



WESTERN RESOURCE ADVOCATES

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(16 pages including Exhibits 1 and 2)

December 7, 2012

Don Simpson, State Director
Bureau of Land Management
5353 Yellowstone Road
P.O. Box 1828
Cheyenne, WY 82003



RE: Protest & Statement of Reasons
14 greater sage-grouse core area parcels proposed for the BLM WSO
February 5, 2013 Oil & Gas Lease Sale:
Parcel Nos. WY-1302-034, 069, 072, 075, 076, 083, 090, 091, 117, 133, 139,
144, 151, and 155

Dear Mr. Simpson:

The Bureau of Land Management's February 5, 2013 oil and gas lease sale proposes to offer fourteen parcels (the "Disputed Parcels"), portions of which include surface lands within identified greater sage-grouse Core Population Areas (or core areas). This Protest requests deferral of the disputed core area parcels, or removal of the core area lands from the disputed parcels. Core area boundaries must be maintained in order to preserve conservation values and management options as range-wide planning proceeds.

1. Audubon & Rocky Mountain Wild's Interest

National Audubon Society, Audubon Rockies, and Audubon Wyoming (collectively, "Audubon") are concerned that the lease sale and subsequent development of these protested core area parcels would further jeopardize the viability and recovery of the greater sage-grouse.

Audubon's interests are succinctly stated by the Society's mission: "To conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity." Audubon Wyoming's mission "is to be a strong, unified voice for an ethic of conservation in Wyoming, focusing on birds, other wildlife and their habitats, for the benefit of present and future generations."

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The vision of Audubon Wyoming is “[o]pen spaces rich in birds and other wildlife, and citizens who enjoy that richness.” Leasing these lands threatens to undermine Audubon’s mission and compromise its vision.

Audubon Wyoming was a key participant in the Wyoming Sage Grouse Implementation Team deliberations that crafted the Core Population Areas Strategy. Audubon is a leading advocate for BLM’s current science-based planning efforts across the bird’s range and in Wyoming. Audubon Wyoming is dedicated to ensure that the Core Areas Strategy and BLM range-wide planning strategies succeed. Success depends on conservative management, including strict interim protections for core areas pending implementation of new policies informed by the best available science.

Audubon members and staff visit the disputed lands for aesthetic and recreational pursuits centered on viewing, studying and appreciating the greater sage-grouse and the overall functioning of healthy sagebrush ecosystems. Members and staff live and work near these lands, and travel to observe sage-grouse and contribute to the species’ conservation. Approving leasing of the protested parcels could harm Audubon through drilling approvals resulting in permanent environmental damage, or lease issuance that could detract from conservation efforts.

Audubon is dedicated to successfully implementing conservation policies that will result in the recovery of populations and healthy habitat; and avoiding the need to list the bird under the Endangered Species Act (ESA).

BLM is aware of the protesting parties’ commitment to constructive, collaborative advocacy efforts to identify and implement science-based conservation measures to reach the shared goal of maintaining and enhancing sage-grouse populations and the sagebrush ecosystem.

2. Summary of Parcels and Concerns

Protesters support BLM’s decision to defer certain parcels in Core Population Area parcels from the sale (FONSIs at 1). Deferral should be extended to all core area habitat. BLM’s NEPA analysis does not support the proposed decision. The unsigned Findings of No Significant Impact (FONSI) should defer all core area parcels at this time.

The decision approving leasing of the disputed core area parcels violates NEPA and FLPMA:

- NEPA requires that BLM make informed decisions by taking a hard look at the environmental impacts of its decisions.
- BLM disregarded significant new scientific information, including the BLM National Technical Team Report, the United States Fish & Wildlife Service (USFWS) Sage-Grouse Conservation Objectives Draft Report, and Breeding Density Maps identifying the most valuable remaining sage-grouse habitat.

- BLM violated NEPA by failing to analyze the potential for direct, indirect and cumulative impacts to sage-grouse conservation of pre-existing and additional leasing in core areas.
- BLM's decision is inconsistent with range-wide conservation efforts and uninformed by the crucial importance of conservation efforts in Wyoming.
- BLM failed to analyze the hugely significant potential impacts of a full ESA listing.
- BLM violated NEPA by not analyzing a Grouse Conservation Alternative proposed by Audubon that would defer *all* core area parcels (or remove all core area lands from the disputed parcels).
- BLM violated NEPA by failing to adequately analyze the potential for direct, indirect and cumulative impacts to sage-grouse conservation.

Deferring the disputed parcels will advance the goals of BLM's ongoing National Sage-Grouse Planning Strategy and preserve the options for Resource Management Plan (RMP) alternatives that maximize sage-grouse conservation. Leasing the protested parcels would undercut this important planning effort and conflict with BLM's goal "to maintain and enhance populations and distribution of sage-grouse[.]"

The proposed sale parcels overlapping with Core Population Areas are mapped by Audubon in Exhibit 1, and listed in the Excel table attached as Exhibit 2 to this protest. These parcels were identified as overlapping with the core areas by applying GIS analyses and the latest parcel spatial data provided by BLM.

Additional leasing of greater sage-grouse core area habitat at this time would likely: 1) have significant impacts on the greater sage-grouse's prospects for recovery and survival, and 2) push the species towards a listing decision that could result in significant socio-economic and environmental impacts across Wyoming and the region. BLM has yet to conduct NEPA analysis of the potential cumulative impacts of continuing to lease core area parcels in Wyoming, although the total acreage continues to increase along with the potential for significant adverse impacts to conservation and recovery efforts.

Energy development is recognized as the leading threat to recovery goals in the Rocky Mountain region, but carefully crafted strategies now under way offer great hope of learning from past mistakes and reversing past trends to better balance future development with sage-grouse conservation. Recovery of healthy populations is crucially important to the environmental and economic health of the eleven western states in the bird's range, and nowhere more so than in Wyoming.

Parcel 034 overlaps the Thunder Basin Core Area and the Newcastle Field Office. Parcels 069, 075, 076, 090, 091, 117, and 133 overlap the Greater South Pass Core Area and the Lander Field Office. Of these, parcel 069 overlaps a 50% regional breeding density polygon. Parcels 072 and 083 overlap the Hyattville Core Area in the Worland Field Office; and 072 overlaps a 50% regional breeding density polygon.

Parcel 139 overlaps with the Oregon Basin Core Area and the Worland Field Office. Parcel 144 overlaps with the Thermopolis Core Area and the Worland Field Office; and overlaps a 50% regional breeding density polygon. Parcel 151 overlaps with the Grass Creek Core Area and the Worland Field Office. Parcel 155 overlaps with the Elk Basin Core Area and the Cody Field Office; and overlaps with 25% and 50% regional breeding density polygons. A map of the parcels and core areas is presented by Exhibit 1.

3. BLM violated NEPA by failing to ensure that its decision was informed by a hard look at the environment impacts of leasing additional core area habitat pending completion of BLM's National Planning Strategy.

NEPA requires informed decisions. "NEPA does not, however, require agencies to elevate environmental concerns over other appropriate considerations; it requires only that the agency take a 'hard look' at the environmental consequences before taking a major action." Citizens' Comm. to Save Our Canyons v. Krueger, 513 F.3d 1169, 1178 (10th Cir. 2008) (citation and internal quotation marks omitted). Here, BLM's decisions were uninformed by a hard look at the potential impacts.

Core Population Areas are necessary for the protection of this candidate species and integral to conservation strategies being implemented by the State of Wyoming and BLM. See IM 2010-012 and 2010-013, and Wyoming EO 2011-5. Core habitat is the nesting and early brood rearing habitat for over eighty percent of the remaining greater sage-grouse breeding population in Wyoming. See <http://gf.state.wy.us/habitat/SagebrushSageGrouse/index.asp>. The range-wide population of the greater sage-grouse has already experienced as much as a ninety percent decline from historic records. Ongoing and reasonably foreseeable future intrusions into sage-grouse habitat led the U.S. Fish & Wildlife Service (USFWS or the Service) to determine that listing the greater sage-grouse as threatened or endangered is warranted, but currently precluded by more urgent priorities. See 75 Fed. Reg. 13910-14014 (March 23, 2010).

BLM's unsigned FONSI (at 4) asserts that listed or sensitive species "will not be affected because surface use restrictions, including timing limitation stipulations (TLS), no surface occupancy (NSO) stipulations, and controlled surface use (CSU) stipulations, as well as unavailable for leasing designations, will be applied to the lease parcels."

This is contradicted by a growing body of scientific literature definitively establishing that past measures being relied on have failed to conserve sage-grouse populations or habitat, and that continuing to lease core areas subject to such "restrictions" will result in a full listing. Wyoming is the stronghold for greater sage-grouse and the sagebrush landscape. Conservation measures in Wyoming will determine the fate of the Rocky Mountain Region population, and possibly the entire species. Deferring core area lands from the sale, and protecting these lands from future leasing in subsequent decisions until 2014, is critical for the recovery of the species. Extensive recent peer-reviewed scientific research, much of it conducted in Wyoming, establishes the negative impacts of oil and gas development on sage-grouse populations.

4. BLM failed to take a hard look at significant new scientific information regarding the threats of energy development to sage-grouse conservation efforts.

NEPA guards against “uninformed – rather than unwise – agency action.” Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 351 (1989). Here, BLM is poised to approve leasing of the protested parcels based on its conclusion that the proposed action would not “significantly affect[] the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.4. But BLM’s decision was uninformed by analysis of key new information that became available after existing RMPs tied to by the leasing EA.

The March 2010 USFWS decision that listing the greater sage-grouse under the ESA is “warranted, but precluded,” establishes the urgent need to develop and implement substantive conservation measures between now and 2015, when the Service will reconsider the status of the bird. This finding clearly establishes the inadequacy of existing RMP measures governing oil and gas in priority habitat, including the various stipulations attached to the disputed parcels.

The leasing of parcels within priority core habitat is inconsistent with BLM’s on-going range-wide conservation effort. All core area parcels should be deferred until the regional planning effort has been completed. If leasing within core continues, USFWS could have little choice but to conclude that such actions establish the continued inadequacy of regulatory mechanisms that constrict or eliminate management options for the largest landowner of sage-grouse habitat.

At some point, additional leasing of core areas will be the straw that breaks the camel’s back regarding the Service’s upcoming listing decision, and, much more importantly, the recovery prospects of this magnificent species and the entire sagebrush ecosystem.

BLM’s own science demonstrates that impacts from leasing will push the species closer to a full listing. Pending final decisions on RMP amendments and the regional planning process, BLM needs to proceed cautiously consistent with its own planning strategy. Leasing will undermine the goal of maintaining, enhancing or restoring existing habitat conditions – to avoid dooming conservation efforts from the start. Leasing and subsequent development would degrade habitat and threaten already dwindling populations. The negative impacts would accelerate long-term trends resulting from past management policies that continue to contribute to the need for a full ESA listing.

a. BLM must analyze and apply the National Technical Team Report before leasing additional core areas.

Additional leasing of Core Population Area parcels cannot proceed without analyzing the new scientific findings and recommendations set forth in the December 21, 2011 “Report on National Greater Sage-Grouse Conservation Measures” produced by the BLM’s Sage-grouse National Technical Team (Technical Team Report). BLM’s analysis of the lease parcels is inadequate, and its decision uninformed, because it was not revisited to consider the scientific recommendations of the Technical Team Report.

Energy development impacts include change in habitat use patterns (use of lower quality habitats), avoidance, noise disturbances, increases in invasive species, death due to collision and electrocution, decreased lek recruitment, habitat fragmentation, cumulative impacts, and creation of travel routes for land predators. Before allowing any leasing of core habitat, BLM should consider the Technical Team Report findings and recommendations on energy development as well as invasive and nonnative species. See Report at 17, 33 (definition of "Conserve"); and Alternatives section below.

Leasing is the point of an irretrievable commitment of resources. New Mexico ex rel. Richardson v. Bureau of Land Management, 565 F.3d 683, 718 (10th Cir. 2009). Existing measures in RMPs have proven inadequate according to the abundant new scientific studies. Speculative conditions of approval on future APDs cannot constitute adequate regulatory measures.

- b. Consistent with the recommendations of BLM's National Technical Team, Core Population Areas should be deferred from leasing as BLM considers what new management policies are needed to recover sage-grouse and habitat.**

The 2010 USFWS decision that listing the greater sage-grouse is "warranted but precluded," establishes the urgent need to develop and implement substantive conservation measures between now and 2015, when the Service will reconsider the status of the bird. This finding establishes that efforts to date, including the use of outdated timing and seasonal stipulations as proposed for core area parcels not deferred are inadequate.

BLM has taken proactive measures in recent months, launching the regional strategy that focuses on the conservation of sage-grouse and the protection of their habitat. Scoping for the Rocky Mountain Region populations for BLM's range-wide planning process was conducted earlier this year. But the DEIS is still several months out. At this point in time, a conservative approach to grouse conservation must defer to the Technical Team recommendations.

Parcels overlapping designated core areas should be deferred until the regional planning effort is completed. If leasing within sage-grouse Core Population Areas continues, the Service will have little choice but to conclude that such actions establish the continued inadequacy of regulatory mechanisms that constrict or eliminate management options for the largest landowner of sage-grouse habitat. Furthermore, the cumulative expanses of leasing proposed within core areas for 2012-13 lease sales could jeopardize current proactive recovery efforts and doom future options beyond Wyoming.

Leasing large acreage of important sage-grouse habitat, prior to the completion of regional conservation planning efforts, will push the species closer to a full listing and must therefore be avoided. Pending final decisions on RMP amendments and the regional planning process that apply the recommendations of the Technical Team Report,

BLM should proceed with caution and avoid any additional leasing of core areas. Further leasing of core areas at this time is likely to significantly impact existing sage-grouse habitat and populations, although the impacts might occur until it is too late.

The introduction of the Technical Team Report recognizes that “Anthropogenic habitat impacts and lack of regulatory mechanisms to protect against further losses provided the basis for warranting listing under the Endangered Species Act (ESA) in 2010 (75 FR 13910).” Report at 4. The Report states that it seeks to provide “the latest science and best biological judgment to assist in making management decisions.” *Id.* at 5. As such, the Report is vital to proposed actions such as the potential leasing of the Disputed Core Population Parcels. BLM’s failure to consider the Report requires deferral of the protested parcels.

In addition to negatively impacting BLM’s regional efforts, offering core area parcels would 1) undermine the RMP sage-grouse amendment process currently proceeding within Wyoming, 2) violate existing BLM sage-grouse policies and Instruction Memoranda, 3) violate NEPA (specifically the “hard look”, new information and cumulative impacts provisions), 4) compromise the Audubon Vision of “Open spaces rich in birds and other wildlife, and citizens who value that richness;” 5) violate Federal Land Policy Management Act provisions, including the multiple-use, sustained-yield mandate and unnecessary and undue degradation provisions (*see* 43 U.S.C. §§ 1712(c)(1), 1732(a) and (b); and 43 C.F.R. § 1601.0-2); and 6) risk undermining the public’s trust in the agency’s stewardship responsibility of the nation’s public lands and wildlife resources.

Relying on hypothetical or not-yet-determined post-leasing mitigation measures cannot justify leasing core habitat without considering the best available science. Wyoming and neighboring states already contain hundreds of thousands of acres of valid leases in sage-grouse habitat. Uninformed decisions to authorize even more leasing of core habitat at this time would violate NEPA.

Core areas should remain intact until new management recommendations have been finalized after considering the comments of interested stakeholders. Decisions must incorporate all significant new scientific information regarding the status of the sage-grouse, population trends, the state of its habitat, and conservation measures needed to avoid pushing it further towards a listing.

c. BLM disregarded scientific information that four of the disputed parcels are among the most valuable remaining sage-grouse habitat.

BLM failed to adequately consider the need to protect habitat in parcel 155, which is within the smallest areas (25% polygons) that encompass the highest breeding density areas, contain the highest density of leks, and are important conservation focus areas for sage-grouse. Exhibit 2. Four total parcels (069, 072, 144, and 155) are within the 50% polygons.

The breeding density maps cannot be ignored in favor of exclusive reliance on Wyoming's Core Area Population Map. The best available science establishes that all "core areas" are not of equal habitat value – and that the 25% and 50% areas identified by the Breeding Density Map identify the most valuable remaining habitat. "Collectively, breeding density areas contain 25% of sage-grouse in 3.9% of the species range (2.9 million ha), 50% of birds in 10.0% of range (7.5 million ha), 75% of birds in 26.9% of range (20.4 million ha), and 100% of the known population in 54.6% (41.2 million ha) the species range."¹

BLM itself commissioned the scientific reports regarding breeding densities. The authors stated that one of the deliverables of the study is "GIS databases delineating high breeding densities of sage-grouse for use by conservation planners."² The relevance of the data and urgency of using it to inform conservation strategies are evidenced by the statement that "[m]apping important landscapes for sage-grouse represent a proactive attempt to identify a set of conservation targets to maintain a viable and connected set of populations before the opportunity to do so is lost."³

Using scientific methodology, the Regional Breeding Density map identifies important range-wide focal areas having high density occurrences of greater sage-grouse. The maps show areas that contain 25, 50, 75, and 100 percent of nesting sage-grouse, based on lek locations and spring censuses. According to the peer-reviewed report prepared for BLM, the 25% "[b]reeding density areas contain 25% of the known population within 3.9% (2.92 million ha) of the species range[.]"⁴ This BLM Report was relied on and cited in BLM's Greater sage-grouse Interim Management Policies and Procedures, which concluded that "[m]apping important landscapes for sage-grouse represent a proactive attempt to identify a set of conservation targets to maintain a viable and connected set of populations before the opportunity to do so is lost."⁵

The 25% breeding density parcel is among the top 4% "cream of the crop" for sage-grouse habitat – the highest biological value based on documented usage by 25% of known populations. The four 50% parcels represent the top 10% of remaining habitat, used by 50% of known populations. To comply with NEPA, BLM must consider the special biological importance of the 25% and 50% parcels.

d. NEPA also requires consideration of the USFWS Sage-Grouse Conservation Objectives Draft Report, which further supports deferral of the disputed core area parcels.

¹ *Mapping breeding densities of greater sage-grouse: A tool for range-wide conservation planning* (September 2010), available online at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs.Par.46599.File.tmp/GRSG%20Rangewide%20Breeding%20Density.pdf at 11.

² *Id.* at 2.

³ *Id.* at 11.

⁴ *Id.* at 2.

⁵ *Id.* at 11.

BLM Wyoming has previously disregarded the agency's national policy commitment to sage-grouse conservation by approving leasing of core area parcels even after BLM commenced its range-side planning effort. Now yet another federal agency has published a comprehensive document supporting the case for fully protecting remaining core area habitat as region-wide planning proceeds: the USFWS Sage-Grouse Conservation Objectives Draft Report (August 1, 2012)(USFWS Conservation Objectives Report).⁶

BLM's NEPA analysis failed to consider this new report and compilation of science. Leasing cannot proceed absent such analysis.

5. NEPA requires consideration of the *Grouse Conservation Alternative* that would defer all parcels in priority core area habitat.

BLM should consider a reasonable sage-grouse conservation alternative that would defer all parcels in core areas. BLM is required to analyze this reasonable alternative. The Grouse Conservation Alternative is tailored to advance the sage-grouse conservation goals of multiple federal agencies, states and stakeholders. It would help ensure that regulatory mechanisms are informed by the best available science.

Audubon's Grouse Conservation Alternative is a reasonable approach that would significantly improve the agency's NEPA analysis. First, instead of simply applying existing sage-grouse screens, the Grouse Conservation Alternative would defer decisions until they could be fully informed by the best available science and impending planning decisions to be finalized by 2014. Second, it would be significantly less likely to contribute to a 2015 USFWS finding that inadequate regulatory mechanisms require an ESA listing. All stakeholders recognize the importance of keeping conservation options open as range-wide planning proceeds.

Third, the Grouse Conservation Alternative would better balance conservation and development considerations by 1) recognizing the current down market conditions for natural gas that have dampened demand and severely curtailed investments in new exploration wells; and 2) significantly improve the prospects of realizing BLM's sage-grouse conservation goal of maintaining and/or enhancing habitat.

BLM's Technical Team Report⁷ provides abundant support for the Grouse Conservation Alternative. The Report documents the threat posed by oil and gas development, which underlies the recommendation to "[p]ropose lands within priority sage-grouse habitat areas for mineral withdrawal." Report at 14. The Minerals section summarizes various categories of threats to grouse from:

- 1) direct disturbance, displacement, or mortality of grouse;

⁶ <http://www.fws.gov/mountain-prairie/species/birds/sagegrouse/20120803conservationobjectivesteamdraftreport.pdf>

⁷ <http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/wildlife.Par.73607.File.dat/GrSG%20Tech%20Team%20Report.pdf>

- 2) direct loss of habitat, or loss of effective habitat through fragmentation and reduced habitat patch size and quality; and
- 3) Cumulative landscape-level impacts.”

Id. at 18.

The Report further documents significant adverse impacts from energy development:

There is strong evidence from the literature to support that surface-disturbing energy or mineral development within priority sage-grouse habitats is not consistent with a goal to maintain or increase populations or distribution. None of the published science reports a positive influence of development on sage-grouse populations or habitats. Breeding populations are severely reduced at well pad densities commonly permitted (Holloran 2005, Walker et al. 2007a). Magnitude of losses varies from one field to another, but findings suggest that impacts are universally negative and typically severe. [. . .]

Avoidance of energy development at the scale of entire oil and gas fields should not be considered a simple shift in habitat use but rather a reduction in the distribution of sage-grouse (Walker et al. 2007). Avoidance is likely to result in true population declines if density dependence, competition, or displacement of birds into poorer-quality adjacent habitats lowers survival or reproduction (Holloran and Anderson 2005, Aldridge and Boyce 2007, Holloran et al. 2010). High site fidelity in sage-grouse also suggests that unfamiliarity with new habitats may also reduce survival, as in other grouse species (Yoder et al. 2004).

Id. at 19 (emphasis supplied).

The Report specifically addresses long-term studies in the Pinedale Anticline Project Area establishing displacement of populations, cumulative impacts, and significant time lags between initial development and documented impacts. Id. at 20. “[A]pplying NSO or other buffers around leks at any distance is unlikely to be effective.” Id. Rather than relying on timing restrictions, “we recommend excluding mineral development and other large scale disturbances from priority habitats where possible, and where it is not limit disturbance as much as possible.” Id. at 21. (emphasis supplied).

The Grouse Conservation Alternative would allow leasing outside the disputed core areas. Contrary to BLM’s assertion in the unsigned FONSI (at 4), leasing of core areas is highly controversial – and there is enormous scientific controversy regarding the adequacy of the proposed stipulations. Contrary to BLM’s assertion in the unsigned FONSI, impacts on the human environment from a full listing of the grouse are “highly uncertain” and involve “unique or unknown risks.” The potential impacts and controversy are significant, triggering a full EIS before proceeding with additional core area leasing.

For the unleased Core Population Area parcels subject to this Appeal, excluding mineral development is still possible. The BLM must consider a Grouse Conservation Alternative before offering the protested parcels.

6. BLM needs to conduct additional analysis of the potential for direct, indirect and cumulative impacts under NEPA.

Comprehensive cumulative impacts analysis is especially essential between now and decisions to be finalized in 2014 and 2015 for this landscape level scale species for which energy development impacts to habitat are the main threat in Wyoming. According to USFWS:

Fragmentation of sagebrush habitats has been cited as the primary cause of the decline of greater sage-grouse populations. Greater sage-grouse are a landscape scale species, requiring large expanses of sagebrush to meet all seasonal habitat requirements. [* * *]

Greater sage-grouse populations are negatively affected by energy development activities (primarily oil, gas, and coal-bed methane), especially those that degrade important sagebrush habitat, even when mitigative measures are implemented. Impacts can result from direct habitat loss, fragmentation of important habitats by roads, pipelines and powerlines, and direct human disturbance. The negative effects of energy development often add to the impacts from other human development, resulting in declines in greater sage-grouse populations.

Population declines associated with energy development results from abandonment of leks, decreased attendance at the leks that persist, lower nest initiation, poor nest success and chick survival, decreased yearling survival, and avoidance of energy infrastructure in important wintering habitat. Energy exploration and development is projected to increase over the next 20 years.

USFWS Questions & Answers for the Greater Sage-Grouse Status Review at 5-6 (emphasis supplied).

The pace at which parcels located within core areas are being proposed for leasing and drilling threatens to undercut efforts to recover the species and its habitat. The science is clear that the direct, indirect and cumulative impacts of energy development threaten to further drive the sage-grouse towards threatened or endangered status and possible extinction – if current trends and impacts continue. Tens of thousands of acres of core habitat are already leased in Wyoming; many of which are experiencing intensive oil and gas development or could be reasonably foreseen to be developed in the near future. Accordingly, BLM must allow existing range-wide planning processes to analyze the potential impacts to grouse conservation of developing existing leases, before approving new leases in core area habitat.

Before proceeding, BLM must analyze the cumulative impacts of leasing the disputed parcels in the context of previous or looming decisions regarding:

- Leasing of 42 parcels for a total of 45,686 acres in the May 2012 WSO lease sale;
- Leasing of 12 parcels of core area habitat in the August 2012 lease sale;
- Leasing of 58 parcels of core area habitat in the November 2012 lease sale; and
- The Chokecherry Sierra Madre wind farm project adjacent to seven Rawlins parcels.

The urgency to re-visit the cumulative impacts analysis in existing RMPs and EAs is supported by a September 28, 2011 federal court decision that was not mentioned by BLM's NEPA analysis. Western Watersheds Project v. Salazar, Case No. 4:08-CV-516-BLW (D. Idaho 2011). WWP remanded the Pinedale, Wyoming and Craters of the Moon, Idaho RMPs for violations of NEPA and FLPMA. The deficiencies in the Pinedale RMP involved both energy development and grazing analysis in the remanded RMP. The court found that:

The data presented in the Pinedale EIS, discussed at length above, at least raises a serious question that the sage grouse population, along with its habitat, is in decline in the Pinedale Field Office. The Pinedale EIS concludes that "[i]mpacts on wildlife would likely occur under all alternatives because of substantial loss of vital, high-value habitats." *EIS* at 4-294.

Two factors in this loss of habitat, identified by the EIS, are energy development and grazing. *Id.*

Slip Op. at 30. As stated above, the Technical Team Report also recognized the severe negative impacts on grouse conservation documented by recent research focused on energy development on public lands in the Pinedale area.

WWP found that BLM had conducted inadequate cumulative impacts analysis of energy development within and adjacent to the Pinedale Field Office.

The EIS was faced with substantial energy development not only in the Pinedale Field Office but also in the adjoining Kemmerer Field Office. *See 72 Fed. Reg. 58113* (2007) (providing notice of draft EIS for Moxa Arch Area Infill Gas Development Project in the Kemmerer Field Office covering 475,808 acres). Yet there was no cumulative impact analysis of that development.

Slip Op. at 31-32.

For the protested parcels, BLM has yet to update its cumulative impacts analysis. BLM must analyze how sage-grouse populations and habitat could be impacted by future development on existing leases in core habitat. Deferring the core area parcels is necessary in light of the potential for significant direct, indirect and cumulative impacts of the leasing decision in the context of other reasonably foreseeable impacts.

7. Conclusion & Request for Relief

Until final RMP and planning decisions are made in 2014, BLM should analyze and adopt a Grouse Conservation Alternative that would either 1) defer all of the protested core area parcels; or 2) remove core area lands from the disputed parcels. Offering the protested parcels with the core lands included would violate NEPA and FLMPA, and could have significant impacts in the likely event that it results in a full listing decision under ESA. The pendency of range-wide planning and the failure of existing NEPA documents to reach a decision informed by a hard look at significant new scientific and regulatory information require granting this Protest.

Audubon and WRA look forward to working collaboratively on future planning efforts regarding the recovery of the greater sage-grouse and its habitat across Wyoming and neighboring states. We appreciate BLM's review of the issues raised by this Protest and look forward to working collaboratively on future planning efforts intended to result in the recovery of the sage-grouse and its habitat across Wyoming and neighboring states.

Sincerely,



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cc: Mike Pool, Acting BLM Director
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Jessica Rubado, BLM National Sage-grouse Coordinator
Johanna Munson, BLM Rocky Mountain Region Project Manager
Dan Ashe, USFWS Director
Pat Deibert, U.S. Fish & Wildlife Service
Jerimiah Rieman, Resource Policy Advisor to Governor Mead
Mary Flanderka, Wyoming Game & Fish Department
Brian Rutledge, Alison Holloran & Daly Edmunds, Audubon

LIST OF EXHIBITS TO PROTEST

- Exhibit 1:** Audubon Map of Final May 2013 Wyoming Oil & Gas Lease Sale Parcels Overlapping Greater Sage-grouse Core Area
- Exhibit 2:** Excel spreadsheet. WY Oil & Gas Lease Sale – February 2013 (Final Protest) depicting BLM Field Office regions, Core Area Name, and Regional Breeding Density Polygon data

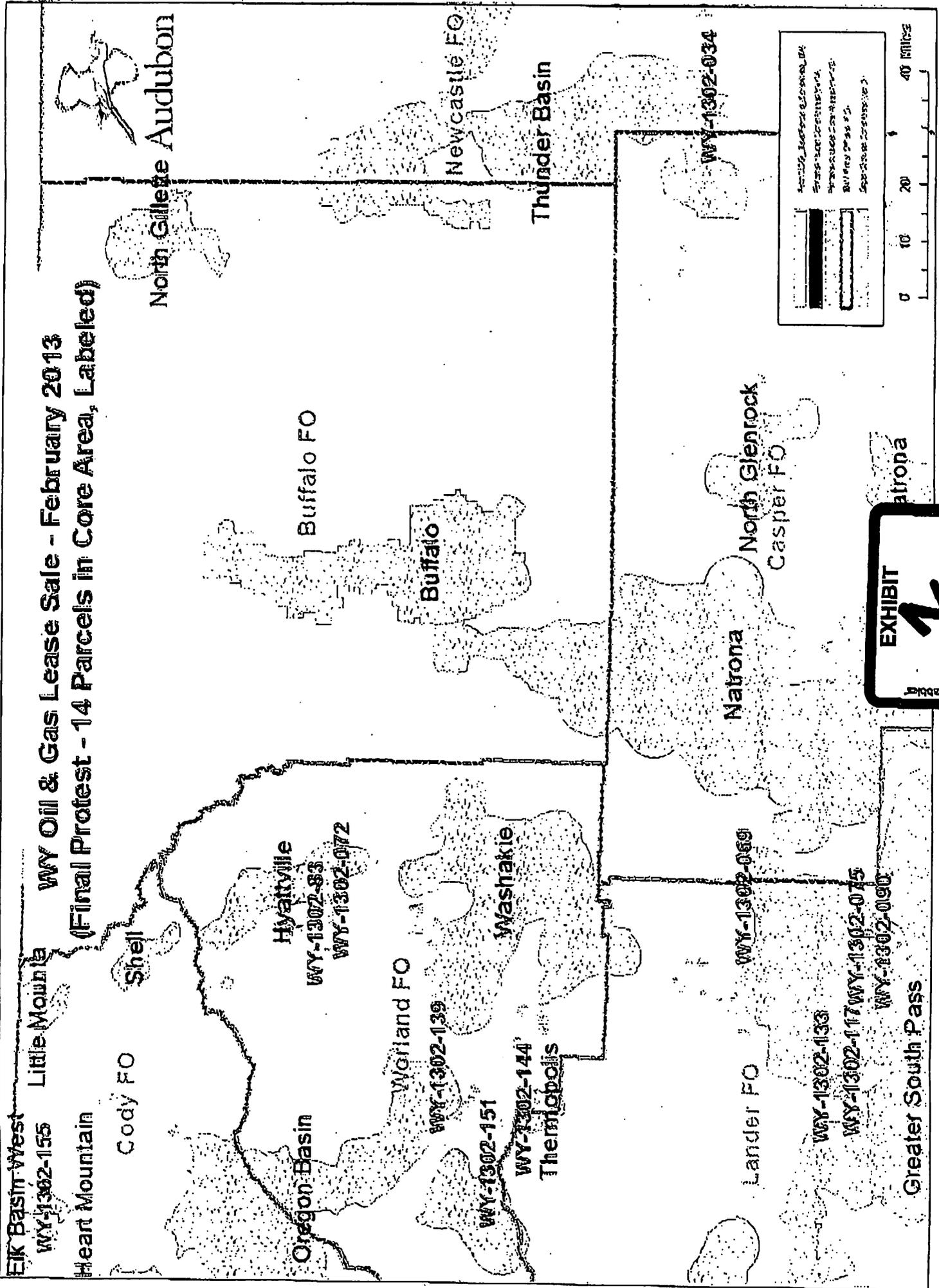


EXHIBIT
1

WY Oil & Gas Lease Sale - February 2013 (Final Protest)

Parcels Within Core Area = 14 of 162 proposed parcels

Preliminary Parcel # in EA	Final Parcel #	Core Area Name	BLM Field Office	Within Regional Breeding Density Polygons		
				25% Polygon (n=1)	50% Polygon (n=4)	75% Polygon (n=11)
39	WY-1302-034	Thunder Basin	Newcastle			
110	WY-1302-069	Greater South Pass	Lander		Yes	Yes
153	WY-1302-072	Hyattville	Worland		Yes	Yes
162	WY-1302-075	Greater South Pass	Lander			Yes
163	WY-1302-076	Greater South Pass	Lander			Yes
203	WY-1302-083	Hyattville	Worland			Yes
212	WY-1302-090	Greater South Pass	Lander			Yes
213	WY-1302-091	Greater South Pass	Lander			Yes
303	WY-1302-117	Greater South Pass	Lander			
327	WY-1302-133	Greater South Pass	Lander			
341	WY-1302-139	Oregon Basin	Worland			Yes
363	WY-1302-144	Thermopolis	Worland		Yes	Yes
416	WY-1302-151	Grass Creek	Worland			Yes
463	WY-1302-155	Elk Basin East	Cody	Yes	Yes	Yes

