

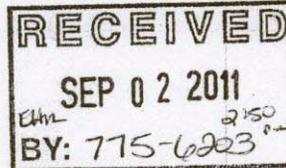
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August 29, 2011

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 November 1, 2011 BLM Competitive Oil and Gas Lease Sale**

Dear Director Simpson:

**Parcels: WY-1111-25, WY-1111-026, WY-1111-027, WY-1111-035, WY-1111-039, WY-1111-040, WY-1111-041, WY-1111-059, WY-1111-066, WY-1111-067, WY-1111-068, WY-1111-069, WY-1111-077, and WY-1111-078 (14 parcels)**

The Wyoming Wildlife Federation (WWF) and the National Wildlife Federation protest, pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Bureau of Land Management's (BLM) lease sale offerings of the above-listed 14 parcels in Wyoming scheduled to be offered at the November 1, 2011 Wyoming BLM Competitive Oil and Gas Lease Sale. The WWF and NWF request that the protested parcels be deferred from sale because:

- 1) timing limitations for big game crucial habitat are not sufficient to protect wildlife from population decline,
- 2) sage grouse amendments need to be incorporated into Wyoming BLM Resource Management Plans,
- 3) the Rock Springs Resource Management Plan is under revision, and
- 4) a cumulative effects review has not been adequately conducted for lease acres within big game winter ranges, wildlife crucial ranges, migration corridors, and hunting and wildlife-associated recreation areas.

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 (10<sup>th</sup> Cir. 1992); *McDonald v. Clark*, 771 F.2d 460, 463 (10<sup>th</sup> 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 (9<sup>th</sup> Cir. 1975).

### **About the Protesters**

The Wyoming Wildlife Federation was established in 1937 and has current standing membership of over 5,000. WWF is Wyoming's oldest and largest statewide sportsmen and 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. Members of WWF visit, hunt, fish, 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 without adequate safeguards to protect the functionality of critical wildlife habitat.

National Wildlife Federation (NWF) is a national member-supported non-profit conservation, education, and advocacy organization. NWF is associated with conservation organizations in 47 states and territories, including WWF in Wyoming. NWF is dedicated to conserving wildlife and other natural resources, and believes that hunting, fishing, and trapping are legitimate recreational pursuits and useful wildlife management practices. NWF works to promote responsible management of wildlife on public lands.

The protesters have a well-established history of participation in BLM planning and management activities. Mineral development in quality habitat will harm our members' interests in their continued use of those areas and the wildlife they support, especially if development is allowed to proceed, as proposed, absent adequate study and safeguards against loss of wildlife resources.

### **Timing Limitations**

According to the Wyoming BLM Competitive Lease Sale Notice data and our review of mule deer, elk and pronghorn range data, the 14 parcels listed above fall within or adjacent to elk, mule deer, and pronghorn migration routes and crucial ranges of particular importance for wildlife populations. BLM has specified for these parcels a timing limitation stipulation for 12 parcels and an additional Controlled Surface Use stipulation on 2 parcels (WY-1111-059, WY-1111-068). The timing limitation allows no surface use from November 15 through April 30 (subject to site-specific exceptions) to protect big game winter range, but allows operation and maintenance of production facilities during the winter once initial drilling has been completed. One of the parcels (WY-1111-068) has another timing stipulation for big game parturition areas with no surface use from May 1 to June 30. The majority of the lease parcels we are protesting have standard timing stipulations. While these may help to alleviate disruption of winter big game activity during the year of initial drilling it does not address loss and degradation of habitat caused by development. Recent research, discussed below, suggests timing limitations are ineffective at protecting mule deer populations impacted by development.

Winter is a critical time for wild ungulates. As such, crucial winter range for pronghorn,

mule deer, and elk is often the focus of management and a criterion for analyzing the impacts on big game. Research has shown that timing limitations do not achieve their desired results when development occurs on lands with anything more than four pads per section in crucial ranges for both mule deer and pronghorn. This level of development constitutes "high" or "extreme" impacts to these habitats requiring mitigation measures in addition to seasonal/timing restrictions (WGFD Recommendations for Oil & Gas Resources within Crucial & Important Wildlife Habitats (2009) at 11).

The draft environmental assessment recognizes that impacts to wildlife will occur. The EA notes, "Well-pad, road, and pipeline development into areas currently void of surface disturbance would result in habitat fragmentation, which depending on the intensity of the development, vegetative cover, and terrain could affect a variety of typically ground dwelling species, such as but not limited to Greater sage-grouse, mule deer, pronghorn, and elk. Should post-lease development actually occur on any of the parcels, the related surface disturbance would result in short-term and long-term losses of wildlife habitat. Short-term habitat loss would include all initial surface disturbance associated with the project and typically would be ongoing until those portions of a well pad not needed for production operations, road disturbance outside the shoulders, and the pipeline disturbance are reclaimed. Long-term habitat loss would include those portions of the pad needed for production operations for the life of the well and travel path and shoulders of the access roads" (Draft EA, BLM, page 94).

"Surface disturbing and/or disruptive activities on the parcels during the crucial big game wintering period could cause unnecessary impacts to wintering moose, mule deer, pronghorn, and elk, such as causing animals to move to less suitable winter habitat and conceivably causing fetal abortion by pregnant females. As stated in Section 1.3, it is not possible at the lease offering stage to accurately predict whether a parcel would actually be leased; if it is leased, whether or not a given parcel would be explored or developed; and if explored or developed, what that level (down-hole and surface well pad spacing) will be. Should activity occur that is analogous to that occurring on Pinedale Anticline, it could be assumed that impacts similar to those shown in the Sawyer, Holloran, and Berger studies would occur" (Draft EA, BLM, page 94).

WWF believes the value lies in an intact ecosystem with healthy populations of wildlife. The statement that development activity could result at the level of impact shown by Hall Sawyer, Matt Holloran, and J. Berger proves that damage is imminent. The parcels WWF would like withdrawn from the November 2011 sale have more than one overlap of big game crucial winter range and the majority are also within a migration corridor. Lease parcels of overlapping crucial winter ranges should be withdrawn.

Migration routes are substantially important to big game. Avoid development within migration corridors and stopover points – this includes roads, well pads and support facilities. Limiting the ability of migrating big game to access critical habitats reduces their chances to survive and thrive (Sawyer and Kaufmann 2009, Sawyer and Nielson 2011). The ability to move freely between seasonal habitats is crucial. Migration corridors are vital to the long-term health and survival of big game and avoidance of negative impacts is essential.

These lease parcels, if sold, will be subjected to mineral development that will 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).<sup>1</sup> Sawyer 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 identify, "deer use was lowest in areas with clusters of well pads", 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 (Sawyer *et al.* 2010).

The results of the Sublette Mule Deer Study, assessing development under the standard timing stipulations relied on by the BLM in the proposed lease sale, indicate that it is inappropriate to rely on prior assumptions that timing limitation stipulations alone will prevent significant changes in big game abundance. See 1. Hall Sawyer *et al.*, *Winter Habitat Selection of Mule Deer Before and During Development of a Natural Gas Field*, *Journal of Wildlife Management* 70(2): 396-403 (2006) and 2. Hall Sawyer *et al.*, *Mule Deer Monitoring in the Pinedale Anticline Project Area: 2010 Annual Report* (September 14, 2010).

WWF and NWF suggest 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.<sup>2</sup>

### Greater Sage-Grouse

#### Parcels WY-1111-077, and WY-1111-078 (2 parcels)

According to the Wyoming BLM Competitive Lease Sale notice data and analysis of sage grouse density data, 2 lease parcels WWF and NWF are protesting fall within occupied Greater sage-grouse core area habitat. As BLM amends their RMPs to address sage-grouse and sagebrush management direction and to bring the existing plans into compliance with Wyoming Executive Order 2011-5, these parcels should be deferred to allow for the BLM's additional analysis to occur. Mapping and planning efforts to document and protect this species are currently incomplete. Therefore, the BLM should refrain from issuing leases that will complicate conservation efforts or diminish decision space until such time as it has adequately addressed

<sup>1</sup> 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 BLM Resource Management Plan RFD at 7-10 to 7-11.

<sup>2</sup> 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 (2006).

conservation policy data and recommendations.

We applaud the Department of Interior's new guidance provided in January 2010 that limits oil and gas development within sage-grouse core areas of Wyoming to one well pad per square mile. The Endangered Species Act listing of this bird would have catastrophic implications for Wyoming and a new standard is needed for the oil and gas industry to abide by. The past minimum buffer and timing stipulations have proven not to be effective in preventing population decline and local extirpation.

### **Outdated Resource Management Plans**

(WY-1111-059, WY-1111-066, WY-1111-067, WY-1111-068)

The BLM is in the process of revising the Green River RMP (what will later be called the Rock Springs RMP). Council on Environmental Quality NEPA regulations dictate that when a federal agency is in the process of developing an EIS, it may not take actions that would "limit the choice of reasonable alternatives" 40 C.F.R. § 1506.1; *see also* 40 C.F.R. § 1502.2(f). Although these regulations obviously do not prohibit any activity within a planning area during RMP revision, in this case, given new information, serious potential concerns regarding important and un-analyzed resources, and an EIS that has not yet seen a public draft and preferred alternative, it would be entirely inappropriate to foreclose alternatives including no surface occupancy (NSO) or limited surface spacing for sage-grouse and mule deer by issuing these leases. CEQ regulations explain that, "[i]nterim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives" 40 C.F.R. § 1506.1(c). Leasing within these resource areas would improperly prejudice any ultimate decision on the RMP by effectively foreclosing the consideration of recommendations or the preservation of some or all high-value sage-grouse and big game habitat as well as recreation opportunities.

By approving oil and gas leasing while considering their impacts on other resources, including alternatives to protect those resources from the potential damage caused by oil and gas development, the BLM will foreclose the selection of alternatives, including important mitigation measures. Such action undermines the efforts of both the agency and the public in participating in the lengthy planning process for revision of a resource management plan.

In granting a protest of the February 8, 2007 lease sale as it pertained to parcels within the Colorado White River Field Office, the BLM stated, "BLM is currently developing management alternatives to amend the 1997 White River RMP to address proposed oil and gas development activity within the planning area. **The management alternatives will analyze impacts to wildlife, including sage-grouse.** The White River Field Office has decided to **defer these parcels from the lease sale during the RMP Amendment process**" (emphasis added). As confirmed by this decision, there are potential impacts from oil and gas development to other resources, including wildlife and recreation opportunities, and an ongoing RMP revision or amendment RMP adoption. Now is the time to consider new information on impacts and ways to protect other resources. For instance, the Green River RMP fails to take into account, or consider alternatives based on significant new research demonstrating the effects of natural gas

development on mule deer. At the time of RMP development, the BLM lacked concrete data now available which demonstrates how significant the impact is at even moderate levels of development. The Sublette Mule Deer Study which analyzed effects on mule deer from gas development in the area around Pinedale, Wyoming, has shown that mule deer avoid gas field development, and that mule deer abundance declined 60% between 2001 and 2009 (Sawyer et al. 2010). "Based on a weighted regression trend, deer abundance declined 36% from 2001 to 2009" (Sawyer et al. 2010). The scientific research from the Sublette Mule Deer Study provides conclusive data indicating that oil and gas leasing within mule deer winter range, under the stipulations proposed in the November lease sale notice, would be contrary to the NEPA requirement of an informed analysis of environmental consequences.

WWF and NWF would like to see these lease parcels deferred in light of the compelling data from the Sublette Mule Deer Study results regarding indirect habitat loss, population consequences, and potential measures to alleviate these effects which are not currently within the Green River RMP. If the BLM decides to sell these leases, WWF and NWF believe at this time it would be inappropriate and inconsistent with NEPA to issue further leases for mule deer winter range absent a conditional surface use stipulation. The CSU stipulation we would like to see for all big game crucial habitats is: "Surface occupancy or use within crucial big game winter range will be restricted or prohibited unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts. This plan may include development, operations, as well as the number, location, and maintenance of facilities." Given the compelling information available from the Pinedale experience, absent the inclusion of such a stipulation conditioning development on an acceptable mitigation plan, continued leasing of winter range is unsupported by a reasoned analysis of environmental consequences and alternatives.

Additional information not currently within the Green River RMP is the economic data associated with hunting, fishing, and wildlife enthusiast pursuits.. 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 without the income from hunters, anglers, snowmobilers, hikers, outfitters, etc. Counties and communities have vested interests in the renewable economic opportunities these resources supply.

Significant new information exists regarding the economic benefits of hunting and fishing since the Green River RMP was created. 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, fishing, and non-consumptive recreation days in Wyoming in 2009 was 4,117,530. Based on the number of recreation days and average expenditure per day, hunters, anglers and trappers expended approximately \$356 million in pursuit of their sport (WGFD Annual Report 2010). Non-consumptive users provided about \$395 million through wildlife watching, wildlife photography, camping, hiking, et cetera. In total, wildlife associated recreation accounts for about \$751 million dollars of income to the state for the year 2009 (WGFD Annual Report 2010).

Potential loss of this revenue affects not only the state but each county, town and the local businesses that depend on these industries for their source of income. For many communities, these revenues are the major source of income. In addition, the Wyoming Game and Fish Department is funded by revenues from the sale of hunting and fishing licenses. WWF and NWF believes that the BLM must update its economic analysis of hunting and fishing revenue and the potential loss of this revenue in light of the known impacts that will be experienced by big game.

When considering the outdated Resource Management Plan and issuing lease parcels for sale under old management criteria, WWF and NWF believe the lease parcels mentioned above should be deferred until that time the RMP is revised.

### Cumulative Effects

The BLM has a duty to protect the diversity of all native wildlife on public lands.<sup>3</sup> 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 fragmented by individually small but cumulatively significant site-specific projects. The project level is simply too small a scale for adequate exploration of impacts to the health of large ecosystems.

Along with wildlife and habitat health, cumulative effects are also tied to 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 (both terrestrial and aquatic), wildlife habitats, fishing and hunting participation will be affected. Impacts associated with oil and gas development on big game

<sup>3</sup> 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. subpt. 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.

habitat (including crucial winter range), migration, coldwater fisheries, and Greater sage grouse populations are well documented in scientific literature. The Executive Order directs federal agencies not only to evaluate and consider impacts to wildlife and habitat, but also to "facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat" (*Id.* § 1). The record is absent of any evidence that the BLM considered the mandates of Executive Order 13443 in deciding to offer parcels at the lease sale. The BLM should nonetheless consider the requirements of the order and perform all review necessary to comply with its mandates prior to offering the parcels.

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). The Sporting Conservation Council identifies a number of goals to promote "improved collaboration and landscape-scale habitat efforts." The Draft White Paper recommends that federal land management agencies "use and apply landscape-scale assessment and state wildlife action plans to identify game/wildlife species needs and conservation priorities to conserve game/wildlife species, populations and habitats while assuring access to energy resources," and that "[t]he BLM should consider temporary deferral of fluid minerals leasing to preserve options for game/wildlife species, populations and habitat conservation in specific areas . . . undergoing active land use planning with legitimate BLM-recognized resource concerns." The lease parcels identified in this protest represent areas undergoing land-use planning and significant BLM-recognized resource concerns (big game seasonal habitat, parturition areas and migration routes; sage-grouse conservation).<sup>4</sup>

### Conclusion

Wyoming Wildlife Federation and National Wildlife Federation respectfully requests all 14 lease parcels to be deferred from the November 2011 oil and gas lease sale to protect habitat, wildlife, and recreation. The consequences of the BLM's actions fall on the people of Wyoming and the nation as a whole as the BLM unethically moves ahead with leasing public lands for private use. In the words of a Department of Interior legend, Gifford Pinchot, "The purpose of conservation: The greatest good to the greatest number of people for the longest time."

Thank you for your consideration and time as you decide on these matters and review the public comments received. We are available to meet with you and agency staff to discuss this matter further.

Respectfully submitted on this 2<sup>nd</sup> day of September 2011 on behalf of the Wyoming Wildlife Federation and National Wildlife Federation.

<sup>4</sup> United States Department of the Interior and United States Department of Agriculture, Sporting Conservation Council, Draft White Papers, pages 1 - 84, June 2008

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