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 (921Bargsten)
February 2012 Protests

FEB 0 6 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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DECISION

PROTESTS DISMISSED
PROTESTED PARCELS WILL BE OFFERED FOR SALE

On December 8, 2011, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received protests to specific oil and gas lease sale parcels from (1) the Wyoming Outdoor Council (WOC) and (2) the Biodiversity Conservation Alliance (BCA).[1] Western Resource Advocates, representing the National Audubon Society and Audubon Wyoming, submitted an untimely protest to this sale which we will not address further in this decision.

The BLM received nominations for the February 7, 2012, competitive oil and gas lease sale until April 8, 2011, and for Federal fluid mineral estate located in the BLM Wyoming's High Plains District (or HPD, which includes the Buffalo, Casper, and Newcastle Field Offices) and the Wind River/Bighorn Basin District (or WRBHBD, which includes the Cody, Lander, and Worland Field Offices). After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the field and district offices, 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 Environmental Assessments (EAs) documenting National Environmental Policy Act (NEPA) compliance.[2]

[1] BCA indicates in their letterhead that Rocky Mountain Wild also is a party to their protest, and a representative of Rocky Mountain Wild is identified near a line apparently intended for signature (though the representative did not sign the protest received by the WSO); however, in the opening paragraph BCA indicates that the protest was filed by BCA and the Natural Resources Defense Council. Because it is unclear who – aside from BCA – is party to this protest, we will refer to the protestor(s) as "BCA."

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

During the BLM's review of these parcels prior to the sale, the WSO also conducted independent screens of parcels, confirmed plan conformance,[3] coordinated with representatives from the State of Wyoming Governor's Office and Game and Fish Department, 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.

The oil and gas lease sale EAs prepared by the HPD (WY-070-EA11-249) and WRBHBD (DOI-BLM-WY-010-2011-0075-EA), along with draft, unsigned Findings of No Significant Impact (FONSIs)[4] were released on July 27, 2011, for a 30-day public review period, ending August 26, 2011. Both WOC and BCA reviewed the EAs and provided public comments to the BLM. The EAs tiered to the existing RMPs and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR 1502.20: [5]

> *Agencies are encouraged to tier 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.*

In their protests, WOC and BCA are protesting, in total, the offering of 12 parcels described in the WSO's Notice of Competitive Oil and Gas Lease Sale for February 7, 2012 (Notice) that was published and released to the public on November 9, 2011. However, seven of the parcels protested by BCA were deferred by the BLM from this sale, by the BLM's discretion,[6] and in consideration of the "Modified and Deferred" alternative (see DOI-BLM-WY-010-2011-0075-EA v.2 at pages 2-1 through 2-3). Resultantly, these parcels are not described in the Notice, and so were not re-numbered for sale in the Notice. BCA's protest to these seven parcels is summarily dismissed, as they are not being offered in this sale:

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[3] 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.

[4] 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.

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

[6] See the Mineral Leasing Act of 1920, as amended, providing that lands subject to disposition under the Act "which are known or believed to contain oil or gas deposits may be leased by the Secretary." (Emphasis added). 30 U.S.C. § 226(a). This discretion may be exercised in the interest of conservation, wildlife protection, and other purposes in the public interest.

Parcel No. WY-1202		Protested By:		
Preliminary	Final	WOC	BCA	Initial Disposition
-279	-177		X	
-280	-178		X	
-281	-179		X	
-304	N/A		X	Not offered – protest dismissed
-305	N/A		X	Not offered – protest dismissed
-310	N/A		X	Not offered – protest dismissed
-322	N/A		X	Not offered – protest dismissed
-329	N/A		X	Not offered – protest dismissed
-342	N/A		X	Not offered – protest dismissed
-360	**-189**	X	X	
-462	N/A		X	Not offered – protest dismissed
-468	**-202**	X		

The remainder of our response will answer the protestors' arguments related to these five parcels (final parcel numbers WY-1202-177, -178, -179, -189, and -202). The protestors' substantive arguments are provided in bold, with BLM responses following.

ISSUES – WYOMING OUTDOOR COUNCIL (WOC)

Parcels -189 and -202: "Fundamentally, we believe it is inappropriate to offer these parcels while the Bighorn Basin and Lander [RMPs] are under revision . . . . Under [BLM Instruction Memorandum] 2004-110, additional NEPA documentation prior to leasing is needed when there are significant new circumstances or information that bear on the environmental consequences of leasing that are not within the scope previously analyzed in the existing RMP." (WOC Protest at page 3).

BLM Response

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

As in *Sierra Club Legal Defense Fund, Inc.*, there is no dispute here that the proposed sale partially implements the goals and objectives in the approved RMP. Although WOC believes that there are "significant new circumstances or information . . . not within the scope previously analyzed in the existing RMP,"[7] they have failed to demonstrate that the offering of parcels -189 or -202 is not in conformance with the approved RMP, or that the February 2012 oil and gas leasing EA's analysis

[7] The WRBHBD determined, in their response to WOC's comments on the EA, that the only substantive comments made by WOC about this parcel addressed (1) the loss of well control at a well approved in the region several years ago, and (2) the presence of "too many sensitive resources" on this parcel as indicated by the large number of lease stipulations.

"was premised on a clear error of law or a demonstrable error of fact, or that the analysis failed to consider an environmental question of material significance to the action for which the analysis was prepared." *Randy A. Green*, 177 IBLA 264 (2009).

Parcel -202: "Parcel -202 requires nine stipulations, which demonstrates the overwhelming significance of the environmental values associated with this parcel, making it inappropriate to lease it while the RMP is under revision. Parcels that require this level of stipulation should not be offered for sale under the framework of an old, outdated RMP." (WOC Protest at page 3).

BLM Response

Under the rationale provided in WOC's protest, parcels with numerous mitigation measures (i.e., lease stipulations) applied at the time they are offered must await a new RMP. However, this overlooks the fact that the stipulations are applied to lease parcels at plan implementation because (1) the area is open to leasing in the current Cody Field Office RMP, and (2) the resources present on or near the parcel warrant application of the lease stipulations.

In the February 2012 oil and gas lease sale EA, the Cody Field Office and WRBHBD documented offering and leasing parcel -202 in order to (EA at page 1-1):

> *. . . verify conformance with the applicable BLM land use plans, address new information, and determine which stipulations are appropriate for the nominated parcels . . .*

The EA described the purpose and need of the proposed action (EA at page 1-2):

> *The BLM is required by law to consider leasing of areas that have been nominated for lease if leasing is in conformance with the BLM land use plan . . . . It is the policy of the BLM to make mineral resources available for disposal and to encourage development of mineral resources to meet national, regional, and local needs . . . .*
>
> *The purpose of the proposed action is to provide legal access to oil and gas resources administered by the BLM. Continued leasing is necessary to maintain options for production of oil and gas as companies seek new areas for production or attempt to locate and develop previously unidentified, inaccessible or uneconomical reserves. Oil and gas are marketable resources that meet the public's need for energy. Offering parcels for competitive oil and gas leasing provides for the orderly development of fluid mineral resources under BLM's jurisdiction in a manner consistent with multiple use management and environmental consideration for the resources that may be present. This requires that adequate provisions are included with the leases to protect public health and safety and assure full compliance with the spirit and objectives of the National Environmental Policy Act (NEPA) and other federal environmental laws and regulations.*

The EA also tiered to the existing RMPs, and evaluated whether the approved RMP provided for offering and leasing the nominated parcels (EA at page 1-2):

> *Pursuant to 40 Code of Federal Regulations (CFR) 1508.28 and 1502.21, this EA tiers to and incorporates by reference the information and analysis contained in the Grass Creek Resource Management Plan (RMP) 1998 (BLM 1998a); Washakie RMP 1988 (BLM 1988b); Cody RMP 1990 (BLM 1990); Lander RMP 1987 (BLM 1987) and Final Environmental Impact Statement and Record of Decision for each RMP. The parcels nominated for the lease sale have been identified as available for leasing in each RMP.*

Lastly, the WRBHBD responded to a similar comment made by WOC to the EA (see EA at Appendix F, page 4):

> *Leasing is in conformance with the approved land use plan, which after evaluating other resources determined leasing and subsequent develop*[ment] *is allowable.*

Regardless, the majority (1,480 acres, or 74 percent) of parcel -202 was deferred (the portions nominated in T. 58 N. , R. 102 W., 6th P.M., Sections 28, 32, 34, and 35 were deferred; see EA at Appendix B page 5 relative to Notice at page 104) from offer in order to ensure that alternatives being contemplated in the current Bighorn Basin RMP revision (which includes both the Cody and Worland Field Offices) are not constrained by interim implementation actions, and so are available for selection in the final record of decision (see EA at page 2-2).

WOC does not provide new information or compelling, objective evidence that contradicts the analysis completed by the BLM for this parcel. Other than forwarding a notion that parcels with numerous protection measures should be deferred for that reason alone, WOC does not explain why this parcel should be deferred. We find that offering parcel -202 (with the portions deferred and as described in the Notice) is in conformance with the approved RMP, and the analysis in the EA supports offering and potentially leasing (if a successful bid is made) this parcel with the stipulations described in the Notice. Furthermore, after considering the context and intensity of impacts described in the EA and in the RMP EISs to which the EA tiered, we agree that it is reasonable to find that the impacts of offering and eventually leasing parcel -202 would not result in new significant impacts.

Parcel -202: ". . . the existing Cody RMP did not address in [*sic*] with any specificity, and really not at all, issues related to long-billed curlews, and many other issues that are implicated by the sale of parcel -202." (WOC Protest at page 3).

BLM Response

In this argument, WOC claims that the Cody RMP (a Record of Decision was approved on November 8, 1990) did not address "at all" issues related to long-billed curlews and "many other issues that are implicated by the sale of parcel -202." Because WOC does not specify the "many other issues" it refers to, we only address the action as it relates to long-billed curlews.

The long-billed curlew is a BLM Wyoming designated sensitive species.[8] The Fish & Wildlife Service (FWS) has described the bird as protected under the Migratory Bird Treaty Act and listed by the FWS as a Bird of Conservation Concern.[9] In 2004, the WSO sponsored an assessment of long-billed curlew in Wyoming.[10]

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[8] See BLM Wyoming Instruction Memorandum WY-2010-027 ("BLM Wyoming Sensitive Species Policy and List") at Attachment 2, pages 13-14. April 5, 2010.

[9] Fellows, S. D., and S. L. Jones. 2009. Status Assessment and Conservation Action Plan for the Long-billed

The Draft EIS (DEIS) for the Cody RMP described the affected environment for long-billed curlews (at pages 234-235), and the potential impact to this species under each alternative. The DEIS included an objective to "maintain and enhance fish and wildlife resources so that... fish and wildlife habitat will be maintained or improved." DEIS at page 47. Consistent with this objective, the DEIS considered imposing seasonal restrictions on lands (see page 87) with important wildlife habitats.

In the Final EIS (FEIS) for the Cody RMP, the BLM considered protection measures for wildlife, including the long-billed curlew. The FEIS evaluated designation of an Area of Critical Environmental Concern (ACEC) named Chapman Bench, which had an objective to (FEIS at page 52):

> *Protect an important long-billed curlew and mountain plover nesting concentration area and adjacent habitat along Sand Coulee.*

In addition, the FEIS described the environmental consequences of the proposed RMP for long-billed curlews at page 85:

> *The quality of production habitat for long-billed curlews and mountain plovers would be reduced in the next ten years by human intrusions and other disturbances from oil and gas activity . . . .*

Consistent with the objectives and decisions in the approved RMP, the Cody Field Office has been applying a Timing Limitation (TL) stipulation to oil and gas leases offered and issued in long-billed curlew habitat areas identified on the RMP map overlays. Parcel -202 includes such a TL stipulation (Notice at page 104).

We find that the Cody Field Office adequately considered the potential impacts to long-billed curlews and appropriately applied mitigation in the form of a TL stipulation to parcel -202, and in conformance with their approved RMP. Contrary to WOC's assertion that the BLM has not addressed "at all" potential resource conflicts arising from oil and gas leasing and protection of long-billed curlew, we find that the record provides adequate information to ensure that the decision-maker is adequately informed about potential impacts to long-billed curlew.

Parcel -189: ". . . this parcel would be located in the area proposed for a Master Leasing Plan (MLP) under the draft Lander RMP. See Lander RMP Draft Environmental Impact Statement at Map 143 . . . . Currently the parcel has controlled surface use stipulations attached to it that relate to paleontological values and threatened, endangered or special status species . . . . But the Beaver Rim area is recognized for many more values than just these . . . . Thus controlled surface use stipulations for [wildlife, geologic, scenic, paleontological, and cultural resource] values should be attached to this parcel. Moreover, under the terms proposed for the MLP . . . the BLM would limit surface disturbance to no more than 5 percent in a township, seek to co-locate new disturbance if possible, and would require that new disturbance be at least 1.2 miles from existing disturbance . . . . Numerous other provisions apply to this MLP area. These limitations too are not reflected in the stipulations currently attached to parcel -189." (WOC Protest at pages 3-4).

Curlew (Numenius americanus). U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication, FWS/BTP-R6012-2009.

[10] Dark-Smiley, D.N., and D. Keinath. 2004. Species Assessment for Long-Billed Curlew In Wyoming. Available at http://www.blm.gov/pgdata/etc/medialib/blm/wy/wildlife/animal-assessmnts.Par.73043.File.dat/Long-billedCurlew.pdf

BLM Response

WOC first brought forward their concerns about this parcel during the EA's public comment period. Resultantly, the WRBHBD responded to WOC's concerns about parcel -189 (which was preliminary parcel number -360) at Appendix F pages 4-5. WOC's concerns relate to offering a parcel within a MLP area (the Beaver Rim MLP Area) while a land use plan revision contemplates additional conservation measures within the MLP area.

The MLP concept originated in guidance from the BLM Washington Office described in the "Leasing Reform" policy.[11] The policy set forth four criteria for MLPs, and described an MLP as:

> *. . . a mechanism for completing the additional planning, analysis, and decisionmaking that may be necessary for areas meeting the listed criteria . . .* [and which] *will reconsider RMP decisions pertaining to leasing.*

The WRBHBD declined to recommend deferral of parcel -189 since, as they explained to WOC in response to the EA comments (EA at Appendix F, page 4):

> *Parcel 360 is within the boundary of the Beaver Rim MLP area but would not be closed to leasing.*

In a November 10, 2011, statewide evaluation of potential Wyoming MLPs[12] the BLM Wyoming determined that the Beaver Rim MLP was a "Category 2" MLP nomination, failing to meet one or more of the MLP criteria. But, as the report indicates (see report at page 22):

> *. . . each of the proposed MLPs are in areas where existing management prescriptions related to oil and gas leasing are addressed in older RMPs currently under revision. The BLM Wyoming State Director is exercising the discretion allowed in IM 2010-117 to evaluate alternatives for these geographic areas along with other relevant data during the preparation of an ongoing LUP revision. BLM will evaluate oil and gas leasing decisions for these areas that address resources of concern and better fit the MLP criteria.*

The report also describes the Beaver Rim MLP (at pages 38-40), stating:

> *To preserve decision space, oil and gas leasing will be deferred in key areas identified in figure 13 until the release of the draft EIS and proposed plan.*

The figures in the report are un-numbered, but the 13th map is located on page 36, and includes a mapped polygon within the Lander Field Office denoting "MLP Leasing Deferral Area." This polygon does not encompass the Beaver Rim MLP. Completing the statewide evaluation and providing the guidance therein, BLM Wyoming has sought to ensure that actions were not taken during the preparation and review of the RMP EIS revision that would limit the choice of reasonable alternatives (40 CFR 1506.1). The DEIS for the Lander RMP was released for public review on

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[11] BLM-Washington Office IM No. 2010-117 ("Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews"). May 17, 2010.

[12] Available at: http://www.blm.gov/style/medialib/blm/wy/programs/energy/og/leasing/reform.Par.2836.File.dat/MLPevaluation.pdf

September 9, 2011, and the comment period closed (after being extended) on January 20, 2012. The Beaver Rim MLP area is included under Alternative D (DEIS at pages 21, 31) and is described in the DEIS as (at page 53):

> *Alternative D applies an MLP only to the Beaver Rim area (143,448 acres; see Map 143) to reduce resource conflicts. Approximately 29,505 acres within the MLP are open to oil and gas leasing subject to an NSO stipulation and 113,943 acres are open to leasing subject to CSU stipulations. Management within the MLP stipulates other requirements designed to protect resource values where there may be a conflict with oil and gas development, such as requiring watershed monitoring to ensure effectiveness of watershed protections.*

The DEIS describes additional protection measures under Alternative D, the BLM's preferred alternative (DEIS at page 15), that would apply to the Beaver Rim MLP area (see pages 78-82).

By offering parcel -189, the BLM seeks to comply with the existing land use plan decision (under which the area encompassed by parcel -189 is open for leasing), while ensuring that actions are not taken that would jeopardize the decision-maker's ability to select from the DEIS's range of reasonable alternatives. The WRBHBD, after considering the guidance provided by the statewide MLP evaluation, recommended to offer parcel -189 upon concluding that offering the 200 acre parcel for lease (<0.1 percent of the MLP area) is not an action prohibited during the RMP revision's NEPA process and would not limit the decision-maker's ability to select from a reasonable range of alternatives. Of note, all of the mineral estate surrounding the 200 acres is currently leased (see Attachment 1), and there are existing active wells within ½-mile of the parcel.

We agree with the conclusions and recommendations given by the WRBHBD, those provided in the statewide evaluation, and for the reasons described above. Offering parcel -189 is in conformance with the approved RMP, will not jeopardize the decision-maker's ability to select from the range of reasonable alternatives being considered in the Lander RMP revision, and is consistent with BLM policy.

ISSUES – BIODIVERSITY CONSERVATION ALLIANCE (BCA)

In our review of BCA's arguments, we found several discrepancies (or possible errors) in the information provided by BCA. As already described, BCA protested seven parcels that are not described for offer in the February 7, 2012, Notice. In their arguments, BCA also protests "certain parcels to be offered at the November 2011 lease auction" (see BCA's Protest at page 1); the protest period for that sale has ended, and the BLM has already responded to and dismissed BCA's protest of the November 2011 lease sale. We note that, in describing the parties to the protest and, presumably, making a case for standing, BCA identifies their members as living in those field office areas where lease parcels "would be offered in the November 2011 lease sale" and as utilizing areas "particularly the Kinney Rim units" (BCA Protest at page 2) which are not located in the field office areas subject to the February 7, 2012, sale. In some cases, as described below, we will dismiss BCA's arguments since they relate to issues raised on parcels that are not being offered, or for sales that have already been conducted. In characterizing the relief they seek, BCA explains that, if the BLM declines to withdraw the protested parcels from the "November 2011 competitive oil and gas lease sale" then BCA requests that the BLM evaluate "the impacts of oil and gas development on wilderness characteristics before the leasing stage" (BCA Protest at page 6, emphasis added).

However, BCA never identified any wilderness characteristics issues in their protest. In replying to BCA's protest, the WSO must necessarily use a rule of reason in responding, since these discrepancies (or possible errors) are interspersed throughout the arguments.

Parcels -279, -280, -281, and -360: ". . . these parcels are within Core Area yet not recommended for deferral due to an absence of suitable sage grouse habitat. Although this decision is consistent with BLM's Wyoming Office sage grouse policy, it ignored the biological reality that oil and gas impacts outside sage grouse suitable habitat can have a negative impact on sage grouse inside suitable habitat . . . . The most scientifically supportable metric for [No Surface Occupancy, or NSO] buffers would be 2 miles from the lek . . . with an additional Timing Limitation Stipulation going out 3 miles from a lek . . . ." (BCA Protest at page 3).

BLM Response

On August 1, 2008, the Wyoming Governor issued Executive Order 2008-2,[13] establishing a "core population area strategy" for sage-grouse in Wyoming, an approach accommodated by the BLM, including in BLM Wyoming's IM No. WY-2010-013. The Core Population Area strategy has been endorsed by the U.S. Fish and Wildlife Service[14]:

> *The Service does indeed believe the "core population area strategy," as outlined in the Implementation Team's correspondence to the Governor, is a sound framework for a policy by which to conserve greater sage-grouse in Wyoming.*

The BLM is a member of the Governor of Wyoming's sage-grouse implementation team and is well aware of the need to protect sage-grouse habitat. The BLM attaches stipulations to leases and Conditions of Approval (COAs) to Applications for Permit to Drill (APDs) at the time of lease development, where appropriate, in order to restrict surface use and occupancy.

BLM Wyoming IM No. WY-2010-013 requires the BLM to conduct a sage-grouse screen on every parcel in order to determine if the parcel should be offered for sale or deferred pending completion of on-going RMP revisions and amendments in all 10 BLM Wyoming field offices. Screening criteria are described in the IM and the results are provided for all parcels in the February 2012 oil and gas lease sale EAs. This screen provides for an objective evaluation of nominated parcels in order to ensure that contiguous blocks of unleased sage-grouse habitat in Core Areas are not leased until the BLM's public RMP revision or amendment[15] processes have been completed, and in order to balance (1) the need to provide energy production from public lands and the jobs energy production provides with (2) the need to ensure the outcomes of the EISs are not prejudiced or the decision-maker's ability to select from a range of reasonable alternatives is not impeded.

The BLM understands that oil and gas leasing is an important implementation decision arising from the approved RMPs with the consequence of granting certain rights to the lessee. However, the BLM

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[13] Wyoming Office of the Governor, Executive Order 2008-2 "Greater Sage-Grouse Core Area Protection." This Executive Order has since been re-issued (most recently as EO 2011-5) and superseded, but the core population area strategy remains in place.

[14] Letter from Brian Kelly (USFWS Wyoming Field Supervisor) to Ryan Lance (Wyoming Office of the Governor), dated May 7, 2008

[15] See 75 FR 30054-30055. May 28, 2010.

also retains certain substantive rights 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 Federal Land Policy Management Act[16] (FLPMA)). Aside from these substantive rights, the BLM is obligated to comply with procedural requirements such as NEPA and other laws such as the Endangered Species Act[17] (ESA) and the National Historic Preservation Act,[18] (NHPA) where applicable to the action or decision at hand. 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.[19] At that time, the BLM will prepare an environmental record of review in order to determine, among other things, any appropriate terms and conditions of approval for the plan of operations submitted by the operator.

The BLM has initiated planning efforts across the range of the Greater sage-grouse in order to ensure that the conservation measures used by the BLM on public lands consider recent scientific studies and conclusions, using an open and public process, and in with due consideration to the BLM's multiple-use and sustained yield mandates under the FLPMA.[20]

These four parcels protested by BCA are located within the State of Wyoming's Core Population Areas for sage-grouse (and are all within the Wind River/Bighorn Basin District Area), but do not meet the criteria described in BLM Wyoming policy and in the oil and gas lease sale EA prepared by the WRBHBD (see EA at 3-19 to 3-20 and Appendix D – "Sage-grouse Screens"). The EA describes potential impacts to sage-grouse and their habitats on these parcels (see EA at page 4-16), and includes application of a seasonal TL stipulation during sage-grouse nesting and early brood-rearing periods (see also Notice at pages 89-92, 96) in accordance with the approved RMPs. The WRBHBD determined that all four of the parcels are greater than 0.6-mile distant from the nearest occupied lek in the Core Area.[21] We find that offering these parcels is in conformance with the approved RMP, complies with current BLM policy, and that a rational basis exists for offering these parcels while the on-going RMP revisions and amendments are being considered.

Parcel -462: "We protest Parcel 462 because it is within Core Area and yet was not recommended for deferral due to an absence of 11 square miles of unleased sage grouse habitat." (BCA Protest at page 3).

BLM Response

This parcel was deferred from this sale and is not described in the Notice.

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[16] 43 U.S.C. § 1701 et seq.
[17] 16 U.S.C. § 1531 et seq.
[18] 16 U.S.C. § 470 et seq.
[19] 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.
[20] See BLM-Washington Office IM No. 2012-044 ("BLM National Greater Sage-Grouse Land Use Planning Strategy"). December 27, 2011.
[21] Using Wyoming Game and Fish Department 2011 Lek data, final parcel numbers -177, -178, and -179 are all located over 2 miles from the nearest occupied lek. Final parcel number -189 is located approximately 1.2 miles from the nearest occupied lek.

Parcels -322 and -329: "We protest parcels 322 and 329 because these parcels are within Core Area, within suitable habitat, in an area at least 11 square miles of unleased habitat, yet were not recommended for deferral . . . ." (BCA Protest at page 4).

BLM Response

These parcels were deferred from this sale and are not described in the Notice.

General: ". . . impacts 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 4).

BLM Response

See previous responses, above; 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 appropriate conservation measures. 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).

Often, where environmental impacts such as those described by BCA remain unidentifiable until exploration activities are proposed, 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, 719-19 (10th Cir. 2009)). Although certain site-specific impacts remain unforeseeable at this time, the analysis in the February 2012 Oil and Gas Lease Sale EA provides additional disclosure and analysis of the anticipated environmental impacts associated with our decision to offer and possibly issue leases for these parcels.

General: "BLM has repeatedly failed to provide any analysis, through field experiments or literature reviews, examining the effectiveness of the standard quarter-mile buffers where disturbance would be 'avoided.' There is substantial new information in recent studies to warrant supplemental NEPA analysis of the impacts of oil and gas development to sage-grouse." (BCA Protest at page 5).

BLM Response

None of the protested parcels include a stipulation for sage-grouse protection that includes a ¼-mile buffer (presumably of leks), and so this argument is dismissed as moot.

General: "The restrictions contained in IM No. WY-2010-012 come nowhere close to offering sufficient on-the-ground protection to sage-grouse leks." (BCA Protest at page 5).

BLM Response

The conservation measures described in IM No. WY-2010-012 (before its expiration and subsequent revision) are not the subject of this protest and, regardless, are immaterial to the decision at hand. That policy applies to projects at the time a specific lease development proposal is submitted to the BLM, as acknowledged in the EA (at page 4-6):

> *In the event these parcels are leased and APDs are pursued, Instruction Memorandum WY-2010-012 (BLM 2010), or similar guidance updated and modified over time, would apply to reduce surface disturbing and disruptive APD activities.*

The operative policy that applies to the decision whether to offer or defer parcels for the purpose of sage-grouse habitat management is provided in IM No. WY-2010-013.

General: ". . . it is in all interested parties favor . . . for BLM to determine specific 'modifications' prior to issuing leases, such as NSO restrictions. If the BLM fails to do so through site-specific environmental review, before the APD stage, the agency will violate the 'jeopardy' prohibition in the Endangered Species Act . . . ." (BCA Protest at page 6).

BLM Response

Not only is it in the BLM and the public's interest to determine specific "modifications" to the lease terms, such as NSO stipulations, prior to lease issuance, it is also required by regulation (see 43 CFR 1601.5(n)(4)) and policy (BLM Land Use Planning Handbook H-1601-1 at Appendix C, page 23):

> [The Land Use Plan must identify the following] . . . *(2) Areas open to leasing, subject to moderate constraints such as seasonal and controlled surface use restrictions . . . (3) Areas open to leasing, subject to major constraints such as no surface occupancy stipulations . . . .*

In this case, the BLM completed RMPs that determined the areas encompassed by the protested parcels are open to oil and gas leasing, the specific stipulations and constraints that apply to these areas, and resource condition objectives for the planning area. To that end, the BLM has complied with law, our regulations, and BLM policy in publishing the Notice that describes the parcels to be offered at the February 7, 2012, competitive oil and gas lease sale.

Aside from completing the RMP EISs, the BLM prepared EAs analyzing and disclosing the purpose and need, alternatives, affected environment, and environmental consequences (to the extent reasonably predicted and anticipated) for offering and issuance of the parcels described in the Notice. The EAs included site-specific review of individual parcels and potentially-affected resources.

Furthermore, as previously described, 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, BLM conducts site-specific environmental review, and any APD

will include (at a minimum) public posting (see 43 CFR 3162.3-1(g)). For these reasons, we disagree with BCA's conjecture that the BLM will violate the ESA, or any other applicable law.

DECISION

After a careful review, it was determined that all five of the protested parcels described above and in the Notice of Competitive Oil and Gas Lease Sale will be offered at the February 7, 2012, sale. The protests to these parcels are dismissed for the reasons described, above.

Of note, but of no consequence to the five protested parcels described above, the BLM Wyoming has reviewed recent policy issued by the BLM-Washington Office,[22] and coordinated with representatives from the State of Wyoming on BLM sage-grouse policy. As a result of these efforts, the BLM Wyoming has re-evaluated the 205 parcels described in the Notice in accordance with this policy, and determined that portions of five additional parcels located within Core areas will be deferred. An information notice was released to the public on January 25, 2012, describing these deferrals. None of the five parcels affected by this change were protested in this sale.

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 (at the above address) 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 below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 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 regulation, 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 protestor's success on the merits;

[22] See IM No. 2012-043 ("Greater Sage-Grouse Interim Management Policies and Procedures"). December 22, 2011. See also IM No. 2012-044 ("BLM National Greater Sage-Grouse Land Use Planning Strategy"). December 27, 2011.

3. The likelihood of immediate and irreparable harm if the stay is not granted; and

4. Whether the public interest favors granting the stay.

Larry Claypool
Deputy State Director,
Minerals and Lands

2 - Attachments
1 – Map of Parcel WY-1202-189
2 – Form 1842-1

cc:
State Offices
District Manager, Wind River/Bighorn Basin District
Field Manager, Cody Field Office
Field Manager, Lander Field Office
Field Manager, Worland Field Office
District Manager, High Plains District
Field Manager, Buffalo Field Office
Field Manager, Casper Field Office
Field Manager, Newcastle Field Office
Deputy State Director, Division of Minerals and Lands (920)
Deputy State Director, Division of Resources (930)
Chief, Branch of Fluid Minerals, Land, and Appraisal (921)
Chief, Branch of Leasing and Adjudication (923) e-mail & final copy on letterhead
Kelly Roberts (923) e-mail & final copy on letterhead
Travis Bargsten (921) e-mail & final copy on letterhead

Feb 2012 Protest
Attachment 1
Legend
Feb 2012 Final Parcels
Existing Oil and Gas Leases
Leased
Leased - Held By Production
OG Units (09/2011)
Active Oil and Gas Well
Federal Fluid Mineral Estate
WY-1202-189
WY-1202-189
Lander
01/23/2012
Drafted by: T. Bargsten
1:60,000
Miles
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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, PO 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)