BIODIVERSITY CONSERVATION ALLIANCE
ROCKY MOUNTAIN WILD

March 8, 2013

VIA FAX 307-775-6203

RECEIVED
MAR 0 8 2013
BY: 307-775-6203 EHM
@ 13:57 hrs

Don Simpson, State Director
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82003

RE: PROTEST OF CERTAIN PARCELS TO BE OFFERED AT BLM'S MAY 2013 COMPETITIVE OIL & GAS LEASE SALE

Dear Mr. Simpson:

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, Biodiversity Conservation Alliance and Rocky Mountain Wild protest certain parcels being offered at the Bureau of Land Management's (BLM) August 2012 competitive oil and gas lease sale.

The parcels under protest are numbered WY-1305-50, 57, 58, 60, and 61. This protest is based on concerns over leasing lands within key sage grouse habitats and designated Core Areas, lands with wilderness characteristics, and potential ACECs. All lease parcel numbers described in this protest are unless otherwise stated numbered in this protest according to the crosswalk list and should reflect the numbers in the Competitive Lease Sale Notice. This renumbering by BLM is unnecessarily confusing to the public and is bound to wreak havoc on lease protests through no fault of the protestors, and we urge BLM to maintain consistent numbering of lease parcels throughout the entire process in the future; we see no difficulty with presenting lease parcels for auction with non-sequential numbering. The Core Area parcels are likely to be included in the BLM's RMP amendment process and/or parallel RMP revision processes and are part of a proposed Sage Grouse ACEC. Given that these plan revision processes are underway, BLM should defer these parcels so that it does not foreclose on alternatives that could be considered in these pending NEPA processes.

We appreciate the fact that the BLM has begun to implement the Interior leasing reforms. We are pleased to have had the opportunity to comment on the EA prior to the lease sale. However, some of our concerns remain insufficiently addressed by the NEPA documents thus far, and so we are protesting certain parcels to be offered at the May 2013 lease auction. We also appreciate that BLM has elected to defer parcels WY-1305-31 through 34 from the original lease notice and parcels 30 through 40 from the final lease notice via information notice. The removal

of these parcels, situated in the Adobe Town citizens' proposed wilderness, are a credit to the BLM's effort to move toward balance.

This Protest incorporates by reference all Exhibits provided to BLM with the protest of the October 2008 lease sale by Biodiversity Conservation Alliance, et al. As BLM is already in possession of these documents, we have not attached them hereto. We are willing to provide electronic copies of any exhibits upon request for BLM's ease of use.

I. THE PARTIES

Biodiversity Conservation Alliance (BCA) is a non-profit conservation group with hundreds of members in Wyoming and other states. BCA is dedicated to protecting Wyoming's wildlife and wild places, particularly on public lands. BCA's members live in all of the Field Office areas where lease parcels would be offered in the May 2013 lease sale. Members of BCA utilize land and water resources within and near these areas, and particularly the Kinney Rim units, for hiking, camping, recreational, scientific study, photography, and aesthetic uses. BCA and its members are actively involved in BLM oil and gas activities in this region and participate in all National Environmental Policy Act (NEPA) stages of BLM oil and gas projects by submitting comments and attending public meetings. BCA has a long record of advocating for environmentally sound oil and gas development in Wyoming and throughout the West. As a consequence, BCA and its members would be adversely affected by the sale of the lease parcels being protested here and they have an interest in this matter.

Rocky Mountain Wild is dedicated to conserving and recovering native and naturally functioning ecosystems in the Greater Southern Rockies and Plains. Its members value the clean water, fresh air, healthy communities, sources of food and medicine, and recreational opportunities provided by native biological diversity. RMW passionately believes that all species and their natural communities have the right to exist and thrive. Rocky Mountain Wild uses the best available science to forward its mission through participation in policy, administrative processes, legal action, public outreach and organizing, and education.

II. THE ISSUES

AT RISK: WILDLIFE, OPEN SPACES, AND CLEAN AIR AND WATER

Oil and gas activities on the public lands at issue herein are quickly escalating. BLM is approving record numbers of large oil and gas development projects in Wyoming. The lands at issue here are mostly federal lands managed by BLM. Many of these lands provide critical habitat for a number of species, ranging from sage grouse, to mule deer, to severely imperiled species, such as fish species in the Green/Colorado River Basin and Platte River Basin, and sage grouse on the sagebrush country. Many of the BLM lands at issue serve as quiet, serene places of natural beauty and solitude, and as such, they provide excellent recreational opportunities for hiking, birding, wildlife viewing, hunting, fishing, backpacking, and enjoyment of open spaces.

The explosion of oil and gas development on these lands threatens all of the above resources, for which BLM has a mandatory duty to protect for "multiple use." Oil and gas development has and will lead to fragmented habitat and surface disturbances through well pad construction, oil and gas well rigs, increased vehicular traffic, miles of roads, pipelines and power lines, and noise from generators and compressor stations. All of these associated activities serve to disrupt habitat, destroy nesting and brooding grounds, and disturb wildlife. These activities can significantly impact elk, mule deer, pronghorn antelope, and sage grouse, as well as many other species that live there. Many of these lands serve as crucial winter range and parturition areas for elk, pronghorn antelope and mule deer, as well as critical breeding and nesting habitat near sage grouse leks. Many rare species find some of their last secure refuges on these lands.

Protestors realize, of course, that a lease itself does not necessarily create immediate disturbances, but as BLM well knows, if a lease is not subject to a "No Surface Occupancy" (NSO) stipulation, the lessee receives contractually-enforceable surface use rights. 43 C.F.R. § 3101.1-2. In other words, once a lease is sold, the cat is out of the bag, putting sensitive resources which have yet to be properly considered through site-specific NEPA analysis at risk of significant and potentially unacceptable harm. Because it represents an irretrievable and irreversible commitment of resources, the leasing stage is extremely critical. We are deeply concerned that the BLM has disparaged the act of mineral leasing as little more than a paper transaction when, in reality, it is an important, legally consequential event that commits lands to a particular use.

III. BLM NEEDS TO DEFER CERTAIN PARCELS WITH KEY SAGE GROUSE HABITAT OR AT MINIMUM ATTACH MORE PROTECTIVE STIPULATIONS

We protest Parcels WY-1305-42, 44, 50, 54, 55, and 62, which are at least partially in a sage grouse Core Area and appear to be slated for leasing. In addition, we protest portions of Parcels 43, 55, 58, 59, 60, and 61 that are within a Core Area. To the extent that no part of these leases slated to be auctioned fall within a Core Area because Core Area portions have been deferred, we withdraw our Protest of parcels meeting these criteria. In particular, the Core Area in question was identified by the Rock Springs Field Office at a Sage Grouse Plan Amendment cooperator's meeting as a candidate area for a Sage Grouse Area of Critical Environmental Concern (ACEC) under the Plan Amendment EIS, which was slated for a "no future leasing" management strategy. At a subsequent meeting, BLM announced that this ACEC candidate would be considered in the Rock Springs RMP revision, currently underway, rather than the Sage Grouse Plan Amendment process. Either way, leasing these lands on the eve of plan revision decisions would remove the potential for these lands to remain unleased, and would instead commit the agency to leasing these lands for a ten-year period.

Although this decision is in some cases consistent with BLM's Wyoming Office sage grouse policy, it ignores the biological realities that oil and gas impacts outside sage grouse suitable habitat can have a negative impact on sage grouse inside suitable habitat, if wells and roads are sited close enough to the edge of the suitable habitat, and also fails to adequately protect sage grouse habitats in Core Areas where there is not contiguous ownership by BLM or contiguous unleased area greater than 11 square miles. The acknowledged inadequacy of sage grouse mitigation measures in current BLM RMPs, including the Green River RMP, and the

major problems with the NEPA analyses for sage grouse for these plans in particular (failure to examine a range of reasonable alternatives on sage grouse conservation, failure to take a hard look at the efficacy of proposed sage grouse conservation measures) places BLM in a legally problematic position.[1] Simply put, with either a sage grouse Plan Amendment or Resource Management Plan revision underway in every Field Office in Wyoming to address the deficiencies in the current Plans, the BLM should defer all leasing in Priority Habitats (which in Wyoming is synonymous with Core Areas) until the completion of the RMP Amendment process, under which BLM will determine whether and under what conditions oil and gas leasing will occur (if at all) inside Core Areas.

As the BLM is currently undertaking a series of Sage Grouse Plan Amendments and Plan revisions for the Field Offices covered by this Lease Protest, and the issuance of these leases absent the measures recommended by the National Technical Team could foreclose on options for greater protection of sage grouse habitats within the plan amendments and/or revisions, the leases included in this Protest should at minimum be deferred pending completion of the planning processes.

According to BLM's 2001 National Greater Sage-Grouse Planning Strategy,[2] "the BLM needs to incorporate explicit objectives and adequate conservation measures into RMPs within the next 3 years." The BLM has yet to accomplish this goal, and indeed the Green River RMP, not revised since 1999, fails to meet this objective. As a result in significant part of the lack of adequate conservation measures in BLM Resource Management Plans, the U.S. Fish and Wildlife Service has listed the greater sage grouse as "Warranted but Precluded" under the Endangered Species Act, with a listing decision due in 2015. In an effort to emplace adequate conservation measures, the BLM is currently revising its Resource Management Plans throughout the range of the greater sage grouse to address deficiencies in BLM sage grouse conservation measures. As a part of this process, the BLM Sage-grouse National Technical Team has issued a *Report on National Greater Sage-Grouse Conservation Measures* ("National Technical Team Report" or "NTT Report"),[3] which makes a number of recommendations directly germane to sage grouse conservation measures. These recommendations represent the opinions of the BLM's ranking experts on sage grouse as well as experts from state and other federal agencies. Recommendations especially salient to this oil and gas leasing EA are as follows:

- Do not allow >3% surface disturbance in any Core Area. NTT Report at 7.
- For each 640-acre section, if surface disturbance exceeds 3%, off-site compensation must occur. NTT Report at 9.

---

[1] BLM has commented voluminously on the deficiencies of these RMPs during the EIS processes, and as we are already on record, we will not repeat these problems here but rather incorporate our comments on the RMP EISs by reference into this lease protest.

[2] Online at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/im_attachments/2012.Par.9299.File.dat/IM%202012-044%20Att%202.pdf.

[3] Available online at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/im_attachments/2012.Par.52415.File.dat/IM%202012-044%20Att%201.pdf. Site last visited 3/6/13.

- Either close all Priority Areas to future oil and gas leasing (Alt. A) or close all Priority Areas to future leasing with a possible exception if a net increase in sage grouse can be shown. NTT Report at 22.
- No new surface disturbance on leases within Priority Habitats, with exceptions allowed if applying a 4-mile NSO buffer around the lek or (only in cases where the entire lease is within the 4-mile lek perimeter) on disturbance per 640-acre section and a maximum of 3% disturbance per section. NTT Report at 23.

These provisions have not been attached as stipulations to any of the leases to be offered at auction. Leases should pass through this screen of recommendations before being offered, in order to prevent the BLM from foreclosing on management options available to the agency under the Sage Grouse Plan Amendment process as well as revision of the Green River RMP.

Some parcels are listed as having the requisite sage grouse habitat, but lack 11 square miles of contiguous unleased and manageable sage grouse habitat. The requirement of 11 square miles of habitat breaks down as a biologically appropriate conservation strategy in cases where land and minerals ownership is fragmented. BLM's current policy assumes that private or state lands are already or will become leased, and thus it is appropriate to lease interspersed BLM parcels. However, we expect BLM to show leadership on the issue of sage grouse conservation, and set a stronger example for neighboring landowners. BLM's current policy is not consistent with the NTT recommendations, which advocate a more protective approach that does not consider current patterns of leasing or land ownership.

Wyoming sage-grouse populations are some of the largest left in the nation and were relatively stable until the last decade, when sage grouse populations experienced major declines range-wide. The Wyoming Game and Fish Department reported that since 1952, there has been a 20% decline in the overall Wyoming sage grouse population, with some fragmented populations declining more than 80%;[4] one of WGFD's biologists reported a 40% statewide decline over a recent 20-years period.[5] These declines are attributable at least in part to habitat loss due to mining and energy development and associated roads, and to habitat fragmentation due to roads and well fields. Oil and gas development poses perhaps the greatest threat to sage-grouse viability in the region. The area within 2 to 3 miles of a sage-grouse lek is crucial to both the breeding activities and nesting success of local sage-grouse populations. In a study near Pinedale, sage-grouse from disturbed leks where gas development occurred within 3 km of the lek site showed lower nesting rates (and hence lower reproduction), traveled farther to nest, and selected greater shrub cover than grouse from undisturbed leks.[6] According to this study, impacts of oil and gas development to sage-grouse include (1) direct habitat loss from new construction, (2) increased human activity and pumping noise causing displacement, (3) increased legal and illegal harvest, (4) direct mortality associated with reserve pits, and (5)

[4] WGFD. 2000. Minutes of the Sage-Grouse Conservation Plan meeting, June 21, 2000, Casper, WY. Cheyenne: Wyoming Game and Fish Department. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 32.

[5] Christiansen, T. 2000. Sage-grouse in Wyoming: What happened to all the sage-grouse? Wyoming Wildlife News 9(5), Cheyenne: Wyoming Game and Fish Department. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 33.

[6] Lyon, A.G. 2000. The potential effects of natural gas development on sage-grouse (*Centrocercus urophasianus*) near Pinedale, Wyoming. M.S. Thesis, Univ. of Wyoming, 121 pp. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 34.

lowered water tables resulting in herbaceous vegetation loss. These impacts have not been thoroughly evaluated with full NEPA analysis.

Because leks sites are used traditionally year after year and represent selection for optimal breeding and nesting habitat, it is crucially important to protect the area surrounding lek sites from impacts. In his University of Wyoming dissertation on the impacts of oil and gas development on sage grouse, Matt Holloran stated, "current development stipulations are inadequate to maintain greater sage-grouse breeding populations in natural gas fields."[7] The area within 2 or 3 miles of a sage-grouse lek is crucial to both the breeding activities and nesting success of local sage-grouse populations. Dr. Clait Braun, the world's most eminent expert on sage-grouse, has recommended NSO buffers of 3 miles from lek sites, based on the uncertainty of protecting sage-grouse nesting habitat with smaller buffers.[8] Thus, the prohibition of surface disturbance within 3 miles of a sage-grouse lek is the absolute minimum starting point for sage-grouse conservation.

Other important findings on the negative impacts of oil and gas operations on sage-grouse and their implications for the species are contained in three studies recently accepted for publication.[9] Sage-grouse mitigation measures have been demonstrated to be ineffective at maintaining this species at pre-development levels in the face of oil and gas development by Holloran (2005) and Naugle et al. (2006). Naugle found an 85% decline of sage-grouse populations in the Powder River Basin of northeastern Wyoming since the onset of coalbed methane development there. 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. It is incumbent upon BLM to consider the most recent scientific evidence regarding the status of this species and to develop mitigation measures which will ensure the species is not moved toward listing under the Endangered Species Act. It is clear from the scientific evidence that the current protections are inadequate and are contributing to the further decline of the bird's populations. This information constitutes significant new information that requires amendment of the Resource Management Plans before additional oil and gas leasing can move forward.

---

[7] M. Holloran. Dec. 2005. Greater Sage-Grouse Population Response to Natural Gas Field Development in Western Wyoming, at 57. This study is attached to the BCA June 2008 Lease Protest as Exhibit 35.

[8] C. Braun. May 2006. A Blueprint for Sage-grouse Conservation and Recovery. Grouse, Inc. This study is available online at http://www.voiceforthewild.org/SageGrouseStudies/Braunblueprint2006.pdf.

[9] Doherty, K.E., D.E. Naugle, B.L. Walker, and J.M. Graham. Greater sage-grouse winter habitat selection and energy development. Journal of Wildlife Management: In Press. Attached to the BCA June 2008 Lease Protest as Exhibit 37.

Walker, B.L., D.E. Naugle, and K.E. Doherty. Greater sage-grouse population response to energy development and habitat loss. Journal of Wildlife Management: In Press. Attached to the BCA June 2008 Lease Protest as Exhibit 38.

Walker, B.L., D.E. Naugle, K.E. Doherty, and T.E. Cornish. 2007. West Nile virus and greater sage-grouse: estimating infection rate in a wild bird population. Avian Diseases 51:In Press. Attached to the BCA June 2008 Lease Protest as Exhibit 39.

Studies have shown that the majority of hens nest within 3 miles of a lek, and that a 5.3-mile buffer would encompass almost all nesting birds in some cases. The minimum scientifically supportable metric for NSO buffers would be 2 miles from the lek to protect breeding birds (after Holloran 2005, finding impacts from post-drilling production extend 1.9 miles from the wellsite) with an additional Timing Limitation Stipulation going out 3 miles from a lek,[4] with the understanding that the impacts of drilling and production activity would extend into the NSO buffer area from wells arrayed along its edge.

The restrictions contained in IM No. WY-2010-012 come nowhere close to offering sufficient on-the-ground protection to sage-grouse leks. Within Core Areas, the IM allows surface disturbing activity and surface occupancy just six tenths (0.6) of a mile from "occupied or undetermined" leks,[10] a far cry from the science-based 3-mile buffer recommended by field biologists. We understand that males use shrubs <1 km (0.6 mi) from a lek for foraging, loafing, and shelter.[11] In Wyoming, State and BLM policies have in the past erroneously use this as a basis for an 0.6-mile No Surface Occupancy buffer around leks. However, there is no science to indicate that preventing wells within 0.6 mile of a lek will eliminate negative population impacts on sage grouse. In fact, the 1.9-mile buffer is the minimum amount found to be needed to avoid negative impacts to breeding grouse by Holloran (2005), and indeed, to protect the nesting hens that site their nests within 5 miles of a lek, an even larger buffer may be needed. Even less protective, restrictions outside Core Areas allow surface disturbing activities and surface occupancy as close as one quarter (0.25) of a mile from leks.[12] BLM has too great an abundance of data to the contrary to continue with scientifically unsound stipulations as used in IM WY-2010-012 and the current Notice of Competitive Oil and Gas Lease Sale. This is especially clear in light of the U.S. Fish and Wildlife Service's recent finding that listing the greater sage-grouse as endangered or threatened under the Endangered Species Act is warranted, but precluded by other priorities. If the BLM and other federal agencies intend to keep the sage-grouse from accelerating beyond other listing priorities, more protective measures, in adherence with the scientific recommendations of Hollaran, Braun, and others, must be undertaken now. In the interim, deferral of leasing is the appropriate course of action.

BLM has the scientific information needed to recognize that any use of these parcels will result in further population declines, propelling the sage-grouse ahead of other "priorities" on the ESA "candidate list." Again, it is in all interested parties favor (conservation groups, potential lessees, BLM and other federal agencies) 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 and will not adhere to the directive of Secretary Salazar and the Department of Interior's announced leasing reforms.

---

[10] Instruction Memorandum No. WY-2010-012, available at http://www.blm.gov/pgdata/etc/medialib/blm/wy/resources/efoia/IMs/2010.Par.61358.File.dat/wy2010-012.pdf.

[11] Rothenmaier, D. 1979. Sage-grouse reproductive ecology: breeding season movements, strutting ground attendance and site characteristics, and nesting. M.S. Thesis, Univ. Wyoming, Laramie; Autenrieth, R.E. 1981. Sage-grouse management in Idaho. Id. Dept. Fish and Game Wildl. Bull. 9.; Emmons, S. R. and C. E. Braun. 1984. Lek attendance of male sage-grouse. J. Wildl. Manage. 48:1023-1028.

[12] *Id.*

BLM repeatedly notes that additional restrictions to protect sage grouse can be added as Conditions of Approval following completion of the RMP amendment process. However, if the leases are sold, and the RMP Amendments prescribe no future leasing, there will be no mechanism for BLM to recall the leases from the leaseholder(s).

IV. THE PARCELS IN CITIZENS WILDERNESS PROPOSAL AREAS CANNOT BE OFFERED FOR SALE BECAUSE TO DO SO WOULD VIOLATE NEPA AND BLM INSTRUCTION MEMORANDUM NO. 2004-110 CHANGE 1

The parties protest Parcels WY-1305-14, 19, 20, 22, 24, 25, 26, 14, 50, 51, 57, 58, 60, and 61, located in the Kinney Rim North and Adobe Town citizens' wilderness proposal areas.

Parcel 14 is located mostly within 'Area B' of the Adobe Town citizens' proposed wilderness. Portions of Area B atop the Willow Creek Rim have had their wilderness characteristics degraded or destroyed by roads, wellpads and pipelines associated with the Barricade and Endurance natural gas units. Other parts of Area B retain their naturalness, solitude, and outstanding opportunities for primitive and unconfined recreation, and Parcel 45, at the eastern end of the unit, is mostly located in one of these areas.

Parcels 19, 20, 22, 24, 25, 26, 41, and 51 are partially or fully within the Adobe Town citizens' proposed wilderness, Adobe Town Very Rare or Uncommon Area, and Monument Valley Management Area (MVMA). The MVMA is described in the Green River RMP as an ACEC candidate area for its scenic, archaeological, and cultural resources. Green River RMP at 37. The Management Objective is "to provide protection of wildlife, geologic, cultural, watershed, scenic, and scientific values (paleontological and cultural)." Id. As this area is an ACEC candidate under the Rock Springs RMP, BLM should avoid committing the area through oil and gas leasing, and should defer these parcels pending the outcome of the Rock Springs RMP.

Parcels 50, 57, 58, 60, and 61 are located within the Kinney Rim North citizens' proposed wilderness. Portions of 58, 60, and 61 are slated for deferral on sage grouse grounds, but it is difficult to determine to what extent the citizens' proposed wilderness lands are covered by these deferrals. These parcels occupy the area between the Sand Butte Road and the Eversole Ranch, including Pine Creek Wash and the lands sloping down from the Pine Creek Wash – Shell Creek divide. These lands are checkerboard in ownership, meaning that no BLM parcel is greater than 640 acres, and the area therefore does not meet the "size" requirement for wilderness. If a land swap were to proceed in this area, bringing the private checkerboard parcels into public ownership in exchange for public parcels elsewhere, the "size" issue would be fully remedied and the area would possess the requisite "size" to be managed as wilderness. Meanwhile, the "naturalness" and "solitude" aspects are readily met due to the numerous southeast-northwest trending draws in the area, which hide visitors from view, and the lack of vehicle routes and other manmade disturbances other than jeep trails that are maintained solely by the passage of vehicles. And public access is available to many of these checkerboard parcels via the Sand Butte Road. Based on the fact that the Rock Springs RMP is currently under

revision, BLM should defer these parcels pending decisions on how to manage the wilderness characteristics that are indeed found on these parcels.

These parcels will hereinafter be referred to as the Special Values Parcel. Because this parcel lies in a Citizens Proposed Wilderness area it clearly have special values, such a wildness and remoteness characteristics and the ecological services typical of such areas (such as greater biological diversity and better water quality), even if BLM does not recommend them for wilderness designation. Under Secretarial Order 3310, the BLM committed to re-inventory all BLM-managed lands for wilderness character under an inventory handbook to be promulgated in the next several months. The EA for this lease sale does not discuss the Kinney Rim South unit, although BLM is well aware that it has been recommended by the conservation community for wilderness consideration, and a detailed field inventory with maps was submitted in 2002. Based on a review of the draft Handbook, the lands of the Kinney Rim South unit will qualify as Lands with Wilderness Character, and will need to be evaluated for designation as 'Wild Lands;' to offer this parcel at auction would preclude BLM from exercising its prerogative to remove these lands from future oil and gas leasing under a Wild Lands designation. These parcels are inside citizens' proposed wilderness (*see* Attachment A) and very clearly possess pristine natural conditions that far exceed the threshold required for wilderness. Aerial images of the parcel in question show that they do not bear the marks of human impacts. The fact that BLM did not recommend CWP areas for wilderness designation does not change these special and unique wilderness values (see Figure 1). For a number of years, BLM's official policy was that FLPMA did not allow the agency to designate new Wilderness Study Areas under Section 202. It is our understanding that this obtuse and potentially illegal interpretation of FLPMA no longer prevails as agency policy. We are certain BLM is well aware of these special values, as well as the WSA areas it has recommended for wilderness designation.

It is notable that under the 'Lands with Wilderness Characteristics' section in the leasing EA, no rationale was provided in making a determination on the impacts to wilderness qualities outlined in this protest. There is no discussion on impacts to potential wilderness in the Kinney Rim parcel in the EA BCA recently received a FOIA response from the BLM seeking all records of phone conversations, meeting minutes and notes, letters, memoranda, emails, formal and informal reports and evaluations, or other documentation generated or received by BLM regarding the presence, absence, or qualities of wilderness character in the Kinney Rim North and Kinney Rim South citizens' proposed wilderness areas. In its response of September 27, 2010, BLM provided not one single document on the Kinney Rim responsive to this FOIA request. Apparently, based on the results of the FOIA request and making the assumption that BLM has followed federal law in its FOIA response, BLM has never analyzed the wilderness character of this area or the potential impacts to wilderness qualities of leasing it. The leasing EA also does not address this issue. The Leasing EA therefore has failed to take the legally required 'hard look' at impacts to wilderness character in the Kinney Rim parcel pursuant to NEPA.

The wide-open spaces and undeveloped landscape of the Kinney Rim North and Adove Town CWPs provide nearly unlimited opportunities for solitude. The Kinney Rim South and Kinney Rim North units together comprise an important habitat connection between the Great Divide Basin and the high deserts of western Colorado. They are part of the Adobe Town – Vermillion Core Area identified in the Heart of the West core-and-corridor conservation plan,

and have been ranked highly in the irreplaceability and vulnerability analysis that has been published for this plan in the peer-reviewed scientific literature.[13] The south unit provides habitat for ferruginous hawks and golden eagles, as well as many other sagebrush steppe species that inhabit it. Hiking, horseback riding, camping, wildlife photography, hunting, bird watching, and rockhounding are some of the recreational activities available in this area.

The proposal of wilderness-quality lands has not been analyzed thoroughly, and BLM has arrived at flawed and often internally conflicting determinations regarding the presence of wilderness character in these areas. Leasing these parcels without No Surface Occupancy (NSO) stipulations could irretrievably destroy the wilderness character of these areas. Therefore, BLM will violate NEPA if these lands are leased in this sale. Before leasing these parcels, BLM must analyze impacts to visitors' experiences, recreation values, and scenic values. *See e.g., Pennaco Energy, Inc. v. Department of the Interior*, 377 F.3d 1147 (10th Cir. 2004). The regulations implementing NEPA provide that federal agencies shall, to the fullest extent possible, "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e). Such alternatives should include reasonable alternatives to a proposed action that will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. *Id.*; *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *City of Aurora v. Hunt*, 749 F. 2d 1457, 1466-67 (10th Cir. 1984). The purpose of NEPA's alternatives requirement is to ensure agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Envnt'l Defense Fund, Inc. v. U.S. Army Corps of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); *see also Or. Envtl. Council v. Kunzman*, 614 F.Supp. 657, 660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would "avoid or minimize" adverse environmental effects).

When these CWP areas were submitted in 2002, the BLM field office in Rock Springs was operating under a Resource Management Plan which had been adopted in 1998, years prior to the Citizen Wilderness Proposals for the Kinney Rim CWPs. This RMP is quite old and the NEPA analysis that was conducted is even older than the plans. These plans were approved ***before*** oil and natural gas of the current scale and impact was on the BLM's radar screen. While there has been light oil and gas development in Wyoming for decades, today's pace of leasing and drilling wasn't foreseen, indeed, couldn't have even been contemplated, at the time these management plans were developed. It is undeniable that BLM has been under intense pressure to lease every acre of public land which has any potential for future oil and gas development.

Under the Federal Land Policy and Management Act (FLPMA) BLM was required to inventory all roadless areas on public lands over 5000 acres under its jurisdiction and to identify lands which have wilderness characteristics as described in the Wilderness Act of 1964. 43 U.S.C. § 1782(a). In addition, under 43 U.S.C. 1711(a), BLM is required to maintain an

[13] Jones, A.L., K. Daly, E. Molvar, and J. Catlin. 2006. Conservation planning and assessment of irreplaceability and vulnerability of conservation sites in the 'Heart of the West' region, Middle Rockies. Journal of Conservation Planning 2: 34-52 , available online at http://www.journalconsplanning.org/2006/volume2/bb10b/finalmanuscript.pdf.

inventory of all public lands and their resource and other values, which is to be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. BLM has failed to comply with the mandates of 43 U.S.C. 1711(a), in that it has failed to re-evaluate the wilderness characteristics of the Red Butte, Honeycombs, Buffalo Creek, Cedar Mountain, and Lysite Mountain CWP areas. This failure is in spite of the receipt by BLM of information from citizen wilderness proposals indicating that these areas do indeed have the wilderness characteristics defined by the Wilderness Act and should be identified by BLM as Wilderness Study Areas (WSAs).

BLM has failed to fulfill its responsibilities under FLPMA to perform a continuing inventory and to identify and include additional WSAs. BLM's failure to maintain current inventories will result in unnecessary or undue degradation of the public lands in the Kinney Rim South CWP.

What is equally important for consideration, however, is that as a result of BLM's failure to maintain current inventories the agency does not have current and accurate information about the wilderness qualities of these parcels, and thus BLM cannot make a determination that the prior NEPA analysis is adequate. Making this determination without current and accurate information is arbitrary and capricious. *See The Wilderness Society v. Wisely*, U.S. District Court for the District of Colorado, Civil Action No. 06-cv-00296-MSK-MEH, Opinion and Order Vacating, in Part, Agency Action, August 6, 2007; *Oregon Natural Desert Association v. Rasmussen*, U.S. District Court for the District of Oregon, CV 05-1616-AS unpublished Findings and Recommendation of the Magistrate Judge, issued April 20, 2006; approved and adopted by the U.S. District Court by Order entered September 6, 2006.

Allowing oil and gas development on these parcels may preclude the proposed wilderness areas from ever again possessing the wilderness characteristics necessary under the Wilderness Act. It is imperative that these parcels be withdrawn from the lease sale until such time as BLM has met its legal obligation under FLPMA to re-inventory and re-evaluate these lands for potential inclusion as Wilderness Study Areas. At the very least, BLM should consider a "no action" alternative before selling these leases. At the lease stage, the "no action" alternative is, of course, the option of not selling the lease. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1502.14(d). Alternatively, BLM should consider an alternative whereby BLM subjects these lease parcels to NSO stipulations. In both situations, BLM would preserve its ability to preclude surface use of these parcels and thereby preserve its ability to properly account for wilderness values through site-specific NEPA analysis.

IM 2004-110 Change 1 requires BLM to "evaluate the application of BMPs when taking leasing actions." (See also WO IM 2004-194.) The EA prepared by the Field Offices where these parcels are located give no indication there was any evaluation of applying BMPs to the CWP and WSA parcels in order to protect their values. Because neither the EA nor the underlying Resource Management Plans (RMPs) evaluated the application of BMPs to these parcels, IM 2004-110 Change 1 (Change IM) was violated. No evaluation of the potential application of BMPs has occurred prior to offering the parcel for sale.

The lease at issue here contains a number of stipulations intended to protect resources. Two of them are timing limitation stipulations intended to protect burrowing owls or raptors. While these stipulations may help protect these specific resources temporarily, they do not prohibit development; as IM 2004-110 Change 1 recognizes, "[O]ften BMPs, applied as either stipulations or conditions of approval, are more effective in mitigating impacts to wildlife resources than stipulations such as timing limitations or seasonal closures." Thus, the existing stipulations attached to these parcels are not enough, standing alone, to meet the requirements of the Change IM. ***BMPs*** must also be ***evaluated*** before leases are offered for sale, and there is no indication this occurred for these parcels. There are also CSU stipulations, including one to protect the Adobe Town dispersed recreation area, but it is unclear what exactly this stipulation would do. Without identifying and evaluating the efficacy of BMPs before leases are offered for sale, BLM has no idea whether BMPs would be able to mitigate impacts within acceptable limits. *See e.g.*, 43 U.S.C. § 1732(b) (requiring BLM to prevent unnecessary or undue degradation.).

There is no indication BLM identified or evaluated the BMPs referenced in IM 2004-194 in the context of the site-specific conditions and circumstances presented by the delineated lease parcels being offered for sale. BLM did not even evaluate the application of BMPs that should be "considered in nearly all circumstances," such as requirements for camouflage painting and construction of roads to a standard "no higher than necessary." Certainly such BMPs can be identified, evaluated, and required, as effectively at the leasing stage as the application for permit to drill (APD) stage. Indeed, a front-end analysis of BMPs provides a measure of certainty for the lessee and, most importantly, may reveal that BMPs, alone, may be inadequate to mitigate impacts within acceptable limits, thus indicating the need for more robust lease stipulations. Moreover, it may behoove BLM to require the BMPs as a lease stipulation rather than as a condition of approval. Additionally, front-end evaluation of BMPs may indicate that BLM may be unable to mitigate impacts within acceptable limits and, therefore, the lease should either be subject to an NSO stipulation or withdrawn from sale (i.e., through selection of a "no action" alternative).

There is no doubt that IM 2004-110 Change 1 is intended to apply to leasing. The IM specifically applies to fluid minerals ***leasing*** actions. It is not the intent of the Change IM with respect to BMP evaluation, that it be applied at the APD stage. That had already been very specifically accomplished with IM 2004-194 issued on June 22, 2004. The Change IM was issued on August 16, 2004, ***after*** IM 2004-194, to fill in gaps in the ***leasing*** program guidance provided by IM 2004-110. Thus, while BLM may further consider and refine BMPs at the APD stage, it nevertheless ***must*** evaluate their application at the leasing stage. There is no indication in the Documentations this was done for any of the parcels listed in the table above, despite the clear language in the Change IM that BLM "shall also evaluate the application of BMPs" at the leasing stage.

Additionally, there is no question that BLM has ongoing authority and responsibility to consider the wilderness values of an area, especially where an area has been proposed for wilderness consideration by private citizens. IM 2003-275 recognizes this authority and that citizen wilderness proposal areas may contain a number of values that are not protected by the above stipulations, such as providing solitude and preserving areas that do not have significant

signs of human use or development. The stipulations which would be applied to these parcels do not protect these kinds of values which clearly exist in the CWP parcels. BLM's failure to evaluate BMPs as a way to protect these values violated IM 2004-110 Change 1 and IM 2003-275.

BLM has the ongoing authority and responsibility to consider the wilderness values of an area before it authorizes the sale of leases which intrude upon Citizen Wilderness Proposal areas. The U.S. District Court for the District of Utah recently underscored this duty with its decision in *Southern Utah Wilderness Alliance v. Norton*, Case No. 2:04CV574 DAK. The Court held that BLM violated NEPA by issuing leases in areas proposed for wilderness without taking a hard look at the no-leasing alternative and by failing to consider significant new information about wilderness values and characteristics of the parcels. The Worland and Lander Field Offices have failed to take the hard look at a no-leasing alternative for these 13 parcels and have failed to give adequate consideration to the wilderness values and characteristics of the parcels. The parcels should be withdrawn from the sale.

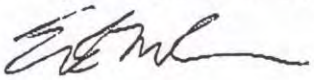
V. PARCELS INVOLVED WITH RMP AMENDMENTS/REVISIONS

As noted above, the parcels under protect are implicated in one or more BLM RMP revisions or amendments, including the Green River RMP/Rock Springs RMP revision, and/or the sage grouse rangewide Plan Amendments. In its EA, BLM misconstrues the language in BLM IM 2004-110 Change 1, arguing that the IM only applies in cases where a planning process has a 'preferred alternative' in place. In fact, the IM states, "All SOs are to consider temporarily deferring oil, gas and geothermal leasing on federal lands with land use plans that are currently being revised or amended. A decision temporarily to defer **could** include lands that are designated in the preferred alternative...." IM 2004-110 Change 1, emphasis added. By using the word "could," the IM makes clear that the passage that follows, focusing on preferred alternatives, is not an all-inclusive, exhaustive list beyond which BLM lacks authority to defer lease parcels. Note that the word "shall" is used elsewhere in the IM to direct BLM actions; the IM notes the agency's discretionary authority to defer. We strongly urge the agency to exercise this authority to avoid foreclosing on alternatives that will clearly be under consideration in the RMP amendments/revisions.

V. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, BCA requests that the protested parcels not be offered for sale at the May 2013 competitive oil and gas lease sale. Sage grouse Core Area parcels need to be deferred pending completion of the RMP amendment/revision process. If BLM declines to withdraw the protested wilderness parcels, then we request that at the minimum, ***adequate*** protective stipulations be placed on the leases before the lease sale in order to provide protection for wildlife, air quality, water quality, and other special resources.

Respectfully submitted,



Erik Molvar
Executive Director
Biodiversity Conservation Alliance
P.O. Box 1512
Laramie, WY 82073

Signing on behalf of

Matthew Sandler
Staff Attorney
Rocky Mountain Wild
1536 Wynkoop St., Suite 303
Denver, CO 80202
Phone: 303-546-0214 ext. 1