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 (921 Gamper)
August 2012 Protests

AUG 06 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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DECISION

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AUGUST 2012 OIL AND GAS SALE PROTEST OF 28 PARCELS

27 PROTESTED PARCELS WILL BE MADE AVAILABLE FOR SALE

ONE PARCEL DEFERRED IN WHOLE
PORTION OF ONE PARCEL DEFERRED

PROTEST GRANTED IN PART, DISMISSED IN PART

The Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received three protests to 28 lease sale parcels from (1) Biodiversity Conservation Alliance (BCA); (2) Greater Yellowstone Coalition (GYC), on behalf of Wyoming Outdoor Council, Powder River Basin Resource Council, and Clark Resource Council; and (3) Western Resource Advocates, representing the National Audubon Society, Audubon Rockies, and Audubon Wyoming (Audubon). Between May 8, 2012 and June 9, 2012, the protest submitted by GYC was received by facsimile and did not include the mailing address of the protestor.

The BLM received nominations for the August 7, 2012, competitive oil and gas lease sale between July 5, 2011, and October 7, 2011. After preliminary adjudication of the 396 nominated parcels conducted by the WSO, the parcels were reviewed by the Field (FO) and District Offices (DO), including interdisciplinary review, field visits to nominated parcels (where appropriate), review of conformance with the Resource Management Plan (RMP) decisions for each planning area, and preparation of an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.[1]

[1] http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/2012/august.html

During the BLM's review of the preliminary parcels, the WSO independently screened each of the parcels, confirmed plan conformance,[2] coordinated with the State of Wyoming Governor's Office and Wyoming Game and Fish Department (WGFD), evaluated recent changes to national and state BLM policies, and considered on-going efforts by the BLM in Wyoming to revise or amend RMPs for planning areas subject to this sale, including the BLM's on-going planning efforts related to the management of greater sage-grouse habitat on public lands. Two parcels were deleted from the preliminary list as one was encumbered by an existing lease and one was determined to be unavailable per the Casper RMP; as such these two parcels were not carried forward for detailed analysis in the August 2012 lease sale EAs.

Environmental Assessments (WY-070-EA12-44 and WY-050-EA12-17), along with the draft, unsigned Findings of No Significant Impact (FONSI)[3] were released on February 7, 2012, for a 30-day public review period, as required by Leasing Reform and Washington Office (WO) Information Memorandum (IM) No. 2010-117. The EAs tiered to the existing FO/resource area RMPs and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR 1502.20:[4]

> *"Agencies are encouraged to tier to their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review... the subsequent ...environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action."*

Compliance with all pertinent laws and regulations were considered in the drafting of the current RMP EIS' and associated Records of Decision (ROD). Current policy designations regarding the leasing and development of fluid minerals underlying this process include but are not limited to: NEPA, Federal Land Management and Policy Act (FLPMA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), 2005 Energy Policy Act, Mineral Leasing Act (MLA), and 43 CFR 3100, 3160 and the BLM Organic Act.

NEPA guides the environmental analysis process. Generally, the scope of an analysis is guided by the development of the purpose and need statement. The BLM Wyoming August 2012 Sale EA described its purpose and need generally as (High Plains District (HPD) EA v.2 at page 4 and Wind River/Big Horn Basin (WRBBD) EA v.2 at page 1-2):

> *The BLM's purpose for offering parcels and subsequent issuance of leases in the August 2012 lease sale is to provide areas for the potential exploration and development of additional oil and gas resources to help meet the nation's current and expanding need for energy sources. Wyoming is a major source of natural gas for heating and electrical energy production in the United States. The offering for sale and subsequent issuance of oil and gas leases is needed to meet the requirements of MLA, FLPMA, and the minerals management objectives in the Cody, Lander and Worland Resource Management Plans (RMP).*

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[2] See BLM's Land Use Planning Handbook at page 42: "After the RMP is approved, any authorizations and management actions approved... must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP." See also 43 CFR 1610.5-3.

[3] See the BLM's NEPA Handbook H-1790-1 at page 76. Though the BLM has elected to release a draft, unsigned FONSI for public review in this instance, the BLM is not asserting that any of the criteria in 40 CFR 1501.4(e)(2) are met.

[4] See also the BLM's NEPA Handbook H-1790-1 at pages 27-28.

Oil and gas leasing provides oil and gas companies the opportunity to expand existing areas of production and to locate previously undiscovered oil and gas resources to help meet the public's energy demands.

Decisions to be made based on this analysis include which parcels would be offered for lease, which parcels would be deferred from the August 2012 lease sale, which parcels are not available for leasing, and what stipulations will be placed on the parcels that would be offered for lease...[5]

The EAs considered three alternatives in detail[6]:

- The "No Action" alternative which considered not offering any of the nominated parcels available for lease.
- The "Proposed Action" alternative which included offering certain parcels (whole or in part) and deferring others (whole or in part).
- The "Maximum Parcels Offering" alternative which was identical to the Proposed Action alternative, but included offering those available parcels deferred under the Proposed Action.

The WRBBD EA considered two additional alternatives: (1) Offering all parcels with Standard Lease Terms and Conditions and (2) Deferring all Parcels within Sage-Grouse Core Areas (SGCAs), but eliminated them from detailed analysis. These alternatives were dismissed from further review because (1) would not be in conformance with the requisite RMP and (2) is considered to be within the range alternatives analyzed.

The HPD EA considered no additional alternatives.

Since the release of the August 2012 Sale EA for public comment, BLM Wyoming signed IM No. WY-2012-019 Greater-Sage Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands Including the Federal Mineral Estate, Change 1 (February 15, 2012) which superseded in whole previous sage-grouse policy found in IM No. WY-2010-013[7]. Changes to this policy have resulted in changes to the process which BLM uses to determine whether or not parcels located within SGCAs should be offered for lease sale. A review of the parcel disposition was conducted by the WSO following release of IM No. WY-2012-019 and because the 30-day public scoping period had already been completed when the revised policy was issued, the resulting changes are reflected in the August 2012 Notice of Competitive Oil and Gas Lease Sale Book.

Because of the large number of RMP related deferrals, results of the WSO re-screen did not change the overall FO/DO recommendation to defer or offer, and our discussion of the protest issues are inclusive of the sage grouse screening process conducted in compliance with IM No. WY-2012-019 and IM No. WY-2010-013.

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[5] While a decision to be made includes what stipulations will be placed on the parcels offered for lease, this is intended as a means to ensure conformance with the decisions in the approved RMPs (see the BLM's Land Use Planning Handbook H-1601-1 at Appendix C, page 23). To the extent that the BLM may consider adding to, deleting, or modifying the constraints (stipulations) identified in the approved RMP, the BLM would need to first amend the RMP.

[6] The two EAs identify their alternatives differently. For purposes of this discussion, both alternatives vary only in the number of parcels which are proposed for deferral, either whole or in part.

[7] The history of this policy has been presented numerous times in many previous protest responses. The WSO will not repeat the history of WY –BLM Sage Grouse policy here. See protest response dated: located at: for a full description.

Those parcels which are protested and addressed herein, include: WY-1208-032, 037, 040, 043, 046, 047, 055, 056, 057, 058, 059, 060, 061, 062, 068, 070, 077, 078, 079, 080, 081, 082, 083, 084, 085, 089, 114 and 115.

The BLM has reviewed the protestors' arguments in their entirety; the protestors' substantive arguments are numbered and provided in bold, with the BLM responses following. Our responses, in some cases, address individual arguments that are identical or similar to those raised by other protestors. For this reason, the BLM's resolution of the individual arguments raised is inseparable from the sum of our responses.

ISSUES – BIODIVERSITY CONSERVATION ALLIANCE (BCA)

BCA participated in a 30-day public review period for the HPD August 2012 Sale EA; HPD provided a response to BCA's written comments in Appendix F of the EA (v.2). Many of BCA's arguments addressed in this protest are identical to the comments they provided as a result of their review of the EA. WSO refers BCA to Appendix F of the HPD EA (v.2) for additional detail as all protested parcels are located in the HPD.

1. "We protest parcels 12-08-32, 43, 70, 77, and 83 because these parcels are within Core Area yet not recommended for deferral... the BLM should defer all leasing in Priority Habitats... " (BCA Protest at page 3).

BCA explains: Although this decision is in some cases consistent with BLM's Wyoming sage-grouse policy, it ignores the biological realities that oil and gas impacts outside sage-grouse suitable habitat can have a negative impact on sage-grouse inside suitable habitat.

<u>BLM Response</u>
Sale Parcel WY-1208-043 is not located within a Core Area and as such, protest on this point by BCA is dismissed as lacking merit.

<u>Sale Parcels 032, 070, 077, 083</u>
Sale Parcel 032 is located in within the Newcastle FO
Sale Parcels 070, 077, and 083 are located in within the Casper FO

BCA argues that these are parcels located in core that are not deferred; WSO has confirmed this statement; portions of sale parcels 32, 70, 77, and 83 are located within Core and are published in the August 2012 sale book.

BCAs argument infers that Wyoming sage-grouse policy ignores the impacts that are caused by development regardless of a "Core area" boundary and as such, all parcels located in Core should be deferred.

The BLM has initiated planning efforts across the range of the greater sage-grouse to consider recent scientific studies and conclusions related to the conservation measures used by the BLM on public lands. It is through this planning process that the BLM will evaluate multiple sage-grouse habitat alternatives; this is not the role of a leasing EA.

These planning efforts use an open and public process, and take into account the BLM's multiple-use and sustained yield mandates under the FLPMA.[8] These planning efforts are in direct response to the 2008 finding by the US Fish and Wildlife Service (USFWS) that the Greater Sage-Grouse was "warranted, but precluded" from listing as a Threatened or Endangered Species under the ESA because other high priority species were at greater risk. As a condition of the USFWS finding, it was expected that the Bureau would put management prescriptions in place that would promote the recovery of the species; this direction is codified as BLM policy in WO IM No. 2012-043. It has been determined by BLM WO that BLM Wyoming may continue under its policies which are in codified in IM No. WY-2012-019.

Oil and gas leasing is an important implementation decision arising from the approved RMPs, granting certain rights to the lessee. However, the BLM also has certain obligations to regulate the lessee's or operator's actions on the lease, as described in our regulations (such as 43 CFR 3101.1-2 and 43 CFR 3162.5-1(a)), on the BLM Lease Form 3100-11 (such as standard lease term Sec. 6), and under applicable laws (such as the FLPMA). Along with these obligations, the BLM also complies with procedural requirements of NEPA and other applicable substantive laws such as the ESA and the NHPA. As required by law and regulation, the lessee or their operator must first submit a plan and obtain approval from the BLM in order to initiate surface-disturbing activities on their lease.[9] At that time, the BLM will prepare an environmental record of review to determine, among other things, the appropriate terms and conditions of approval for the plan of operations submitted by the operator.

We agree with the findings of the HPD that parcels 032, 070, and 077 do not meet the criteria prescribed by BLM Wyoming policy which is discussed within HPD's oil and gas lease sale EA (see EA at pages 9, 83-85, and Appendix C – "Greater Sage-grouse Screen").[10]

Both the HPD and the WSO conducted independent screens of the parcels to determine which parcels (or portions of parcels), under the applicable BLM policy, would be deferred until completion of the sage-grouse amendments or pending plan revisions. The HDD and WSO deferred any portions of parcels within 0.6-mi. of occupied leks in Core, and used unleased Federal fluid mineral estate for determining the 11 mi.^{2} criterion.[11] The EA describes potential impacts under Alternative B to sage-grouse and their habitats on these parcels (see EA at page 37), and includes analysis considering application of a seasonal Timing Limitation stipulation (TLS)during sage-grouse nesting and early brood-rearing periods (EA at pages 37-38 and Appendix D) in conformance with the approved RMPs.

A re-review of parcel 83 indicates that a portion of the parcel, located in the 6th Principal Meridian, Township 35 North, Range 87 West, section 20, should also be deferred from the August 2012 sale and this portion of the protest is **granted**.

BCA further argues that all parcels located within SGCAs should be deferred in whole from leasing. While BCA makes this argument within its protest, this comment was not provided during the public comment review period so that it could be evaluated by the HPD and as such, this protest point is not ripe for review by the WSO. Even so, the WRBBD did consider this alternative but dismissed it from further review as it was within the range of alternatives considered. We agree with this determination and

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[9] See the Mineral Leasing Act of 1920, as amended. 30 U.S.C. § 226(g): "No permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area." See also Onshore Oil and Gas Order No. 1 parts IV and VII. See also 43 CFR 3162.3-1(c) and 3162-3-3.

[10] In the remainder of our response, our citations of the EA will refer to Version 2 of the EA posted on the BLM's public website.

[11] See also EA at Appendix F, Response to Comment #34

consider it to hold true for the HPDs range of alternatives as well. Not offering any parcels within Core is covered within the No Action alternative in which no parcels would go forward for consideration.

Finally, the WSO notes for the record that the HPD EA discloses expected impacts from development to sage-grouse habitats located outside of Core Population Areas (CPAs) (EA at 35):

> *Remaining suitable sagebrush habitat areas outside of Core Areas could be productive for Greater Sage-grouse; however, fragmentation and degradation might limit the distribution and abundance of Greater Sage-grouse.*

We find that offering of parcels 032, 070, 077 and 083 (as modified by this decision) is in conformance with the approved RMPs, complies with current the BLM policy, and that a rational basis exists for offering these parcels while the on-going RMP revisions and amendments are being considered.

As such, this point of BCAs protest is **granted in part and denied in part**.

2. BCA further protests" parcels WY-1208-37, 40, 46, 47, 55, 56, 57, 58, 59, 60, 61, 62, 68, and 78 which are outside sage grouse Core Areas yet are identified as being inside occupied sage grouse breeding and nesting habitat...These parcels are being issued with biologically inadequate sage grouse protections, as follows: TLS (1) Mar 15 to Jul 15; (2) as mapped on the Casper Field Office GIS database; (3) protesting nesting Greater sage-grouse. These Timing limitation Stipulations appear to be even weaker than BLM's standard-issue sage grouse stipulations from leases sales past which prescribe a quarter-mile NSO ...

The BLM Sage-grouse National Technical Team has issued a *Report on National Greater Sage-Grouse Conservation Measures...* These provisions have not been attached as stipulations to any of the leases to be offered at auction. Leases should pass through this screen of recommendations before being offered, in order to prevent the BLM from foreclosing on management options available to the agency under the Sage Grouse Plan Amendment process." (BCA Protest at page 3, 4 and 5).

BLM Response

A review of the protested parcels shows that one parcel (WY-1208-040) is located within a ¼ mile buffer of an occupied sage-grouse lek. As such, a CSU stipulation will be added to this parcel.

> *CSU (1) Surface occupancy or use within 1/4 mile of a Greater sage-grouse strutting/dancing ground will be restricted or prohibited unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts; (2) as mapped on the Casper Field Office GIS database; (3) protecting Greater sage-grouse breeding habitat.*

The BLM's National Technical Team (NTT) report was released within BLM WO IM No. 2012-044. BCA argues that several conservation measures for "Priority Habitats" or Core Population Areas be applied to the parcels offered in the August 2012 Sale. First, the IM describes the intent of the report:

> *The BLM must consider all applicable conservation measures when revising or amending its RMPs in Greater Sage Grouse habitat. The conservation measures developed by the NTT and contained in* [the NTT Report] *must be considered and analyzed, as appropriate, through the land use planning process...*

The NTT Report also emphasizes the intent of the conservation measures in the report for land use planning purposes (at page 5):

> *The conservation measures described in this report are not an end point but, rather, a starting point to be used in the BLM's planning processes...*

The NTT Report does not weigh the conservation measures relative to the BLM's multiple-use and sustained yield mandate. As such, it would be premature for the BLM to apply the conservation measures as a "screen" to implementation decisions prior to completion of the RMP revisions or amendments, which will consider the conservation measures relative to other land use objectives;[12] on a Greater sage-grouse range-wide basis; and through coordination with the states (and the states' wildlife management agencies), the USFWS, other cooperating agencies, and the public. The conservation measures in the NTT Report must be considered and analyzed through the BLM's land use planning process, and were not intended or designed to be applied to implementation decisions (such as leasing decisions) prior to their evaluation through the RMP process. Offering lease parcels subject to the numerous conservation measures described in the NTT Report (some of which, we note, are described as "alternatives" in the NTT Report) would not be in conformance with the current, approved RMPs, and so the BLM will not apply those measures until the plan revisions or amendments are completed.

BCA then argues that to offer lease parcels without application of conservation measures from the NTT Report would "foreclos[e] on management options available to the agency" under the RMP amendment process (BCA's Protest at page 4). However, this overlooks that the BLM has already established an objective process to ensure that the BLM's decision-maker(s) will be able to freely select from the range of alternatives contemplated in the RMP sage-grouse amendments and plan revisions – the process is described as the "sage-grouse leasing screen" in the BLM Wyoming IM. The Council on Environmental Quality's (CEQ's) regulations at 40 CFR 1506.1 describe the limitations on actions during the NEPA process, including (a):

> *Until an agency issues a record of decision... no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives.*

The Department of the Interior's (DOI's) NEPA regulations at 43 CFR 46.160 further explains:

> *"During the preparation of a program or plan NEPA document, the Responsible Official may undertake any major Federal action in accordance with 40 CFR 1506.1 when that action is within the scope of, and analyzed in, an existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action."*

Additionally, the BLM's NEPA Handbook[13] provides:

> *"You must not authorize any action that would limit the choice of alternatives being analyzed under the NEPA until the NEPA process is complete (40 CFR 1506.1). However, this requirement does not apply to actions previously analyzed in a NEPA document that are proposed for implementation under an existing land use plan."*

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[12] Where there are competing resource values in the same area, Section 103(c) of FLPMA (43 U.S.C. §1702(c)) requires that the BLM manage the public lands and their various resource values so that they are utilized in the combination that will best meet our multiple use and sustained yield mandates.

[13] BLM Handbook H-1790-1 (January 30, 2008) at page 3.

Offering and subsequently issuing competitive oil and gas leases at the August 2012 Sale is an implementation decision under the applicable RMPs.[14] As a result of the FO analysis, approximately 82 percent of the nominated lease parcel acreage was deleted or deferred, primarily as a result of the BLM Wyoming Greater sage-grouse screen. We believe the EA and RMP EISs to which it is tiered provide adequate disclosure for the decision-maker and in compliance with NEPA regarding the potential impacts to sage-grouse and their habitats from leasing the protested parcels. BLM Wyoming's sage-grouse screening process provides an objective, reasonable means for the BLM to ensure that decision-making under the current RMPs and during preparation of the sage-grouse amendments and plan revisions is cautious; in order to ensure the collective RMP amendments' and revisions' range of alternatives is available for the Responsible Official to select from. For these reasons, this portion of BCA's protest is denied.

Lastly, the HPD EA accurately captures the scope of BLM management and regulatory authority as it relates to any development for any species or resource concern, but particularly as it relates to the Greater sage-grouse in Wyoming:

> *"At the time development activities are proposed, BLM would conduct a site-specific review of the proposal and the current Greater Sage-grouse habitat boundaries (such as the Wyoming Governor's core areas). The BLM may require additional avoidance and/or impact minimization measures in order to manage Greater Sage-grouse habitat in support of Wyoming's Greater Sage-grouse conservation strategy and the WGFD's Greater Sage-grouse objectives. These measures may include, but are not limited to, density/disturbance limitations and surface use and timing restrictions in proximity to certain habitats (e.g., severe winter relief habitat, Greater Sage-grouse leks, etc.). Restrictions and prohibitions for surface use activities may be applied for distances and time periods more restrictive than current RMP stipulation guidance if supported by site-specific NEPA analysis of a development proposal. Such restrictions could be applied as COAs for exploration and development activities associated with the lease. These measures may be necessary to meet BLM policy goals for managing Greater Sage-grouse habitat and populations as special status species as directed in BLM Manual 6840."*

3. "...impacts of oil and gas development to sage-grouse include (1) direct habitat loss from new construction, (2) increased human activity and pumping noise causing displacement, (3) increase legal and illegal harvest, (4) direct mortality associated with reserve pits, and (5) lowered water tables resulting in herbaceous vegetation loss. These impacts have not been thoroughly evaluated with full NEPA analysis." (BCA Protest at page 6).

<u>BLM Response</u>
See previous responses, above;[15] the BLM Wyoming's RMP revisions and amendments are currently evaluating (through the public NEPA process) potential impacts to sage-grouse arising from energy development on public lands, and in consideration of recent scientific inquiries regarding impacts to sage-grouse and the appropriate conservation measures to avoid or reduce impacts from energy development. The BLM is in the process of updating current sage-grouse conservation measures in the applicable plans (hence the statewide amendment or revision of RMPs' sage-grouse habitat management decisions).

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[14] See BLM's Land Use Planning Handbook (H-1601-1, dated March 11, 2005) at Appendix C, page 24: "Implementation Decisions: Offer leases with appropriate stipulations."
[15] See also the HPD's response to BCA's identical comment on the draft EA at Appendix F, Comment #12.

Often, where the context and intensity of environmental impacts such as those described by BCA remain unidentifiable until exploration activities are 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*, 10th Cir., April 17, 1987). In addition, the Interior Board of Land Appeals (IBLA) has decided that, "the BLM is not required to undertake a site-specific environmental review prior to issuing an oil and gas lease when it previously analyzed the environmental consequences of leasing the land..." (*Colorado Environmental Coalition,* et al., IBLA 96-243, decided June 10, 1999). However, when site-specific impacts are reasonably foreseeable at the leasing stage, NEPA requires the analysis and disclosure of such reasonably foreseeable site-specific impacts (*N.M. ex rel. Richardson v. BLM,* 565 F.3d 683, 719-19 (10th Cir. 2009)). Although certain site-specific impacts remain unforeseeable at this time, the analysis in the August 2012 Oil and Gas Leasing EAs provide additional disclosure and analysis of the anticipated environmental impacts associated with our decision to offer and possibly issue leases for these parcels.

4. "It is clear from the scientific evidence that the current [sage-grouse] protections are inadequate and are contributing to the further decline of the bird's populations. This information constitutes significant new information that requires amendment of the Resource Management Plans before additional oil and gas leasing can move forward...

If the BLM and other federal agencies intend to keep the sage-grouse from accelerating beyond other listing priorities, more protective measures... must be undertaken now. In the interim, deferral of leasing is the appropriate course of action." (BCA Protest at pages 7 and 8, respectively).

BLM Response

Should a parcel be offered, a successful bid received, a lease issued, and oil and gas development be proposed (as the HPD points out in the EA at page 6, a small proportion of leases issued in Wyoming have ever been developed), the BLM will have the ability to apply protection measures for sage-grouse and their habitats on the Federal oil and gas leases. IM No. WY-2012-019 provides several timing, distance, and disturbance conservation measures for benefit of sage-grouse, and requires (at page 8):

> *All recommendations, mitigation and conservation measures will be considered in site-specific documentation of NEPA compliance. As appropriate, these measures may be incorporated into Conditions of Approval (COAs) of permits, plans of development, and/or other use authorizations.*

Prior to surface-disturbing activities on the parcels (should they be leased) the BLM requires a detailed plan of operations for development of the lease. Prior to approval of the plan of operations, the BLM conducts site-specific environmental review, and any APD will include (at a minimum) public posting (see 43 CFR 3162.3-1(g)). The BLM retains substantial authority to regulate environmental aspects of Federal oil and gas lease operations through approval (see 43 CFR 3162.3) of APDs or Sundry Notices (SNs), and through the issuance of orders and instructions of the authorized officer (see 43 CFR 3161.2). As previously described, the BLM also can regulate the lessee's or operator's actions on the lease, as described in our regulations (such as 43 CFR 3101.1-2 and 43 CFR 3162.5-1(a)),[16] on the BLM Lease Form 3100-11 (such as standard lease term Sec. 6), and under applicable laws (such as FLPMA).

Aside from completing the approved RMP EISs, the August 2012 leasing EAs analyzed and disclosed the purpose and need, alternatives, affected environment, and environmental consequences (to the extent

[16] See also *Yates Petroleum Corporation*, 176 IBLA 144 (September 30, 2008): "When making a decision regarding discrete surface-disturbing oil and gas development activities following site-specific environmental review, BLM has the authority to impose reasonable measures to minimize adverse impacts on other resource values, including restricting the siting or timing of lease activities."

reasonably foreseeable) of offering the parcels and possibly issuing leases as described in the Notice. The EAs included site-specific review of individual parcels and potentially-affected resources.

For the August 2012 Sale, the respective offices followed BLM policy (the sage-grouse screen) to ensure that the Responsible Official may select from a reasonable range of alternatives in the sage-grouse RMP amendments or revisions; they prepared documentation of NEPA compliance, considered conformance with the approved RMPs, and provided recommendations to the WSO on the disposition of each parcel based upon their interdisciplinary review.

We find that offering (and subsequently issuing, should a successful bid be received by the BLM) the lease parcels described in the Notice is in conformance with the approved land use plans, and the lease stipulations described in the Notice provide adequate protection measures for those parcels to be offered in sage-grouse habitat, and given the substantial authority the BLM has to condition approval of lease development actions with reasonable measure to protect natural resources and environmental quality. Where the BLM has identified, through policy guidance, a need to defer parcels within Core Areas to ensure that the Responsible Official's choice of reasonable alternatives is not limited, the HPD and WRBBD in coordination with the WSO appropriately deleted or deferred certain August 2012 parcels. For these reasons, we deny this portion of BCA's protest.

ISSUES – GREATER YELLOWSTONE COALITION ET AL. (GYC)

5. GYC has protested the inclusion of parcel WY-1208-115 proposed to be offered in part in the August lease sale. GYC protests the inclusion of that portion of the parcel located in Sections 6 and 8, T. 0570N, R.1020W "due to the proximity of these agency-managed surface sections within the delineated Absaroka Front Management Area being considered under Alternative D of the Bighorn Resource Management Plan revision. To further their protest, they also contend that:

a) Lease parcels should not be sold while this revision is ongoing;
b) Lease parcels should not be sold in overlapping crucial wildlife habitat;
c) Lease parcels should not be sold that pose a direct negative impact to golden eagle nest occupation;
d) Lease parcels should not be sold that impact a National Historic Trail;
e) That the BLM is not in compliance with its oil and gas leasing reform as directed by the Secretary of the Interior;
f) The BLM should analyze site-specific impacts through the NEPA process prior to this lease sale;
g) Lease parcels should not be sold in an area of unstable geology where a history of high pressure gas reservoirs and loss of circulation events have occurred, and where contamination of groundwater is threatening human health and the environment.

(GYC Protest at 2, 3)

BLM RESPONSE
a) 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 BLM must suspend an action that is in conformance with an existing land use plan when it decides to prepare a new plan. IBLA recognized that acceptance of protestor's position would seriously impair the BLM's ability to perform its land management responsibilities.

The IBLA also pointed out in their order dated July 31, 2002, that neither the BLM Handbook (H-1601-1), Land Use Planning, nor WO IM No. 2001-191, Processing of Applications for Permit to Drill, Site-Specific Permits, Sundry Notices, and Related Authorizations on Existing Leases, and Issuing New Leases During Resource Management Plan Development, absolutely preclude issuance of oil and gas leases while the underlying RMP is being amended. Rather, the BLM Handbook states existing decisions remain in effect during the amendment process and directs the BLM to review all proposed implementation actions through the NEPA process to determine whether the approval of a proposed action would harm resource values and limit the choice of reasonable alternatives in the land use plans being re-examined.

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

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

Prior to offering for sale any of the parcels, the FO managers completed an Environmental Assessment to determine whether offering the parcels was consistent with their existing RMP, whether there was new information not previously analyzed that might question whether leasing was still appropriate, or whether offering the parcels for sale would limit the choice of reasonable alternatives in the RMPs being revised.

That being said, parcel WY-1208-115 (aka 391) has been reviewed for accuracy; the deferred acreage associated with parcel, as described in WRBBD EA, Appendix B, has been corrected to reflect that those portions of the parcel intersecting the Absaroka Front Management Area (AFMA) described in the draft Bighorn Basin RMP are deferred from lease at the August 2012 sale. Once this RMP revision is finalized and a ROD published, this parcel will be re-evaluated for conformance with the RMP and its availability for leasing. As such, **we hereby grant this portion of GYCs protest.**

b) Because parcel WY 1208-115 will be deferred in whole from the August 2012 lease sale, we believe this protest point to be resolved and **this portion of the protest is denied.**

c) BLM data does indicate that there is an active golden eagle nest located in the 6th Principal Meridian, Township 57 North, Range 102 West, section 1 adjacent to the parcel. Because the existing Cody RMP indicates that a 0.75 mile NSO prohibiting surface disturbing activities around active raptor nests, this stipulation and a timing limit stipulation for the protection of raptors (February 1 to August 15) will be applied as appropriate when the availability of those lands for lease is determined through the RMP revision process and subsequent ROD.[17] As such, under consideration of the deferral, the BLM believes this protest point to be resolved.

d) As noted above, this parcel was only partially deferred when the EA specifically states that the parcel will be deferred for both AFMA and Alternative D trail management options; as a result, this parcel will be deferred in whole from the August 2012 sale. As such, this protest point is resolved.

[17] Cody RMP, 1990, page 39-40, Raptors (General)

e) GYC claims that because the BLM did not note the presence of a golden eagle nest adjacent to parcel WY-1208-115, they conclude:

> *"given the fact that the BLM makes no mention of stipulations to protect a golden eagle nest on section 6 of the protested parcel there is indication that the proposed parcel has not been field-checked for this and other natural resource concerns (in accordance with WO IM 2010-117)."* (Audubon Protest at 5)

In addition to what is noted in response to item c), the BLM has added language to the WRBBD EA for the August lease sale documenting when and where on-the-ground site visits were made. This protest point is therefore considered resolved.

f) The BLM has the responsibility to manage the public lands in accordance with 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 RMPs. During preparation of the RMP, and prior to issuing any oil and gas leases, the BLM performs an environmental analysis under NEPA which discloses anticipated impacts that can result from leasing and subsequent oil and gas development on the environment, including the public lands and its resources. As a result, the BLM develops appropriate mitigation and protection measures, such as lease stipulations, before the BLM issues any oil and gas lease. FLPMA does not require the BLM to analyze every aspect of a transaction to make sure any actions by the BLM will protect the long-term viability of the public lands. Nevertheless, the BLM has prepared an 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 APD may be the first useful point at which a site-specific environmental appraisal can be undertaken (*Park County Resource Council, Inc. v. U.S. Department of Agriculture*, 10th Cir., April 17, 1987). In addition, the 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 (10th Cir. 2009)). Although certain site-specific impacts remain unforeseeable at this time, the analysis prepared in support of the August 2012 Leasing EA provides additional disclosure and analysis of the environmental impacts associated with our decision to offer these parcels for sale.

g) Because this sale parcel is deferred in whole until the RMP revision can be completed, we consider this point of protest to be resolved.

ISSUES – AUDUBON

Audubon protests the offering of parcels WY-1208-032, 070, 077, 079, 080, 081, 082, 083, 084, 085, 089, and 114 at the August 2012 lease sale. Parcels 032 and 070 were also protested by BCA.

Audubon participated in the public review of the EAs, and provided comments to which both the HPD and WRBBD responded (See Appendix F and Appendix G of the EAs respectively). We refer Audubon to these Appendices for additional detail on the BLM's position regarding the arguments Audubon raises or repeats in their protest.

In their protest, Audubon lists 12 parcels that they are protesting "comprising tens of thousands of acres of public land or mineral estate within identified Greater sage-grouse Core Population Areas..." (Audubon Protest at page 1). BLM Wyoming has confirmed that all of the protested parcels are, in fact, located either entirely or partially in Core Area.

6. "The tentative conclusion of the unsigned FONSI that the project will not significantly impact the environment and that environmental effects will not meet the definition of significance are unsupported. Leasing core habitat would likely: 1) have significant impacts on the Greater sage-grouse's prospects for recovery and survival, and 2) push the species towards a listing decision that could result in significant socio-economic and environmental impacts across Wyoming and the region." (Audubon Protest at page 1). "The unprecedented scale at which parcels located within core areas are being proposed for leasing threatens to undercut efforts to recover the species and its habitat. Because of the importance of core population areas to sage-grouse populations, parcels located within core areas should not be leased." (Audubon Protest at page 2).

BLM Response

Please refer to our responses above and in particular to Issue No. 1 and 2. The EA (and the EISs to which it tiers) describe potential impacts to sage-grouse, and we find that the record provides adequate information for the decision-maker to determine if significant (new) impacts may occur under the alternatives analyzed. Of the 396 parcels reviewed by the BLM for the August 2012 Sale that were located in Core Areas, the BLM has deferred or deleted 280 (71 percent) of the parcels entirely; additional portions of 98 parcels were deferred, as well.[18] The parcels (or portions of parcels) that the BLM intends to offer for the August 2012 sale have all passed BLM Wyoming's sage-grouse screen. While Audubon contends that any additional leasing in Core Areas will "have significant impacts," we find that the decision-maker has adequate information and data from which to make a decision for the August 2012 Sale and that the FONSI is adequately supported.

[18] Of the approximately 562,127 acres reviewed for the August 2012 sale by the BLM, less than 3,600 acres would be offered in Core Areas as described in the Notice. Based upon other information collected by the WSO, prior to the August 2012 sale, the BLM Wyoming has deferred 666,722 acres of lease parcels within Core Areas since 2010.

On the USFWS' listing decision, BLM has explained to the public:[19]

> *"Based on the identified threats to the greater sage-grouse and the USFWS timeline for making a listing decision on this species, the BLM needs to incorporate explicit objectives and adequate conservation measures into RMPs within the next 3 years in order to conserve greater sage-grouse and avoid a potential listing under the Endangered Species Act. The planning strategy will evaluate the adequacy of BLM RMPs and address, as necessary, revisions and amendments throughout the range of the greater sage-grouse...."*

In the interim, until the BLM is able to "incorporate explicit objectives and adequate conservation measures into RMPs" through our land use planning process, the BLM Wyoming has provided policy direction (IM No. WY-2012-019) through coordination with the State of Wyoming and USFWS (among others) for making implementation decisions (such as offering and issuing oil and gas leases) under approved RMPs, while balancing the need for energy production from public lands.

As such, we deny this portion of Audubon's protest.

7. "No leasing of Core Population Area parcels should proceed without analyzing the new scientific findings and recommendations set forth in the "Report on National Great Sage-Grouse Conservation Measures' produced by the BLM's Sage-grouse National Technical Team and dated December 21, 2011 (Technical Team Report). BLM's analysis of the lease parcels is inadequate, and its decision uninformed, because it was not revisited to consider the scientific recommendations of the Technical Team Report." (Audubon Protest at page 5). "At this point in time, a conservation approach to grouse conservation must defer to the NTT recommendations." (Audubon Protest at page 6).

BLM Response
Please see our responses above and in particular our responses to Issue No. 2[20]. This portion of Audubon's protest is denied.

8. "...offering core area parcels would (1) undermine the RMP sage-grouse amendment process currently proceeding within Wyoming, (2) violate existing BLM sage-grouse policies and Instruction Memoranda, (3) violate NEPA..., (4) compromise the Audubon Vision of 'Open spaces rich in birds and other wildlife, and citizens who value that richness;' (5) violate [FLPMA] provisions, including the multiple-use, sustained-yield mandate and undue degradation provisions (*see* 43 U.S.C. §§ 1712(c)(1), 1732(a) and (b); and 43 C.F.R. §1601.0-2); and (6) risk undermining the public's trust in the Department of the Interior's stewardship responsibility of the nation's public lands and wildlife resources." (Audubon Protest at pages 6-7).

BLM Response
First, the BLM has determined that offering the parcels as described in the appropriate EA will not constrain the BLM's ability to complete the RMP sage-grouse amendments or select from a reasonable range of alternatives in those RMP EISs (see our response to Issue Nos. 1 and 2, above). Offering these parcels is in conformance with the approved RMPs and applicable BLM policy.

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[19] See http://www.blm.gov/wo/st/en/prog/more/sagegrouse/eastern.html
[20] We Refer Audubon also to WRBBD EA, Appendix G, Comment Response #22

The BLM has substantial authority to ensure that (should a successful bid be received, a lease issued, and development operations proposed on the protested parcels) current and appropriate conservation measures are applied to actions taken on Federal oil and gas leases. See our response to Issue No. 2.

Next, Audubon argues that offering the protested parcels would "violate" existing BLM policies. In fact, offering the parcels is consistent with current BLM policy (as we have described, above). Rather, not offering the protested parcels would be inconsistent with policy, since all of the protested parcels passed the sage-grouse leasing screen described in current BLM policy (IM No. WY-2012-019).

In response to Audubon's argument that the BLM has violated NEPA, we have carefully reviewed the EA prepared by the HPD which tiers to the applicable RMP EISs. We find that the record provides ample information and disclosure for the decision-maker to make an informed decision.

In *Robertson v. Methow Valley Citizens Council* (490 U.S. 332 (1989)), the U.S. Supreme Court found:

> *"NEPA itself does not impose substantive duties mandating particular results but simply prescribes the necessary process for preventing uninformed – rather than unwise – agency action. If adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh environmental costs."*

NEPA is an "essentially procedural" statute, meant to ensure "a fully informed and well-considered decision, not necessarily" the best decision. *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519 (1978).

The intent of preparing an EA is to briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI (40 CFR 1508.9).

We find that the BLM has provided "reasoned analysis containing quantitative or detailed qualitative information" (BLM's NEPA Handbook at page 131) in the EAs and RMP EISs to which it tiers – has taken a hard look – about the effects of offering the protested parcels, and has satisfied NEPA's procedural requirements.

Next, Audubon argues that offering and leasing the protested parcels will "compromise" Audubon's vision of "[o]pen spaces rich in birds and wildlife, and citizens who value that richness." However, the BLM must consider applicable laws, regulations, and policies that have prompted the BLM to consider offering the protested parcels; to the extent that Audubon's vision aligns with the goals and objectives of the approved RMPs, offering these parcels may not compromise Audubon's vision. Regardless, the BLM cannot defer to a single entity's vision when fulfilling its obligations under FLPMA and the MLA. During the RMP process, Audubon has had (and continues to have) ample opportunity to provide input to the management goals and objectives for management of public lands.

Next, Audubon argues that offering the protested parcels will violate FLPMA's multiple-use and sustained yield mandates, and the prohibition of "undue or unnecessary degradation."

Section 302(a) of FLPMA directs the Secretary of the Interior to manage the public lands under principles of multiple use and sustained yield "in accordance with the land use plans developed under section 202 of

this Act..." Section 302(b) of the Act states in part, "[i]n managing the public lands the Secretary shall, by regulations or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands."

As we have described, previously, offering the protested parcels is in conformance with the approved RMPs, which were prepared pursuant to Section 202(c) of FLPMA, which requires:

> *In the development and revision of land use plans, the Secretary shall– (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law...*

Audubon has not provided objective evidence that the approved RMPs do not "use and observe" the principles of multiple use and sustained yield. Regardless, a challenge of the RMPs is outside the scope of this protest.

Similarly, Audubon has not demonstrated that offering these parcels (with the stipulations provided as described in the Notice and in consideration of the CAP strategy and the BLM's related policies) will result in injury to sage-grouse. Accordingly, "unnecessary or undue degradation" to the public lands will not occur, and Audubon has failed to show otherwise. As the IBLA held in *Colorado Environmental Coalition*, 165 IBLA 221. 229 (2005):

> *"...to show that an action results in undue or unnecessary degradation of leasehold land, at a minimum, an appellant would have to show that a lessee's operations are or were conducted in a manner that does not comply with applicable law or regulations, prudent management practice, or reasonably available technology, such that the lessee could not undertake that action pursuant to a valid existing right."*

Finally, Audubon argues that by offering these parcels in accordance with the approved RMPs, the BLM is "at risk" of undermining the public's trust in the DOI's stewardship of the public lands. We disagree. In the BLM's administration of activities on public lands for multiple-use management ("a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put...[21]), the BLM continues to follow applicable laws, our regulations, and policies to (43 CFR 1601.0-2):

> *...maximize resource values for the public through a rational, consistently applied set of regulations and procedures....*

For the reasons described above, we deny this portion of Audubon's protest.

9. "Audubon's comments on the EA proposed a reasonable sage-grouse conservation alternative that would defer all parcels in core areas. BLM is required to analyze this reasonable alternative. BLM violated NEPA by declining to analyze the Grouse Conservation Alternative proposed by Audubon." (Audubon Protest at page 7).

<u>BLM Response</u>
See our response to Issue No. 8, above. In addition, Audubon overlooks the BLM's alternative to defer all parcels, which includes those within sage-grouse core areas. Both the HPD EA (at pages 13-14) and

[21] *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004).

the WRBBD EA (at page 2-1) included "Alternative A – No Action" that "mean(s) that an EOI to lease (parcel nomination) would be denied or rejected, and a lease would not be offered for that parcel." This alternative remains available for the decision-maker to select, or a hybrid alternative that selects from elements of more than one alternative, [22] including deferral of all parcels located within Core Areas.

Because the EAs prepared for the August 2012 sale included an adequate range of reasonable alternatives, we deny this portion of Audubon's protest.

10. "The stipulations and other conditions in the Lease Sale have been repeatedly shown to be scientifically inadequate, and inconsistent with the NTT recommendations." (Audubon Protest at pages 7-8).

BLM Response
Please see our responses to Issue Nos. 2 and 4, above. We deny this portion of Audubon's protest.

DECISION: Regarding those parcels which have been protested by BCA, GYC, and Audubon the following decisions are made:

Parcel 043 is not located within a SGCA and this protest is dismissed.

Parcel 083 will be partially deferred to ensure compliance with IM No. WY-2012-19.

Parcel 115 is deferred in whole but a raptor TLS will be added to the parcel upon conclusion of the Bighorn RMP revision and subsequent availability determination.

Parcel 040 will include a Controlled Surface Use stipulation to protect the presence of a sage grouse lek.

Information has been added to the WRBBD EA to disclose the review (both on the ground and in the office) each parcel underwent to determine resource conflicts and the need for particular stipulations.

All of the remaining protested parcels will be offered at the August 2012 lease sale: WY-1208-032, 037, 040, 043, 046, 047, 055-062, 068, 070, 077-085, 089, and 114.

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

[22] See 43 CFR 46.420(c): "The Responsible Official must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents, but may select elements from several alternatives discussed."

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 August 2010 sale and are, therefore, adverse parties who must be served with any pleadings.

Larry Claypool

Larry Claypool
Deputy State Director, Minerals and Lands

Attachment

cc:
District Manager, HPDO
District Manager, WRBBDO
Field Managers, HPD FOs
Field Managers, WRBBD FOs
Resource Advisor M&L, HPDO
Resource Advisor M&L, WRBBDO
DSD (920)
DSD (930)
J. Weaver (923)
S. Moberley (923)
M.Gamper (921) e-mail of final and a letterhead copy

Form 1842-1
(September 2006)

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, 5353 Yellowstone Road, Cheyenne, WY 82009 OR
Bureau of Land Management, 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 Street, Suite 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 Street, Suite 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.

(Continued on page 2)

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.