

THE
WILDERNESS
SOCIETY

Central Rockies Regional Office
1660 Wynkoop Street Suite 850
Denver, CO 80202
Ph. 303) 650-5818
Fx. 303) 650-5942

RECEIVED
MAR 02 2012
BY: LB

Fax TO: BLM WY Fax No. (307) 776-6203

Fax FROM: The Wilderness Soc.

Date: 03/02/12

Number of Pages: 9 inc. cover

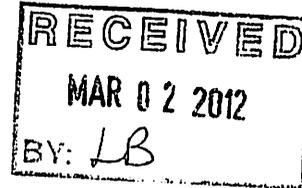
Protest of (7) parcels being offered in the
May 2012 oil + Gas Lease Sale



March 2, 2012

VIA FAX ((307) 775-6203)

Mr. Don Simpson
 Director, Wyoming State Office
 Bureau of Land Management
 5353 Yellowstone Road
 Cheyenne, WY 82009



Re: **Protest of the Bureau of Land Management's Decision to Offer Seven (7) Parcels in Wyoming's May 2012 Oil and Gas Lease Sale**

Pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, The Wilderness Society ("TWS") protests the Bureau of Land Management's decision to offer seven parcels in Wyoming's May 2012 oil and gas lease sale.¹ Those parcels are assigned the following numbers in the Sale Notice, and unless otherwise noted are referred to throughout this protest as the "Protested Parcels":

	PARCEL NUMBER	FIELD OFFICE
1	WY-1205-041	Rawlins
2	WY-1205-042	Rawlins
3	WY-1205-049	Rawlins
4	WY-1205-050	Rawlins
5	WY-1205-051	Rawlins
6	WY-1205-052	Rawlins
7	WY-1205-053	Rawlins

INTRODUCTION

I. INTERESTS OF THE WILDERNESS SOCIETY

TWS protects wilderness and inspires Americans to care for our wild places. TWS represents more than a half million members and supporters nationwide, all of whom have a great interest in the protection and enhancement of the natural values and recreational opportunities provided by our public lands, including lands that are included in or may be affected by Wyoming's May 2012 lease sale.

II. AUTHORIZATION TO FILE THIS PROTEST

Nada Culver is Senior Counsel and Director of TWS's BLM Action Center. She is authorized to file this protest on behalf of TWS and its members.

¹ The seven parcels total approximately 12,424 acres.

Mr. Don Simpson, BLM
March 2, 2012
Page 2

STATEMENT OF FACTS

I. DURING THE RAWLINS RESOURCE MANAGEMENT PLAN REVISION, THE BLM FINDS THAT LANDS SURROUNDING THE ADOBE TOWN WSA CONTAIN WILDERNESS CHARACTERISTICS.

The Bureau of Land Management ("BLM") completed a revision to the Rawlins Resource Management Plan ("RMP") in 2008. At the outset of the revision process, the BLM prepared a Management Situation Analysis ("MSA") for the Rawlins Field Office—essentially a summary of existing resource conditions and management. According to the MSA:

[s]ince consideration of the Adobe Town WSA in the 1988 Wilderness [environmental impact statement], additional information has been submitted to BLM concerning adjacent lands that also potentially contain wilderness characteristics. Pursuant to regulations, BLM ground checked this information and has determined that portions of the proposal do indeed contain wilderness characteristics.

Rawlins MSA at 3-110, 111. The Draft RMP elaborated on this finding, and indicated that approximately 31,510 acres on the "fringe" of the Adobe Town WSA contained wilderness characteristics. Rawlins Draft RMP at 4-230. The Draft RMP also included measures that would have protected those characteristics. *See id.* at 4-187 (proposing VRM Class II designations for lands with wilderness characteristics). A portion of parcel 042 is located in the Adobe Town "fringe" and contains wilderness characteristics. May 2012 Lease Parcels Final EA at 87.

In the Final RMP, however, the BLM struck "measures to provide protection for any wilderness characteristics" from the range of alternatives. Rawlins Final RMP at 2-11. BLM did so because it "found the lands to be unmanageable as wilderness because of preexisting oil and gas leases. . ." *Id.* The BLM also cited Instruction Memorandum ("IM") 2003-275 – Change 1 as authorizing the withdrawal of alternatives that would have protected lands with wilderness characteristics. *See, e.g.,* Rawlins Final RMP at A38-161 (citing the IM for the proposition that even though certain areas in the Rawlins Field Office satisfy wilderness criteria, "they are not of sufficient value to warrant management for wilderness character."); *id.* at A38-327 ("The BLM has no mandate to manage for roadlessness.").

II. THE BLM PROPOSES TO DEFER PARCELS IN THE VICINITY OF THE ADOBE TOWN WSA IN ORDER TO CONDUCT WILDERNESS INVENTORIES.

Sometime last year the oil and gas industry nominated seven parcels in the vicinity of the Adobe Town WSA to the November 2011 oil and gas lease sale.² As required by IM 2010-117, the BLM drafted an

² Those seven parcels are parcels 058 through 061 and 063 through 065. Rawlins West Lease Parcels, Leases & Wells Map, available at http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/og/1111.Par.22441.File.dat/09_West_RFO_Lease%20Parcels_Leases_Wells.pdf.

Mr. Don Simpson, BLM
March 2, 2012
Page 3

environmental assessment ("EA") to evaluate the impacts of the nominations. In the Draft EA, the BLM determined that the parcels were "located in areas that meet size requirement [sic] for LWCs." Nov. 2011 Lease Parcels Draft EA at 69. Because the BLM lacked a current wilderness inventory for the area, it proposed to defer all seven parcels from the sale in order to inventory their wilderness characteristics. *Id.* at 95.

III. THE BLM "LOCATES" A MISSING WILDERNESS INVENTORY FOR KINNEY RIM SOUTH.

That inventory never happened, however. Instead, after issuing the Draft EA, the BLM "located a 2002 wilderness characteristics inventory for the South Kinney Rim CWP," which concluded that an area encompassing the seven parcels lacked wilderness characteristics because of an "abundance of human impacts. . . ." Nov. 2011 Lease Parcels Final EA at 71. As a result, the seven parcels were not deferred from the lease sale, as originally proposed by the BLM. The BLM did not append the 2002 inventory to the Final EA. Nor did the Final EA evaluate whether the findings of the 2002 wilderness inventory were consistent with IM 2011-154—the applicable guidance document on inventorying and considering lands with wilderness characteristics.

IV. BLM ISSUES NEW GUIDANCE ON INVENTORYING AND CONSIDERING LANDS WITH WILDERNESS CHARACTERISTICS DURING THE NEPA PROCESS.

In July 2011, the BLM issued new guidance (IM 2011-154) on inventorying and considering wilderness characteristics "in land use plans and when analyzing projects under the National Environmental Policy Act (NEPA)." IM 2011-154's procedures and standards are mandatory and override previous policy, including IM 2003-275 – Change 1. BLM adhered to IM 2003-275 – Change 1 when it revised the Rawlins RMP.³ See, e.g., Rawlins Final RMP at A38-161.

There are significant differences between IM 2011-154 and IM 2003-275 – Change 1, including several differences that bear on this protest:

- The "Naturalness" Criterion: "Naturalness" is a criteria used to determine whether an area possesses wilderness characteristics. See 16 U.S.C. § 1131(c) (defining "wilderness" in part as an area "which . . . generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable"). Under IM 2003-275 – Change 1, only areas with "a high degree of naturalness" and "where the imprint of human activity is substantially unnoticeable" were considered "natural."

By contrast, IM 2011-154 directs the BLM to "[a]void an overly strict approach to assessing naturalness" because "[s]ome human works are acceptable so long as they are substantially unnoticeable." Such works include fencing, spring developments, certain linear disturbances and stock ponds. Furthermore, when assessing "naturalness," IM 2011-154 requires the BLM to "document existing conditions as opposed to potential future conditions."

- Impacts of Valid Existing Rights: IM 2003-275 – Change 1 lacked guidance on whether and to what extent the BLM should consider valid existing rights as impacts on wilderness

³ IM 2003-275 – Change 1 also expired by its terms on September 30, 2004.

Mr. Don Simpson, BLM
March 2, 2012
Page 4

characteristics. IM 2011-154 supplies this guidance: "Undeveloped ROWs and similar undeveloped possessory interests (e.g., mineral leases) are not treated as impacts to wilderness characteristics because these rights may never be developed."

- **External Impacts:** Similarly, IM 2003-275 – Change 1 contained no guidance on whether and to what extent the BLM should consider external impacts when evaluating the manageability of an area with wilderness characteristics. IM 2011-154 again supplies this guidance, and states that external impacts (visual and auditory) "should not be a determining factor when analyzing the manageability of [areas with wilderness characteristics] unless these impacts are pervasive and omnipresent."

V. THE BLM CONFIRMS THAT LANDS SURROUNDING THE ADOBE TOWN WSA CONTAIN WILDERNESS CHARACTERISTICS IN THE OIL SHALE AND TAR SANDS DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT.

Just over a month ago, the BLM released the Draft RMP Amendments and Draft Programmatic Environmental Impact Statement for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming ("Oil Shale PEIS"). The Oil Shale PEIS evaluates areas with oil shale resources that are managed by the Rawlins Field Office and discloses whether any of those areas contain wilderness characteristics. According to the Oil Shale PEIS, there are four such areas in the Rawlins Field Office, all of which surround the Adobe Town WSA: the Adobe Town Very Rare or Uncommon Area (96,183 acres), Kinney Rim North (57,063 acres), Kinney Rim South (77,392 acres) and Skull Creek (2,535 acres). Oil Shale PEIS at 3-36.

Parcels 041 and 042 are located in the Adobe Town Very Rare or Uncommon Area, and parcels 049 through 053 are located in Kinney Rim South. Those parcels, along with the other wilderness characteristic areas in the Rawlins Field Office, are closed to oil shale and tar sands development in the Oil Shale PEIS's preferred alternative. "Should commercial development occur on these lands, the identified wilderness characteristics in both the areas that are developed and those that border the developed areas would be lost." *Id.* at 6-5.

STATEMENT OF REASONS

TWS is filing this protest because the BLM continues to neglect its legal duties concerning certain wilderness quality lands in and around Adobe Town. Those duties arise from NEPA, the Federal Land Policy and Management Act ("FLPMA") and IM 2011-154. For the following reasons, the BLM must defer the Protested Parcels from the lease sale.

1. OFFERING THE PROTESTED PARCELS IN THE MAY 2012 LEASE SALE WOULD VIOLATE NEPA.
 - A. The Final EA Lacks An Accurate Description of the Affected Environment.

The Final EA does not accurately portray the wilderness characteristics of the Protested Parcels. Under NEPA, the BLM must provide "high quality" information "to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). As part of that duty, the BLM must "succinctly describe the environment of the area(s) to be affected" by proposed actions. *Id.* § 1502.15,

Mr. Don Simpson, BLM
March 2, 2012
Page 5

Without such a description, "there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA." *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988).

According to the Oil Shale PEIS, the Protested Parcels contain wilderness characteristics. Oil Shale PEIS at 3-34, 35. Yet, the Final EA provides a contradictory assessment, stating that all of the parcels except for a portion of parcel 042 are located in areas "determined not to have wilderness characteristics." Final EA at 87. Thus, the BLM must defer the Protested Parcels from the lease sale in order to account for the findings of the Oil Shale PEIS.

Additionally, the BLM has based its description of the wilderness characteristics of the Protested Parcels on a wilderness inventory that does not comply with IM 2011-154. This is fully explained in section II below; however, the BLM must defer the Protested Parcels for the additional reason that it must update its wilderness inventory for the area and develop an appropriate description of the parcels based on that inventory.

B. The BLM Has Not Taken A Hard Look at Impacts on Wilderness Characteristics.

NEPA requires the BLM to assess the direct, indirect and cumulative environmental impacts of proposed actions, taking a "hard look" at environmental consequences and performing an analysis commensurate with the scale of the action at issue. 42 U.S.C. § 4321 et seq.; 40 C.F.R. § 1508.8; see also *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). As described in the section above, the BLM has not adequately described the wilderness characteristics of the Protested Parcels. For this reason, the Final EA lacks an analysis of the direct, indirect and cumulative impacts of the lease sale on the Protested Parcels.

C. The Final EA Lacks A Reasonable Range of Alternatives.

The BLM has not evaluated a reasonable range of alternatives for protecting the wilderness characteristics of the Protested Parcels. Under NEPA, the BLM must consider a broad range of alternatives to mitigate environmental impacts. 40 C.F.R. § 1502.14(a); see also *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 72-73 (D.C. Cir. 2011) (requiring the BLM to consider a reasonable range of alternatives for oil and gas activity); IM 2010-117 (requiring consideration of "alternatives to the proposed action that may address unresolved resource conflicts.") Additionally, under current policy, the BLM must fully "consider" wilderness characteristics during planning actions and evaluate a range of measures to protect wilderness characteristics during the leasing process, including measures not contained in existing RMPs. See IM 2011-154 at Att. 2; IM 2010-117 at III. E., F. Because the BLM has not considered measures to protect the wilderness characteristics of the Protested Parcels, such as leasing with no-surface occupancy stipulations, it must defer the Protested Parcels from the lease sale.

D. The BLM Has Not Complied with 40 C.F.R. § 1502.24.

NEPA requires the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analysis in environmental impacts statements" and EAs. 40 C.F.R. § 1502.24. "Where the information" provided by the BLM is "so incomplete or misleading that the decisionmaker and the

Mr. Don Simpson, BLM
March 2, 2012
Page 6

public could not make an informed comparison of the alternatives, revision of an EIS [or EA] may be necessary to provide a reasonable, good faith, and objective presentation of the subjects required by NEPA." *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988) (citing *Johnston v. Davis*, 698 F.2d 1088, 1095 (10th Cir. 1983)) (internal quotations omitted).

Here, the BLM has released contradictory findings on whether the Protested Parcels contain or do not contain wilderness characteristics. Compare Oil Shale PEIS at 3-36 with May 2012 Lease Parcels Final EA at 87. This contradiction undermines the integrity of the analysis and decisions for the May 2012 lease sale, and provides the public with little assurance that offering the Protested Parcels "would not impact wilderness characteristics. . . ." May 2012 Lease Parcels Final EA at 126; see also *Van Abbema v. Fornell*, 807 F.2d 633, 639 (7th Cir. 1986) (warning that if an agency "bases its conclusions on entirely false premises or information, even when its attention is specifically directed to possible defects in its information, we would have difficulty describing its conclusions as reasoned; we would have to call them arbitrary and capricious."). Thus, to insure the professional integrity of its environmental analysis, the BLM must defer the Protested Parcels from the lease sale.

II. AS PROPOSED, THE MAY 2012 LEASE SALE VIOLATES FLPMA AND IM 2011-154.

A. The BLM Has Not Fulfilled Its Duty to Inventory and Consider the Wilderness Characteristics of the Protested Parcels.

FLPMA requires the BLM to inventory and consider lands with wilderness characteristics during the land use planning process. 43 U.S.C. § 1711(a); see also *Ore. Natural Desert Ass'n v. BLM*, 531 F.3d 1114, 1119 (9th Cir. 2008). IM 2011-154 contains mandatory guidance on implementing that requirement. Because the BLM has not complied with FLPMA or IM 2011-154, it must defer the Protested Parcels from the lease sale.

1. The BLM has not properly considered the wilderness characteristics of parcel 042.

The BLM has not complied with IM 2011-154's requirements for considering the wilderness characteristics of parcel 042 during the land use planning process. Parcel 042 is adjacent to the Adobe Town WSA and contains approximately 145 acres of land with wilderness characteristics. May 2012 Lease Parcels Final EA at 87. In the Rawlins RMP, the BLM "found the lands to be unmanageable as wilderness because of preexisting oil and gas leases. . . ." Rawlins Final RMP at 2-11. The BLM also found that parcel 042 cannot be managed for the protection of wilderness characteristics because it borders existing oil and gas leases, some of which are held by production. *Id.* at App. F-28, 29. IM 2011-154 does not allow the BLM to assign dispositive weight to either of those findings, however.

First, IM 2011-154 expressly prohibits the BLM from treating existing oil and gas leases "as impacts to wilderness characteristics because these rights may never be developed." IM 2011-154, Att. 1 at 8; see also *id.* at 2 (requiring the BLM to "document existing conditions as opposed to potential future conditions."). Second, IM 2011-154 prohibits the BLM from treating external impacts, such as oil and gas production, as a "determining factor . . . unless these impacts are pervasive and omnipresent." IM 2011-154, Att. 2 at 2. BLM made no finding in the Rawlins RMP or Final EA that existing oil and gas production in the vicinity of parcel 042 is "pervasive or omnipresent." Thus, because BLM's

Mr. Don Simpson, BLM
 March 2, 2012
 Page 7

consideration of lands with wilderness characteristics in the Rawlins RMP does not comport with IM 2011-154, the BLM must defer parcel 042 from the lease sale.

B. The BLM continues to rely on an outdated wilderness inventory of the Protested Parcels.

The BLM continues to rely on an outdated wilderness inventory of the Protested Parcels that does not comply with IM 2011-154 and is contradicted by the Oil Shale PEIS. *See N. Plains Res. Council v. Surface Transp. Bd.*, No. 97-70037, slip op. at 24-32 (9th Cir. Dec. 29, 2011) (rejecting agency's reliance on "stale" inventory data). The BLM completed that inventory in 2002 and found that the Protested Parcels lacked the requisite "naturalness." In doing so, however, the BLM relied on the criteria from IM 2003-275 – Change 1,⁴ which is no longer in force, and on factors that IM 2011-154 instructs the BLM to either ignore or downplay.

For example, in the 2002 wilderness inventory, the BLM repeatedly cites linear disturbances and grazing features as evidence that the Protested Parcels lack "naturalness." Yet, those are the very sorts of "human works" that "are acceptable" under IM 2011-154 "so long as they are substantially unnoticeable." IM 2011-154, Att. 1 at 5. Moreover, the 2002 wilderness inventory is directly at odds with the findings of the Oil Shale PEIS, where the BLM found that the Protested Parcels contain wilderness characteristics. Oil Shale PEIS at 3-36. Thus, as required by IM 2011-154, the BLM must defer the Protested Parcels from the lease sale in order to update its wilderness inventory for the area.

B. The Rawlins RMP is Flawed and Cannot Support A Decision to Lease the Protested Parcels.

The BLM must comply with approved land use plans unless they are inconsistent with applicable law. 43 U.S.C. § 1732(a); *see also New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 711 (10th Cir. 2009) (striking down a land use plan amendment opening an environmentally sensitive area to leasing, because the BLM violated NEPA). Here, the BLM opened lands with wilderness characteristics to oil and gas leasing through an RMP revision without considering "measures to provide protection for any wilderness characteristics of lands in addition to the previously established WSAs" in any alternatives. Rawlins Final RMP at 2-11; May 2012 Lease Parcels Final EA at 126. That decision violated NEPA. *See* 40 C.F.R. § 1502.14(a) (requiring consideration of a reasonable range of alternatives); *New Mexico ex rel. Richardson*, 565 F.3d at 711 (requiring the BLM to consider a "no leasing" alternative for an environmentally sensitive area). Consequently, the BLM must defer the Protested Parcels from the lease sale until it corrects the deficient planning analysis.

Moreover, the BLM cannot claim, as it does in the Final EA, that the Rawlins RMP adequately protects wilderness characteristics from the impacts of oil and gas leasing and development. Final EA at 127 ("One of those stipulations is a Controlled Surface Use stipulation that provides for the protection of the Adobe Town Dispersed Recreation Use Area, which would include the LWC values in the southern portion of the parcel 46."). There is simply no support for such a claim in the Rawlins RMP. *See* Rawlins ROD and Approved RMP at 1-3 ("The BLM Approved RMP was selected from an alternative in the Proposed RMP/Final EIS that did not include management for wilderness characteristics.").

⁴ *See, e.g.,* Rawlins Final RMP at A38-152 (explaining that "the Adobe Town fringe areas . . . do not possess wilderness characteristics" because they do not meet the criteria set forth in IM 2003-275 – Change 1).

Mr. Don Simpson, BLM
March 2, 2012
Page 8

CONCLUSION

For the foregoing reasons, the BLM must defer the Protested Parcels from the May 2012 lease sale.

Sincerely,

Nada Culver
Director and Senior Counsel, BLM Action Center
The Wilderness Society
1660 Wynkoop Street, Suite 850
Denver, CO 80202
303-650-5818 Ext. 117

TI Hays
On Behalf of The Wilderness Society
1660 Wynkoop Street, Suite 850
Denver, CO 80202
303-650-5818 Ext. 131