FAX COVER SHEET

TO	Don Simpson
COMPANY	WildEarth Guardians
FAX NUMBER	13077756203
FROM	WildEarth Guardians
DATE	6/6/2014 3:37:29 PM MDT
RE	Protest of August 2014 Lease Sale

COVER MESSAGE

Protest of August 2014 Lease Sale EAs follows.

June 6, 2014

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

VIA FAX TO (307) 775-6203

RE: PROTEST OF CERTAIN PARCELS TO BE OFFERED AT BLM'S AUGUST 2014 COMPETITIVE OIL & GAS LEASE SALE

Dear Mr. Simpson:

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, WildEarth Guardians and Rocky Mountain Wild protest certain parcels being offered at the Bureau of Land Management's (BLM) August 2014 competitive oil and gas lease sale.

We protest two sets of parcels. The parcels under protest because they are within sage grouse Core Areas in the absence of adequate stipulations to prevent significant impacts to sage grouse are numbered WY-1408-9, 24, 34, 42, 52, 59, 74, and 75. The parcels under protest because they are entirely or partially outside sage grouse Core Areas but within 4 miles of active sage grouse leks, and lack adequate stipulations to prevent significant impacts to sage grouse are numbered WY-1408-5, 8, 10, 12, 14, 17, 19, 32, 33, 34, 35, 36, 37, 40, 41, 43, 44, 49, 51, 56, 57, 58, 59, 62, 63, 74, and 75.This protest is based on concerns over leasing lands within key sage grouse habitats and designated Core Areas and potential ACECs, or potential ACECs in the Bighorn Basin RMP revision. <u>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.</u> 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 under Alternative B and C of the Wyoming Sage-Grouse RMP Amendment Draft EIS. 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.

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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 August 2014 lease auction. We support the deferral of 36 whole and partial parcels totaling 8,186 acres from the High Plains EA due to sage grouse concerns High Plains EA version 2 at 5, and the deferral of 4 parcels totaling 2,477 acres from the Wind River/Bighorn Basin EA. The removal of these lands, situated in sage grouse Core Areas and/or lands deferred due to pending wildlife issues in the Bighorn Basin RMP revision, 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., and all attachments to the protest of the May 2014 lease sale by WildEarth Guardians. 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.

THE PARTIES

WildEarth Guardians (Guardians) is a non-profit conservation group with thousands of members in Wyoming and other states. Guardians is dedicated to protecting wildlife, wild rivers, and wild places throughout the American West. Members of Guardians utilize land and water resources within and near these areas for hiking, camping, recreational, scientific study, photography, and aesthetic uses. Guardians and its members are actively involved in BLM oil and gas activities in this region and participate in National Environmental Policy Act (NEPA) stages of BLM oil and gas leasing and projects by submitting comments. Guardians has a long record of advocating for preventing the impacts of oil and gas development from destroying lands and wildlife in Wyoming and throughout the West. As a consequence, Guardians 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 and use lands in and near the parcels in question for recreational pursuits. 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.

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.

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

We protest Parcels WY-1408-9, 24, 34, 42, 52, 59, 74, and 75, which are at least partially in a sage grouse Core Area and appear to be slated for leasing. 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. Some of the Core Areas in question have been identified by the BLM as candidate areas for a Sage Grouse Area of Critical Environmental Concern (ACEC) designation under at least one alternative in the Bighorn Basin

RMP revision Draft EIS supplement. Leasing these lands on the eve of plan revision and amendment decisions would remove the potential for these lands to remain unleased, and would instead commit the agency to some form of oil and gas development on 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. Furthermore, the presence or absence of 11 square miles of contiguous federally controlled sage grouse habitat has no bearing on the significance of impacts that will result as a consequence of leasing the lands in question. The acknowledged inadequacy of sage grouse conservation measures in current BLM RMPs by the U.S. Fish and Wildlife Service in its 2010 "warranted, but precluded" rule on the greater sage grouse, 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) and General Habitats 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) in key sage grouse habitats inside and outside 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 Lander, Grass Creek, Cody, Washakie, Newcastle, Casper, and Bufaalo RMPs all fail 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

[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

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.
- 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 rergardless of 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

[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.

[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.

decline over a recent 20-years period.[5] More recently, WGFD population counts indicate a 60% decline in greater sage grouse male lek counts between 2007 and 2013. 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) 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] Importantly, failure to maintain breeding population levels constitutes a significant impact under NEPA. The area within 4 miles of a sage-grouse lek is crucial to both the breeding activities and nesting success of local sage-grouse populations. The National Technical Team, representin g BLM's own experts on sage grouse, has recommended NSO buffers of 4 miles from lek sites, based on the uncertainty of protecting sage-grouse nesting habitat with smaller buffers. Thus, the prohibition of surface disturbance within 4 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.[8] 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

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[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.

[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] 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.

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.

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 (Doherty et al. 2010).[9] 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 a 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 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

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[9] Doherty, K. E., D. E. Naugle, and B. L. Walker. 2010. Greater Sage-Grouse nesting habitat: the importance of managing at multiple scales. Journal of Wildlife Management 74:1544–1553.

[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.*

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 Holloran, 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.

We remain concerned that the leasing of the parcels in question will result in significant impacts to greater sage grouse should the BLM adopt its Preferred Alternative for the Wyoming Sage-Grouse RMP Amendment EIS, rendering the decision to issue the leases in question under a Finding of No Significant Impact (FONSI) a violation of NEPA. BLM itself states for the alternative adopted,

> Well-pad, road, and pipeline development into areas currently devoid of surface disturbance could result in habitat fragmentation for some species. This habitat impact could affect a variety of species, including Greater Sage-grouse, mule deer, antelope, and elk. Post lease development on the parcels could result in short-term and long-term losses of wildlife habitat. Short-term habitat loss would include all initial surface disturbance associated with the project and typically would be on-going until those portions of a well pad not needed for production operations, road disturbance outside the running surface or ditches, and the pipeline disturbance are reclaimed. Long-term habitat loss would include those areas needed for production operations for the life of the well.

High Plains Lease EA Version 2 at 52.

According to 40 CFR § 1508.27, regarding the definition of "Significantly," BLM is directed to consider "Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas." Sage grouse Priority and General Habitats under evaluation in the Wyoming Sage-grouse RMP Amendment qualify as "ecologically critical areas." BLM critically omits this in its significance determination. High Plains FONSI at unnumbered 3. Significant impacts as described to these ecologically critical areas requires the completion of a new EIS to support oil and gas leasing for each of these BLM Field Offices.

The Competitive Lease Sale Notice applies only a Timing Limitation Stipulation to the parcels in question preventing drilling and construction (but not production-related activities) on an unspecified area of the lease between March 1 and July 15. See, e.g., High Plains EA version

2 at 41. 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). The would undermine the agency's ability to implement Alternative B or C, which would close Core Areas to future leasing (Wyoming Sage-Grouse RMP Amendment DEIS at 2-63) under the Wyoming Sage Grouse RMP Amendment should either of these alternatives be adopted for implementation. In order to maintain its range of options, BLM should exclude the parcels protested on sage grouse grounds for this reason alone.

The Preferred Alternative in the Wyoming Sage-Grouse RMP Plan Amendment EIS is Alternative E, which leaves sage grouse Core Areas open to future leasing (Wyoming Sage-Grouse RMP Amendment DEIS at 2-63) and prescribes a suite of conservation measures that are inadequate to prevent significant impacts to breeding, nesting, brood-rearing, and/or wintering sage grouse using Core Area habitats. If this alternative were to be adopted and its conservation measures applied in addition to the timing limitation stipulation that currently applies to the leases in question, significant impacts would result to greater sage grouse under certain types of development allowed under the combined stipulations and Conditions of Approval.

Holloran (2005) determined that roads sited within 0.7 miles of a lek, and main haul roads sited within 1.9 miles of a lek, result in significant negative impacts on sage grouse lek populations.[13] Under the Preferred Alternative of the Wyoming Sage-Grouse RMP Amendment DEIS, constructing such roads would be "avoided," but not prohibited. Wyoming Sage-Grouser RMP Amendment DEIS at 2-96. This means that such roads, constructed to serve oil and gas facilities on leases sold pursuant to this EA, could be located in areas that result in significant impacts to breeding sage grouse.

Knick et al. (2013) found that 99% of the active sage grouse leks in the western half of the species' range were surrounded by lands with 3% surface disturbance per square mile or less. The Preferred Alternative of the Wyoming Sage-Grouse RMP Amendment DEIS would allow 5% surface disturbance on the leases in question. Wyoming Sage-Grouse RMP Amendment DEIS at 2-134. This would result in significant impacts on breeding and nesting habitat, leading to abandonment of leks and extirpation of lek populations.

Holloran (2005), Walker et al. (2007), and Tack (2009) all found that well densities greater than 1 wellsite per square mile section result in significant impacts to sage grouse lek populations.[14] The Wyoming Sage-Grouse RMP Amendment DEIS Preferred Alternative limits wellpad density to one wellpad per square mile using a Disturbance Density Calculation Tool

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[13] Holloran, M. J. 2005. Greater sage-grouse (*Centrocercus urophasianus*) population response to natural gas field development in western Wyoming. PhD Dissertation. University of Wyoming. Laramie, Wyoming.

[14] Holloran, M. J. 2005. Greater sage-grouse (*Centrocercus urophasianus*) population response to natural gas field development in western Wyoming. PhD Dissertation. University of Wyoming. Laramie, Wyoming; Walker, B.L., D.E. Naugle, and K.E. Doherty. 2007. Greater sage-grouse population response to energy development and habitat loss. Journal of Wildlife Management 71(8):2644-2654; Tack, J.D. 2009. Sage-grouse and the human footprint: Implications for conservation of small and declining populations. M.S. Thesis, Univ. of Montana, 96 pp.

(DDCT) that radically expands the square-mile area across which the average is calculated beyond the proposed project area (Wyoming Sage-Grouse RMP Amendment DEIS at 2-133) in contravention of the recommendations of the BLM's own experts in the National Technical Team report (NTT 2011)[15], which prescribed calculating wellpad density per square-mile section only. This latter approach avoids wellpad densities exceeding 1 per square mile in certain parts of a Core Area if the larger DDCT area is largely undeveloped, an outcome that results in significant impacts to sage grouse populations sited inside and near the oil and gas development. Copeland et al. (2013) underscored the inadequacy of the State of Wyoming Core Area strategy (to be implemented under Alternative E of the Wyoming Sage-Grouse RMP Amendment DEIS) by concluding that sage grouse populations are predicted to significantly decline both statewide and inside Core Areas with the implementation of these conservation measures.[16]

As noted earlier in these comments, Holloran (2005) found that the presence of a producing wellsite within 1.9 mile of a sage grouse lek results in significant negative effects on lek populations. No lek buffers are applied as lease stipulations under this EA, and the Preferred Alternative of the Wyoming Sage-Grouse RMP Amendment DEIS would prohibit surface-disturbing activities (such as wellsites) within 0.6 mile of leks, but would allow them to be permitted outside this buffer. Wyoming Sage-Grouse RMP Amendment DEIS at 2-138. Thus, if the Preferred Alternative is adopted the location of oil or gas wells as close a 0.7 mile from active lek sites would be permitted, likely resulting in significant impacts to the sage grouse populations using these leks.

Under the Preferred Alternative, exceptions, modifications, and waivers would continue to be considered to any and all sage grouse conservation measures applied to minerals management in both core and general habitat. Wyoming Sage-Grouse RMP Amendment Draft EIS at 2-62. In addition, Conditions of Approval under the Preferred Alternative would only be "considered," not required. Wyoming Sage-Grouse RMP Amendment DEIS at 2-73. This means that <u>even if such conservation measures were adequate</u> to prevent significant impacts, there is no guarantee that they will be applied on the ground when the time comes for lessees to develop leases sold at this lease auction. For the foregoing reasons, the development of the lease parcels in question pursuant to applied stipulations plus Conditions of Approval that may be applied under the Sage-Grouse RMP Amendment would still likely result in significant impacts to sage grouse in the areas affected. The issuance of these leases under a FONSI is therefore illegal under NEPA. At minimum, these parcels must be deferred pending completion of the Wyoming Sage-Grouse RMP Amendment.

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[15] Sage-grouse National Technical Team. 2011. A Report on National Greater Sage-grouse Conservation Measures. Available at www.blm.gov/pgdata/etc/medialib/blm/co/programs/wildlife.Par.73607.File.dat/GrSG%20Tech%20Team%20Report.pdf.

[16] Copeland, H.E., A. Pocewicz, D.E. Naugle, T. Griffiths, D. Keinath, J. Evans, and J. Platt. 2013. Measuring the effectiveness of conservation: A novel framework to quantify benefits of sage-grouse conservation policy and easements in Wyoming. PlosONE 8: e67261. 14 pp.

In 2004, BLM published its National Sage-Grouse Habitat Conservation Strategy ("Strategy").[17] According to this policy,

> "The Federal Land Policy and Management Act (1976) (FLPMA) provides the basic authority for BLM's multiple use management of all resources on the public lands. One of the BLM's many responsibilities under FLPMA is to manage public lands for the benefit of wildlife species and the ecosystems upon which they depend. ... Consistency and coordination in identifying and addressing threats to sage-grouse and sagebrush habitat in context of the multitude of programs that BLM manages is required. Addressing these threats throughout the range of the sage-grouse is critical to achieving the mandate of FLPMA and threat reduction, mitigation, and elimination to sage-grouse and sagebrush habitats."

Strategy at 4. Among other commitments, this policy binds the BLM to "use the best available science and other relevant information to develop conservation efforts for sage-grouse and sagebrush habitats." Strategy at 7. This best available science includes all studies footnoted herein.

The Strategy also required BLM to complete an Ecoregional Assessment for the Wyoming Basins Ecoregion. *Id.* at 11. This Wyoming Basins Ecoregional Assessment publication ("WBEA")[18] was completed in 2011, and all lease parcels in this EA fall entirely within the Wyoming Basins Ecoregion. In order for the BLM to meet its obligation to "use the best available science" including publications specifically mandated under the Strategy, it must have considered this document and its recommendations in this NEPA analysis. The BLM did not do this. This study included a complete land cover mapping exercise including analysis of human footprint, which would have been useful to include in the Affected Environment section of the EA. Chapter 5 of this publication (WBEA at 112) specifically addresses sage grouse avoidance of oil and gas developments and other permitted facilities. This analysis found that sage grouse density was negatively correlated with major highways, powerlines, and the presence of oil and gas wells. WBEA at 124. These researchers pointed out, "Any drilling <6.5 km [approximately 4 miles] from a sage-grouse lek could have indirect (noise disturbance) or direct (mortality) negative effects on sage-grouse populations." WBEA at 131. Thus, the WBEA further underscores the likelihood of significant impacts resulting from the sale of these parcels. Yet no NEPA analysis has considered this significant new information regarding the likelihood of significan impacts to sage grouse.

The underlying programmatic NEPA for the Field Offices in question do not support the issuance of lease parcels in Core Areas or General Habitat outlined in the Wyoming Sage-grouse RMP Amendment DEIS, Buffalo RMP revision DEIS, or the Bighorn Basin RMP revision DEIS supplement. Significant new information, including the USFWS Rule making the greater sage

[17] Available online at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/fish__wildlife_and.Par.9151.File.dat/Sage-Grouse_Strategy.pdf; site last visited 3/13/13.

[18] Available online at http://sagemap.wr.usgs.gov/Docs/WBEA/wbea_book_15mb.pdf; site last visited 1/24/14.

grouse a Candidate Species under the ESA (2010),[19] BLM National Technical Team (2011) report,[20] the USFWS Conservation Objectives Team (2013) Report,[21] and the Baseline Information Report (Manier et al. 2013), Open File Report 2013-1098,[22] all came to light after NEPA for each of the Resource Management Plans was completed, indicating significant impacts are likely to occur if oil and gas leases are developed in the absence of specific protection measures absent from the August 2014 lease Notice. We incorporate each of these documents into this Protest by reference. In fact, for the Buffalo Field Office, BLM essentially concedes this fact:

> Buffalo FO recommended deferring all parcels nominated for the August 2014 Oil & Gas Lease Sale within the FO boundaries not previously deferred by WSO for Sage-grouse concerns or Wyodak Decision, Pennaco Energy Inc. v. United States Department of Interior in Chapter 1. This recommendation was based upon comparison with the Preferred Alternative of the Buffalo RMP Revision Draft EIS (Draft EIS) and the differences in stipulations between this newer revision and the current 1985 Buffalo RMP. Based upon the Preferred Alternative of the Draft EIS, all of the parcels would need to have substantially different stipulations added than currently used in the 1985 Buffalo RMP.

High Plains EA version 2 at 15. Failure to unambiguously require such stipulations results in a likelhood that impacts to greater sage grouse, a BLM Sensitive Species and ESA Candidate Species, are likely as a result of leasing these parcels.

For the Wind River/Bighorn Basin EA, impacts to wildlife under the alternative adopted, for parcels issued, were stated to be the same as impacts under Alternative 2. Wind River/Bighorn Basin EA version 2 at 4-40. For sage grouse, the impacts analysis includes the following statement:

> Current science indicates the restrictions under Alternative 2 do not provide the level of protection desired for Greater sage-grouse habitat within Greater Sage-grouse Core Habitat Areas (also known as BLM's Key Habitat Areas).

Wind River/Bighorn Basin EA version 2 at 4-31. Furthermore, "As more areas are leased and developed, Sensitive Species populations are likely to decline further." Id. At 4-30. These are significant impacts. BLM fails to reach a determination that impacts to sage grouse will be reduced to a level of insignificance for parcels issued; instead its impacts analysis focuses primarily on which parcels will be deferred, leaving to conjecture the level of impacts to sage grouse on parcels that are not deferred.

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[19] Online at http://www.fws.gov/nevada/nv_species/documents/sage_grouse/sage_grouse_bi_state_12_mo_frn_032310.pdf.
[20] Online at http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/wildlife.Par.73607.File.dat/GrSG%20Tech%20Team%20Report.pdf.
[21] Online at http://www.iwjv.org/sites/default/files/cot-report-with-dear-interested-reader-letter.pdf.
[22] Online at http://sagemap.wr.usgs.gov/docs/rs/Summary%20of%20Science.pdf.

Leasing of these parcels under the existing stipulations is likely to result in significant impacts to sage grouse. In 2010, the US Fish and Wildlife Service examined the sage grouse protection measures applied to oil and gas leasing and development under the existing Resource Management Plans, including the current Casper, Newcastle, Buffalo, Grass Creek, Lander, Cody, and Washakie RMPs whose NEPA processes underlie this lease sale. They concluded,

> The BLM stipulations most commonly attached to leases and permits are inadequate for the protection of sage-grouse, and for the long-term maintenance of their populations in those areas affected by oil and gas development activities (Holloran 2005, pp. 57-60; Walker 2007, p. 2651).

75 Fed. Reg. 13910, 13978. These very stipulations are proposed for the parcels in question. See, e.g., High Plains EA version 2 at 41. BLM may apply additional stipulations in the future as Conditions of Approval that could reduce impacts below the threshold of significance for the lease parcels in question. See High Plains EA version 2 at 53. Then again, they may not, in which case development of the lease parcels in question would in fact result in significant impacts to sage grouse. We therefore raise the significant concern that significant impacts to greater sage grouse may in fact occur as a direct result of leasing the parcels in question.

The protection of proposed General Habitats and Connectivity Areas as proposed in the sage grouse plan amendments and revisions currently underway is also important to prevent significant impacts to sage grouse populations. According to the USFWS Conservation Objectives Team (2013),[23]

> Sage-grouse habitats outside of PACs may also be essential, by providing connectivity between PACs (genetic and habitat linkages), habitat restoration and population expansion opportunities, and flexibility for managing habitat changes that may result from climate change. There may also be seasonal habitats outside of PACs essential to meeting the year-round needs of sage-grouse within PACs but that have not yet been identified. Therefore, maintaining habitats outside of PACs may be important (Fedy *et al.* 2012).

We are further concerned that the leasing of these parcels violates BLM's Sensitive Species Manual with regard to prescribing inadequate sage grouse conservation measures that contribute to the need to list the species under the Endangered Species Act. As an implementation of Resource Management Plans that fail to apply adequate conservation measures and have contributed (and continue to contribute) to the likelihood and need to list the greater sage grouse as threatened or endangered, the decision to lease these parcels violates the agency's Sensitive Species Manual.

CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, WildEarth Guardians and Rocky Mountain Wild request that the protested parcels not be offered for sale at the August 2014 competitive oil and gas lease sale.

[23] Online at http://www.iwjv.org/sites/default/files/cot-report-with-dear-interested-reader-letter.pdf, see p. 36.

Sage grouse parcels need to be deferred pending completion of the RMP amendment/revision process.

Respectfully submitted,

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