



# 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)  
August 2013 Protest

AUG 05 2013

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Biodiversity Conservation Alliance  
P.O. Box 1512  
Laramie, Wyoming

### DECISION

#### PROTESTS DISMISSED; ALL PARCELS WILL BE OFFERED FOR SALE

On June 5, 2013, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received a single protest from Biodiversity Conservation Alliance (BCA)<sup>1</sup> to five oil and gas lease sale parcels (parcel numbers WY-1308-093, -094, -095, -098, and -100)<sup>2</sup> planned to be offered at the August 6, 2013 competitive oil and gas lease sale (August 2013 Sale). The parcels the BLM plans to offer are described in the WSO's Notice of Competitive Oil and Gas Lease Sale for August 6, 2013 (Sale Notice) that was published and released to the public on May 8, 2013.<sup>3</sup>

The Sale Notice describes the manner in which protests will be considered, and requires (at page viii):

*A protest must state the interest of the protesting party in the matter.*

The BLM's regulations addressing protests of competitive oil and gas lease sales (at 43 CFR §3120.1-3) do not describe any limitations as to who may protest inclusion of lands in a sale notice.<sup>4</sup> Recently, the issue of standing for purposes of appealing a BLM decision to dismiss and deny lease sale protests was addressed by the Interior Board of Land Appeals (IBLA). In *Biodiversity Conservation Alliance et al.* (183 IBLA 97, decided January 8, 2013), the IBLA evaluated the standing of the appellants to challenge the BLM's decisions to dismiss and deny protests related to certain oil and gas lease sale parcels, and determined (183 IBLA 97, 108):

<sup>1</sup> BCA indicated in their letter that there are two other parties to their protest (Californians for Western Wilderness and Rocky Mountain Wild), and the protest states that BCA's representative (Erik Molvar) is "signing on behalf of" these two organizations; however, The August 2013 Competitive Oil and Gas Sale Booklet provides (at page ix.): "If the party signing the protest is doing so on behalf of an association... the signing party must reveal the relationship between them." Because BCA's protest does not do so for the other two organizations, we consider the protest to be submitted solely by BCA.

<sup>2</sup> BCA also indicated (at page 2 of their protest) that they would "waive" their protest to parcel WY-1308-068 if it had been partially deferred. This parcel (which was reviewed as preliminary parcel number -089) was partially deferred as described in the BLM High Plains District's Environmental Assessment (EA), version 2, at page 5 such that no area remains with the greater sage-grouse Core Areas. See also Attachment 1. As a result, the WSO considers the protest to this parcel as waived by BCA, and will not evaluate it further.

<sup>3</sup> See press release, available at: [http://www.blm.gov/wy/st/en/info/news\\_room/2013/may/08oglist.html](http://www.blm.gov/wy/st/en/info/news_room/2013/may/08oglist.html).

<sup>4</sup> Other BLM regulations pertaining to administrative reviews of agency decisions do, in some cases, provide an indication of who may bring a request for review of the BLM's decision. For example, the BLM's State Director Review (SDR) regulations for onshore oil and gas operations (at 43 CFR §3165.3(b)) indicate that a requestor must be an "adversely affected party."

*...since the BLM decision at issue involves the leasing of several parcels of land for oil and gas purposes, each of the appellants must show an adverse effect as a result of the leasing of each parcel to which it objects, in order to be recognized as having standing to appeal the decision to lease that parcel.*

In BCA's protest of the 5 parcels from the August 2013 Sale, it did not provide to the BLM "colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, sufficient to establish a causal relationship between the approved action and the injury alleged" (183 IBLA 97, 107). Nonetheless, given the BLM's directions to the public in the Sale Notice regarding submittal of protests, and the lack of specific agency guidance for adjudicating when an individual or group may have standing to protest lease parcels, the BLM has decided to answer the specific arguments made by BCA. However, the BLM does so with the reservation that BCA may not have standing to bring an appeal to the IBLA of our protest decision.

The BLM received nominations for the August 2013 Sale until September 21, 2012. The August 2013 Sale includes unleased Federal fluid mineral estate located in the BLM Wyoming's High Plains and Wind River/Bighorn Basin Districts. After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the field offices 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 an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.<sup>5</sup>

During the BLM's review of the August 2013 parcels, the WSO independently screened each of the parcels, confirmed plan conformance,<sup>6</sup> coordinated with the State of Wyoming Governor's Office and Game and Fish Department, confirmed compliance with 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 August 2013 Sale EAs (High Plains District EA No. WY-070-EA13-27, Wind River/Bighorn Basin District EA No. DOI-BLM-WY-R010-2013-0014-EA), along with draft, unsigned Findings of No Significant Impact (FONSI)s<sup>7</sup> were released on January 25, 2013, for a 30-day public review period, ending February 25, 2013. BCA submitted comments to the BLM for both EAs. The EAs tied to the existing field office/resource area RMPs and their respective Environmental Impact Statements (EISs).

BLM Wyoming IM No. WY-2012-019 (at pages 13-15 and the IM's attachment number 7)<sup>8</sup> requires the BLM to conduct a sage-grouse screen on every reviewed oil and gas parcel to determine if the parcel should be offered for sale or deferred pending completion of the on-going RMP amendments and plan revisions in all 10 BLM Wyoming field offices. Screening criteria are described in the IM and the results are provided for all parcels in the August 2013 oil and gas lease sale EAs. This screen provides for an

<sup>5</sup> <http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/2013/august.html>

<sup>6</sup> 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.

<sup>7</sup> 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. Since the RMP EISs have already evaluated potentially significant impacts arising from the BLM's land use planning decisions, the BLM anticipates a "finding of no new significant impacts." See 43 CFR 46.140(c).

<sup>8</sup> IM No. WY-2012-019 ("Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Included the Federal Mineral Estate"), dated February 10, 2012.

objective, repeatable evaluation of nominated parcels 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 processes have been completed, and 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 designed to enhance protection of sage-grouse habitat is not impeded.

## ISSUES – BIODIVERSITY CONSERVATION ALLIANCE (BCA)

1. **“We protest the parcels 68, 93, 94, 95, 98, and 100 within sage grouse Core Areas.” (BCA Protest at page 2)**

### BLM Response

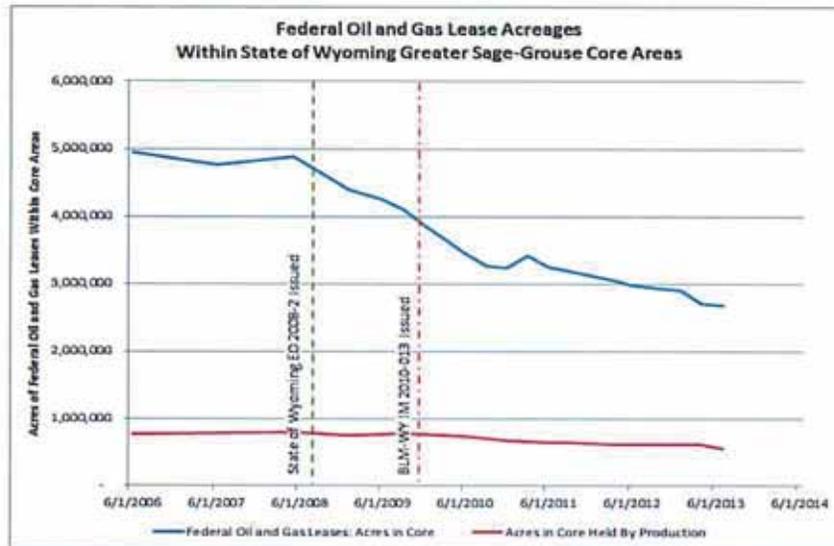
We have determined that none of the parcels protested by BCA are actually located in State of Wyoming-designated greater sage-grouse Core Population Areas (Core Areas).<sup>9</sup> Since the Core Area boundaries have not been surveyed or monumented, the BLM uses the best-available information: a set of GIS data published by the Wyoming Game and Fish Department. The portions of these parcels nominated within Core Areas for the August 2013 Sale have been deferred by the Wyoming State Office, as described in the EAs (see High Plains District EA v.2 at pages 3-6, and Wind River/Bighorn Basin District EA v.2 at Appendix C), and as re-confirmed by the WSO through review of the BLM's final GIS shapefiles<sup>10</sup> (see also Attachments 1-3 to this decision). Although BCA continues to challenge the BLM's continued leasing of parcels within Core Areas, the area encompassed by Federal oil and gas leases within Core Areas is currently the lowest it has been since before the Core Area strategy was issued by the Governor of Wyoming, and as adopted by the BLM:<sup>11</sup>

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<sup>9</sup> The State of Wyoming's current Core Area boundaries are described by the State as “Version 3.” See <http://gf.state.wy.us/web2011/wildlife-1000382.aspx>

<sup>10</sup> [http://www.blm.gov/wy/st/en/resources/public\\_room/gis/datagis/state/ogparc-2013/aug2013final.html](http://www.blm.gov/wy/st/en/resources/public_room/gis/datagis/state/ogparc-2013/aug2013final.html)

<sup>11</sup> These data represent GIS analysis of the BLM's Federal oil and gas leasing data from June 1, 2006 through July 1, 2013. To obtain these data, the WSO utilized twenty GIS shapefiles representing the extent of Federal oil and gas leasing within Wyoming at varying (but generally 3-month) intervals. The shapefiles were clipped to Version 3 Core Area boundaries, and the total acreages of the Federal oil and gas leases in Core Areas were calculated and summed, first for all leases and second for those leases held by production. These data indicate that approximately 17% of the 15.3-million acre Core Area is leased (as of July 1, 2013) for Federal oil and gas development, down from a high of approximately 32% in May of 2008. These same data indicate that approximately 4% of the Core Area is currently in held by production status under a Federal oil and gas lease.



Due to lease expirations, lease terminations, and the relatively subdued pace of new leasing in Core Areas, the amount of Federal oil and gas estate leased by the BLM in Core Areas has fallen by 45 percent since the time the State of Wyoming issued the first sage-grouse Core Population Area Executive Order in August of 2008. The relatively subdued pace of new leasing in Core Areas is the direct result of the application of the BLM's sage-grouse leasing screen, whereby many parcels in recent sales have been deferred from sale until the sage-grouse RMP amendments and on-going plan revisions are completed.

## DECISION

After a careful review, it was determined that all of the protested parcels will be offered at the August 6, 2013 sale. The protests to these parcels are dismissed for the reasons described, above.

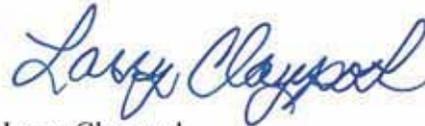
This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (Attachment 7). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days 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;
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

4 - Attachments

- 1 - Map of Parcel WY-1308-068
- 2 - Map of Parcels WY-1308—093, -094, -095
- 3 - Map of Parcels WY-1308-098, -100
- 4 - 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

District Manager, High Desert District

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

Sue Moberly (923) e-mail & final copy on letterhead

Travis Bargsten (921) e-mail & final copy on letterhead

**August 2013 Oil & Gas Lease Sale  
Attachment 1**

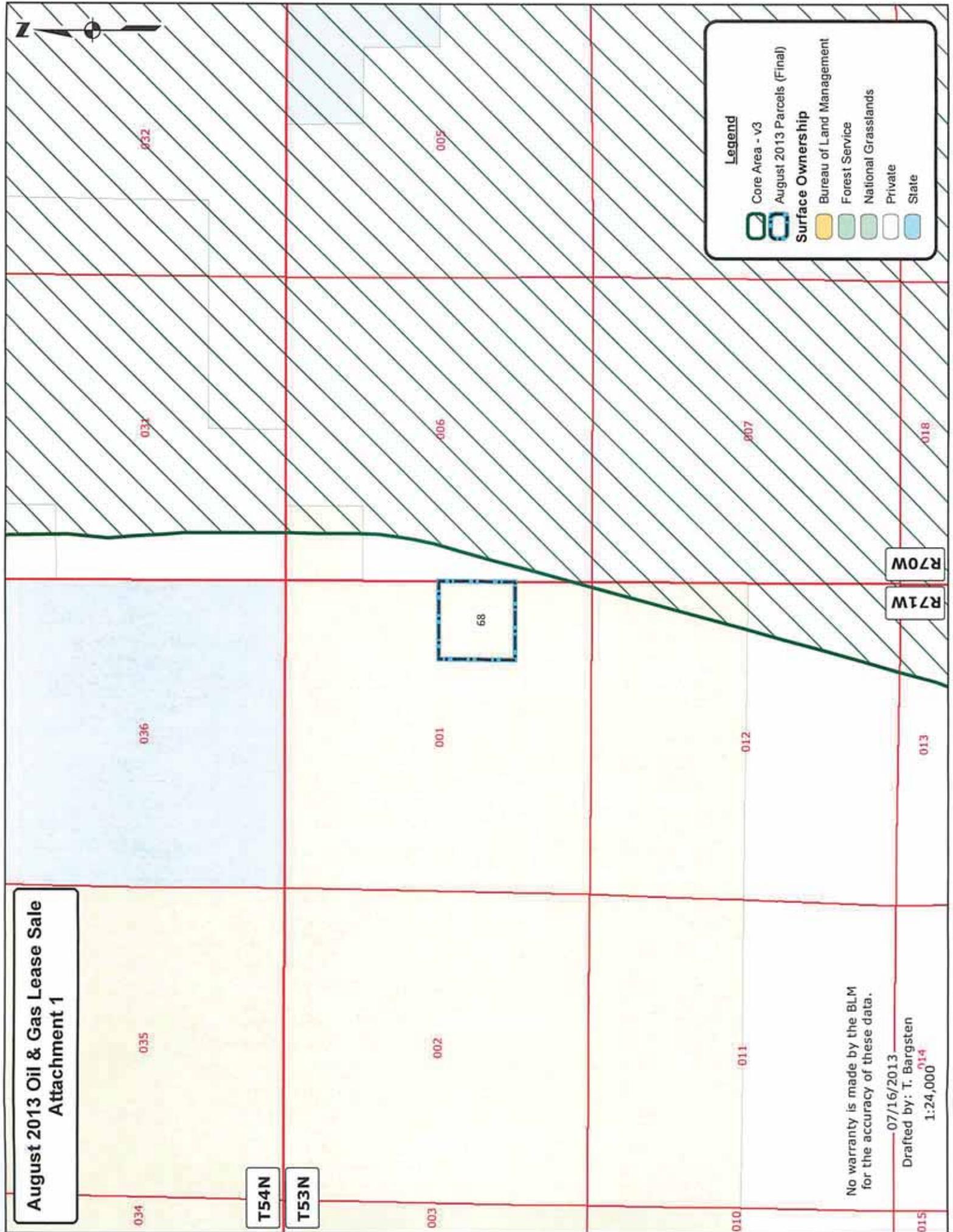


**Legend**

Core Area - v3  
August 2013 Parcels (Final)

**Surface Ownership**

- Bureau of Land Management
- Forest Service
- National Grasslands
- Private
- State



R70W  
R71W

T54N  
T53N

No warranty is made by the BLM  
for the accuracy of these data.

07/16/2013  
Drafted by: T. Bargsten  
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**August 2013 Oil & Gas Lease Sale  
Attachment 2**

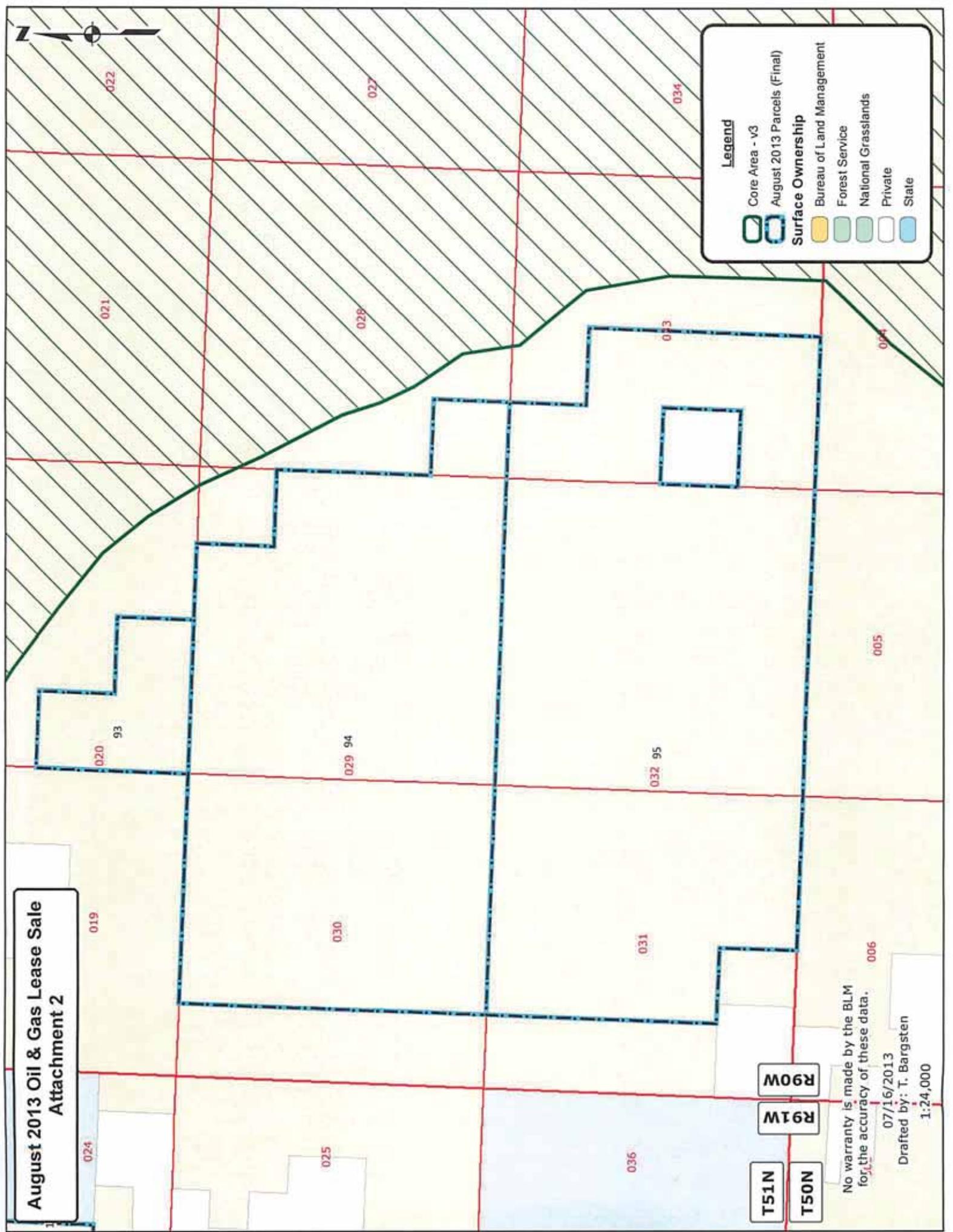


**Legend**

Core Area - v3  
August 2013 Parcels (Final)

**Surface Ownership**

- Bureau of Land Management
- Forest Service
- National Grasslands
- Private
- State



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**T51N**

**T50N**

**R90W**

**R91W**

No warranty is made by the BLM for the accuracy of these data.

07/16/2013

Drafted by: T. Bargsten

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August 2013 Oil & Gas Lease Sale  
Attachment 3

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T51N

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Drafted by: T. Bargsten

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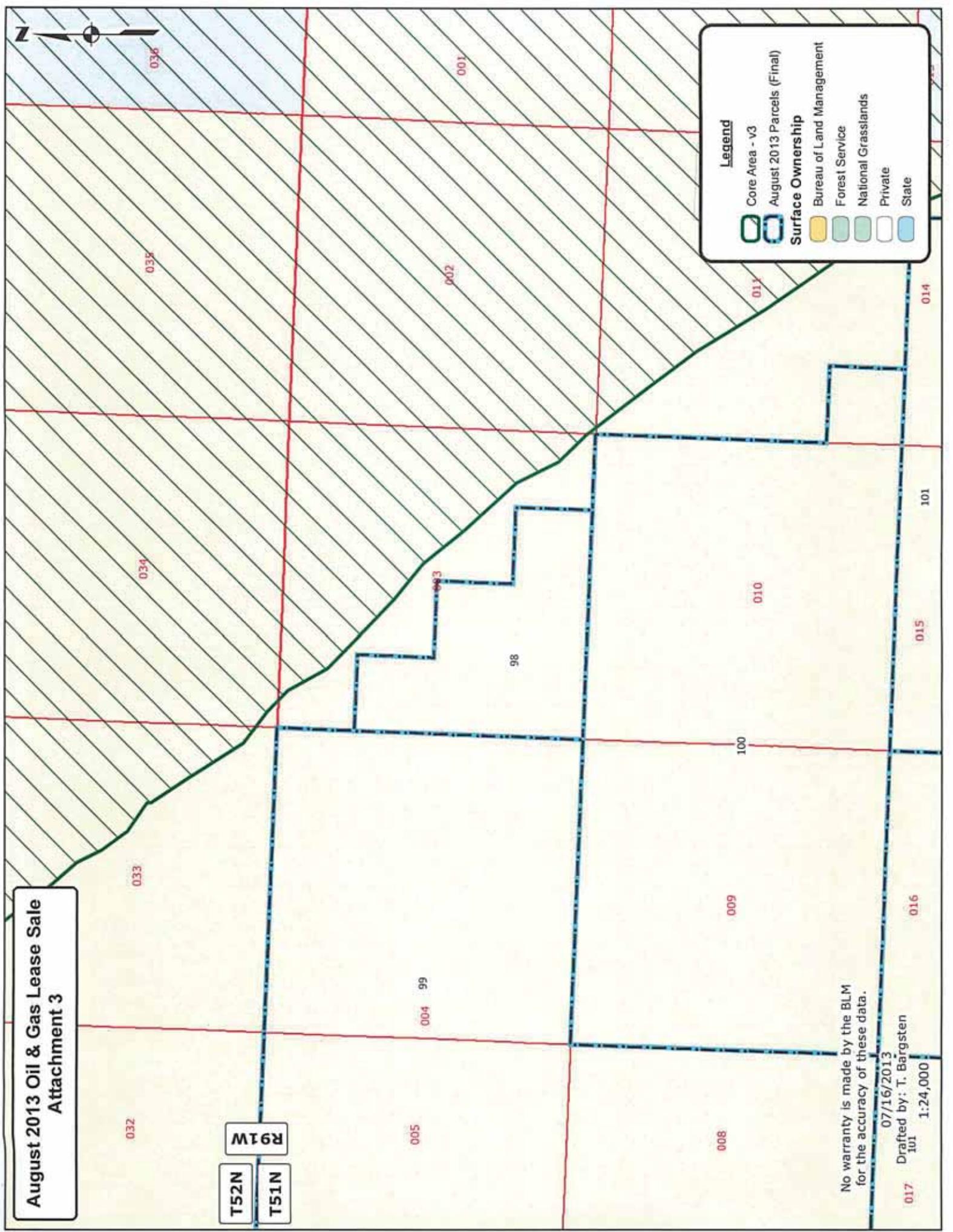
**Legend**

Core Area - v3  
August 2013 Parcels (Final)

**Surface Ownership**

- Bureau of Land Management
- Forest Service
- National Grasslands
- Private
- State

No warranty is made by the BLM  
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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 P. O. Box 1828, Cheyenne, WY 82003

WITH COPY TO SOLICITOR... U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region, 755 Parfet St., #151, Lakewood, CO 80215

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR..... U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region, 755 Parfet St., #151, Lakewood, CO 80215

4. ADVERSE PARTIES.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

**Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

#### 43 CFR SUBPART 1821—GENERAL INFORMATION

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

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

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

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

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(Form 1842-1, September 2006)