and Cody (CyFO) Field Offices. Biodiversity Conservation Alliance, Natural Resources Defense Council, and Californians for Western Wilderness (BCA); Western Resource Advocates (Audubon); and Wyoming Outdoor Council and Greater Yellowstone Coalition (WOC) filed protests to this competitive oil and gas lease sale.

#### **DECISION:**

After careful review of all the protest arguments, it was determined that all 74 parcels will be included in the August 2, 2011 lease sale.

#### **Discussion:**

**1. WOC argues that oil and gas development has led to and will continue to lead to fragmented wildlife habitats. WOC argues all of the associated oil and gas activities will disrupt habitats, destroy nesting and brooding grounds, and disturb wildlife. BCA and WOC argue 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. WOC argues that BLM has a mandatory duty to protect for “multiple use.”**

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 on the environment that can result from leasing and subsequent oil and gas development. As a result, the BLM develops appropriate mitigation and protection measures, such as lease stipulations, before the BLM issues any oil and gas lease. 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 is proposed, 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 August 2011 EA provides additional disclosure and analysis of the anticipated environmental impacts associated with our decision to issue leases for these parcels.

**2. BCA protests parcels WY-1108-082 and 083 because they are located in the Cedar Mountain South proposed addition to the Cedar Mountain WSA. BCA argues BLM’s rationale for reaching**

**the determination of the area having no solitude or outstanding primitive recreation is flawed. BLM needs to revisit the analysis and defer the sale and the issuance of these two parcels during the re-analysis.**

BLM Response: This sale contains 74 parcels. There are no parcels numbered 082 or 083 in this sale notice.

BCA cites the "Second Worland EA at 30" on page 3 and the "Buffalo Second EA at 112". These two documents do not exist.

On pages 4 and 5 of BCA's protest, BCA indicates they are protesting DNAs in this lease sale. The BLM did not use Determinations of NEPA Analysis (DNAs) to analyze environmental impacts for this lease sale. The BLM has not used DNAs to evaluate lease sales since August 2010. We do not understand what BCA is protesting; therefore, it is not possible to respond to this protest argument.

BCA stated there are 22 parcels with an endangered species nexus. However, BCA did not identify which 22 parcels they are protesting. Again, the BLM cannot respond by making assumptions or corrections to a protest that does not have correct lease sale parcel numbers and/or does not list parcel numbers. Nevertheless, the BLM Wyoming will protect appropriate species in accordance with the Endangered Species Act, applicable regulations, and BLM policy on all parcels.

BCA argues that the BLM should not offer parcels for sale that the BLM could not physically access in order to perform NEPA analysis prior to the lease sale. Washington Office (WO) Instruction Memorandum (IM) 2010-117 states: "For a parcel that is inaccessible due to location or other factors, it may be sufficient to conduct a review from a nearby vantage point or to use remote-sensing data (e.g., aerial photos, satellite imagery, and topographic maps)." The HPD compared all parcels against known Threatened & Endangered habitats using Geographical Information System (GIS) data and Digital Ortho Photo Quads (DOQQ) (Appendix H, Comments and Responses, page 112). The BLM complied with the subject WO IM.

**3. WOC 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 (WY-1108-051, 052, 053, 054, 056, and 065) are located in the WFO.**

BLM Response: All the subject parcels protested by WOC in the August 2011 oil and gas parcel list are available and eligible for oil and gas leasing in accordance with the existing WFO 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 RMP when it decides to prepare a new plan. The 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 WFO prepared an EA for the August 2011 oil and gas competitive sale to analyze whether the decision to sell and issue leases for these parcels remains appropriate. Based on this analysis, the WFO concluded that the decision to offer these parcels for sale and issue leases remains appropriate.

**4. Audubon argues BLM has failed to consider reasonable alternatives to conserve the sage-grouse and its habitat in the leasing EA prepared by the HPD. Audubon argues that the EA does not address the the proper management of oil and gas leasing and development inside core area habitat. Audubon also argues that leasing in core-areas undermines the RMP sage-grouse amendment process. Audubon argues that leasing in core areas violates 40 CFR 1506.1 because leasing limits the choice of reasonable alternatives by precluding implementation of a “no leasing in core area” alternative. Audubon argues that BLM plans to offer protested parcels without explaining how the decision for each parcel was reached; therefore, falling short of the “hard look” required by NEPA. Audubon argues that this is an arbitrary and capricious exercise of agency authority. Finally, Audubon argues BLM has failed to analyze new winter concentration information and new science regarding impacts to sage-grouse.**

BLM Response: The BLM is a member of the Governor’s sage-grouse implementation team. BLM Wyoming is well aware of the need to protect sage-grouse habitat. The BLM attaches stipulations to leases and conditions of approval (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 sage-grouse leks, and nesting habitat, and crucial winter habitat.

Existing BLM policy protects the 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) in order to better protect sage-grouse and its habitat. The BLM also participates in a statewide modeling and mapping effort to better identify sage-grouse habitat. 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 the Wyoming Game and Fish Department (WGFD) to identify and refine important sage-grouse seasonal habitat information.

All BLM field offices have identified timing restrictions to protect the sage-grouse mating season, the 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 requires 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 in order to determine if the parcel should be offered for sale or deferred pending completion of RMP revisions or completion of the sage-grouse plan amendment. 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. 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 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 (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 these terms. 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 always enforces the lease terms and the regulations.

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 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 operations. 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, if a sage-grouse lek or crucial sage-grouse habitat is found within the lease, the BLM can and does use its authority to impose reasonable protective measures to minimize adverse impacts to sage-grouse as described above.

#### **Decision:**

After careful review, it was determined that all 74 parcels will be offered for sale at the August 2, 2011 lease 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.



Larry Claypool  
Deputy State Director  
Minerals and Lands

1 Attachment

1 – Form 1842-1

cc:

State Offices

Field Offices

DSD (930)

DSD (920)

Branch Chief (921)

Branch Chief (923) e-mail of final and a letterhead copy

S. Moberley (923)

K. Roberts (923)

T. Bargsten (921)

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

1. NOTICE OF APPEAL.....

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).

2. WHERE TO FILE

NOTICE OF APPEAL..... Bureau of Land Management  
5553 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.

#### 43 CFR SUBPART 1821—GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

##### STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska  
Arizona State Office ----- Arizona  
California State Office ----- California  
Colorado State Office ----- Colorado  
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri  
and, all States east of the Mississippi River  
Idaho State Office ----- Idaho  
Montana State Office ----- Montana, North Dakota and South Dakota  
Nevada State Office ----- Nevada  
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas  
Oregon State Office ----- Oregon and Washington  
Utah State Office ----- Utah  
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)