

In Reply Refer to:  
3100 (921Bargsten)  
May 2014 Protest

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Erik Molvar  
WildEarth Guardians  
319 S. 6<sup>th</sup> Street  
Laramie, Wyoming 82070

**DECISION**

**PROTESTS DISMISSED OR DENIED; PROTESTED PARCELS WILL BE OFFERED FOR SALE**

On March 6, 2014, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received a single protest to specific oil and gas lease sale parcels planned to be offered in the May 6, 2014 competitive oil and gas lease sale (May 2014 Sale) from WildEarth Guardians (WildEarth).<sup>1</sup>

The BLM received nominations for the May 2014 Sale until June 21, 2013. The May 2014 Sale includes Federal fluid mineral estate located in the BLM Wyoming's High Desert District (HDD). After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the field offices and the HDD Office, including interdisciplinary review, field visits to nominated parcels (where appropriate), review of conformance with the Resource Management Plan (RMP) decisions for each planning area, and preparation of an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.<sup>2</sup>

During the BLM's review of the May 2014 parcels, the WSO screened each of the parcels, confirmed plan conformance,<sup>3</sup> coordinated with the State of Wyoming Governor's Office and Game and Fish Department, confirmed compliance with national and state BLM policies, and considered on-going efforts by the BLM in Wyoming to revise or amend RMPs for planning areas subject to this sale, including the BLM's on-going planning efforts related to the management of greater sage-grouse habitat on public lands.<sup>4</sup>

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<sup>1</sup> WildEarth indicates in their letterhead that Rocky Mountain Wild also is a party to their protest, and the protest states that WildEarth's representative (Erik Molvar) is "signing on behalf of" Rocky Mountain Wild. The May 2014 Competitive Oil and Gas Sale Booklet provides (at page ix): "If the party signing the protest is doing so on behalf of an association... the signing party must reveal the relationship between them." Because WildEarth's protest does not do so, we consider the protest to be submitted solely by WildEarth. Furthermore, Rocky Mountain Wild has not provided evidence to the BLM that they have standing to protest this sale.

<sup>2</sup> <http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/2014/may.html>

<sup>3</sup> See BLM's Land Use Planning Handbook at page 42: "After the RMP is approved, any authorizations and management actions approved... must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP." See also 43 CFR 1610.5-3.

<sup>4</sup> See 75 FR 30054-30055, May 28, 2010. See also 76 FR 77008-77011, December 9, 2011. For the HDD, only a single office is currently engaged in a RMP revision, the Rock Springs Field Office (encompassed by the 1997 Green River RMP). See 76 FR 5607-5608, February 1, 2011.

The HDD's May 2014 Sale EA (WY-040-EA13-221 v.1), along with a draft, unsigned Finding of No Significant Impact (FONSI)<sup>5</sup> were released on October 31, 2013, for a public review period, ending December 2, 2014. A total of six comment letters were received (EA v.2 at Appendix F). The EA tiered to the existing field office/resource area RMPs and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR 1502.20:

*Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review... the subsequent ...environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.*

The BLM described its purpose and need for the May 2014 Sale EA,<sup>6</sup> including (at pages 2-3):

*The BLM's purpose for offering parcels and subsequent issuance of leases in the May 2014 lease sale is to provide for exploration and development of additional oil and gas resources to help meet the nation's need for energy sources, while protecting other resource values in accordance with guiding laws, regulations, and Land Use Planning decisions...*

*The offering for sale and subsequent issuance of oil and gas leases is needed to meet the requirements of [the Mineral Leasing Act of 1920, the Federal Land Policy Management Act of 1976], and the minerals management objectives in the Kemmerer, Pinedale, Rawlins, and Green River Resource Management Plans (RMPs)...*

*Decisions to be made based on this analysis include which parcels would be offered for lease, which parcels would be deferred, which parcels are not available for leasing, and what stipulations will be placed on the parcels that would be offered for lease...<sup>[7]</sup>*

The May 2014 Sale EA considered three alternatives in detail (at pages 6-8):

- The No Action alternative (Alternative A) which considered not offering any of the 61 parcels (a total of 65,369.61 acres) available for lease
- The "Proposed Action" alternative (Alternative B) which included offering 43 entire parcels and portions of 10 parcels (a total of 52,348.29 acres, or 75% of that area nominated and available for the May 2014 Sale)
- The "Offer All Parcels for Sale" alternative (Alternative C) which was identical to the Proposed Action alternative, but including offering those available parcels deferred in Alternative B, for a total of 61 entire parcels

<sup>5</sup> See the BLM's NEPA Handbook H-1790-1 at page 76. Though the BLM has elected to release a draft, unsigned FONSI for public review in this instance, the BLM is not asserting that any of the criteria in 40 CFR 1501.4(e)(2) are met. Since the RMP EISs have already evaluated potentially significant impacts arising from the BLM's land use planning decisions, the BLM anticipates a "finding of no new significant impacts." See 43 CFR 46.140(c).

<sup>6</sup> In the remainder of our response, our citations from the EA will refer to Version 2 of the EA posted on the BLM's website.

<sup>7</sup> While a decision to be made includes what stipulations will be placed on the parcels offered for lease, this is intended as a means to ensure conformance with the decisions in the approved RMPs (see the BLM's Land Use Planning Handbook H-1601-1 at Appendix C, page 23). To the extent that the BLM may consider adding to, deleting, or modifying the constraints or stipulations identified in the approved RMP, the BLM may need to first amend the RMP.

The EA also considered two alternatives that were eliminated from detailed analysis: (1) offering all the parcels available for leasing with a No Surface Occupancy (NSO) stipulation, and (2) deferring all parcels located in sage-grouse Core Areas.

The single protest challenges a total of 9 parcels described in the WSO's Notice of Competitive Oil and Gas Lease Sale for May 6, 2014 (Notice) that was published and released to the public on February 5, 2014<sup>8</sup>:

Preliminary Parcel No.	Final Parcel No.	Acres for Offer	Acres in Greater Sage-Grouse Core Areas
WY-1405-018	<b>WY-1405-017</b>	640.00	0.32
WY-1405-019	<b>WY-1405-018</b>	640.00	12.46
WY-1405-028	<b>WY-1405-022</b>	2,524.38	2,524.38
WY-1405-031	<b>WY-1405-024</b>	640.00	640.00
WY-1405-033	<b>WY-1405-026</b>	1,938.04	220.54
WY-1405-044	<b>WY-1405-037</b>	2,371.49	
WY-1405-051	<b>WY-1405-044</b>	1,250.73	
WY-1405-052	<b>WY-1405-045</b>	160.00	
WY-1405-061	<b>WY-1405-052</b>	640.00	640.00
<b>TOTAL:</b>		<b>10,804.64</b>	<b>4,037.70</b>

The remainder of our response will address WildEarth's arguments related to these 9 parcels. The BLM has reviewed WildEarth's arguments in their entirety; the substantive arguments are numbered and provided in bold with BLM responses following.

## ISSUES

WildEarth participated in the HDD's public review of the EA, and provided comments to which the HDD responded in Appendix F of the EA. Several of WildEarth's arguments are substantially identical to the comments they provided the HDD during their review of the EA; we refer WildEarth to HDD's responses in Appendix F of the EA for additional detail.

The BLM's regulations addressing protests of competitive oil and gas lease sales (at 43 CFR §3120.1-3) do not describe any limitations as to who may protest inclusion of lands in a sale notice.<sup>9</sup> Recently, the issue of standing for purposes of appealing a BLM decision to dismiss and deny lease sale protests was addressed by the Interior Board of Land Appeals (IBLA). In *Biodiversity Conservation Alliance et al.* (183 IBLA 97, decided January 8, 2013), the IBLA evaluated the standing of the appellants to challenge the BLM's decisions to dismiss and deny protests related to certain oil and gas lease sale parcels, and determined (183 IBLA 97, 108):

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

<sup>8</sup> See press release, available at: [http://www.blm.gov/wy/st/en/info/news\\_room/2014/february/05-oglist.html](http://www.blm.gov/wy/st/en/info/news_room/2014/february/05-oglist.html)

<sup>9</sup> Other BLM regulations pertaining to administrative reviews of agency decisions do, in some cases, provide an indication of who may bring a request for review of the BLM's decision. For example, the BLM's State Director Review (SDR) regulations for onshore oil and gas operations (at 43 CFR §3165.3(b)) indicate that a requestor must be an "adversely affected party."

The IBLA explained that a party appealing a lease sale protest decision must provide “colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, sufficient to establish a causal relationship between the approved action and the injury alleged” (183 IBLA 97, 107). WildEarth’s protest describes that their members (at unnumbered page 2) “utilize land and water resources within and near these areas for hiking, camping, recreational, scientific study, photography, and aesthetic uses.” However, it is not clear that a legally cognizable interest can be demonstrated by WildEarth for certain parcels included in their protest, in particular where their access to the parcels may be impeded by land ownership patterns, including the portion of parcel WY-1405-022 where the surface estate is privately-owned.

Nonetheless, given the BLM’s directions to the public in the Sale Notice regarding submittal of protests, and the lack of specific agency guidance for adjudicating when an individual or group may have standing to protest lease parcels, the BLM has decided to answer the specific arguments made by WildEarth. However, the BLM does so with the reservation that WildEarth may not have standing to bring an appeal to the IBLA of all or parts of our protest decision.

We have noted that a portion of WildEarth’s protest is devoted to opining on the BLM’s on-going RMP amendment for greater sage-grouse (e.g., see WildEarth’s Protest at unnumbered pages 8-10). The May 2014 Sale does not provide an opportunity to challenge or protest BLM’s on-going land use planning efforts and so those portions of the protest are dismissed. The public has been invited to participate in the land use plan amendments and revisions in Wyoming, which is the proper forum for WildEarth’s comments on the BLM’s contemplated preferred alternative(s).

1. **“We protest [6 parcels] which are at least partially in a sage grouse Core Area... the BLM should defer all leasing in Priority Habitats... until the completion of the RMP Amendment process... (WildEarth Protest at unnumbered pages 3-4)**

#### BLM Response

Of the 6 parcels described in the May 2014 Sale Notice that WildEarth protests in this argument (see Attachments 1 – 4 for maps depicting these parcels), three (parcels WY-1405-017, -018, and -026) are only partially located in State of Wyoming-designated greater sage-grouse Core Population Areas (Core Areas).<sup>10</sup> The total area of these six parcels located in Core Areas is 4,037.30 acres. Greater sage-grouse are a BLM-listed sensitive species.<sup>11</sup>

On August 1, 2008, the Wyoming Governor issued Executive Order 2008-2,<sup>12</sup> establishing a “core population area strategy” for sage-grouse in Wyoming, an approach accommodated by the BLM on public lands, including in BLM-Wyoming Instruction Memorandum (IM) No. WY-2012-019.<sup>13</sup> The Core Population Area strategy has been endorsed by the U.S. Fish and Wildlife Service (FWS)<sup>14</sup>:

<sup>10</sup> The State of Wyoming’s current Core Area boundaries are described by the State as “Version 3.” See <http://gf.state.wy.us/web2011/wildlife-1000382.aspx>

<sup>11</sup> See BLM-Wyoming IM 2010-027 (“Update of the Bureau of Land Management, Wyoming, Sensitive Species List – 2010”), April 5, 2010.

<sup>12</sup> Wyoming Office of the Governor, Executive Order 2008-2 “Greater Sage-Grouse Core Area Protection.” This Executive Order has since been re-issued (most recently June 2, 2011 as EO 2011-5) and the core population area strategy remains in place.

<sup>13</sup> IM No. WY-2012-019 (“Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Included the Federal Mineral Estate”), dated February 10, 2012.

<sup>14</sup> Letter from Brian Kelly (FWS Wyoming Field Supervisor) to Ryan Lance (Wyoming Office of the Governor), dated May 7, 2008. By letter to the Wyoming Office of the Governor, dated November 10, 2010, the FWS again supported the Core Area

*The Service does indeed believe the “core population area strategy,” as outlined in the Implementation Team’s correspondence to the Governor, is a sound framework for a policy by which to conserve greater sage-grouse in Wyoming.*

BLM Wyoming IM No. WY-2012-019 (at pages 13-15 and the IM’s attachment number 7) requires the BLM to conduct a sage-grouse screen on every reviewed oil and gas parcel to determine if the parcel should be offered for sale or deferred pending completion of the on-going RMP amendments and plan revisions in all 10 BLM Wyoming field offices. Screening criteria are described in the IM and the results are provided for all parcels in the May 2014 oil and gas lease sale EA (Appendix C). This screen provides for an objective, repeatable evaluation of nominated parcels to ensure that contiguous blocks of unleased sage-grouse habitat in Core Areas are not leased until the BLM’s public RMP revision or amendment processes have been completed. This approach recognizes the need (1) to provide energy production from public lands and the jobs energy production provides and (2) to ensure the outcomes of the RMP EISs are not prejudiced and the decision-maker’s ability to select from a range of reasonable alternatives designed to enhance protection of sage-grouse habitat is not impeded.

The Council on Environmental Quality’s (CEQ’s) regulations at 40 CFR 1506.1 describe the limitations on actions during the NEPA process, including (a):

*Until an agency issues a record of decision... no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives.*

The Department of the Interior’s (DOI’s) NEPA regulations at 43 CFR 46.160 further explain:

*During the preparation of a program or plan NEPA document, the Responsible Official may undertake any major Federal action in accordance with 40 CFR 1506.1 when that action is within the scope of, and analyzed in, an existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.*

Lastly, the BLM’s NEPA Handbook<sup>15</sup> provides:

*You must not authorize any action that would limit the choice of alternatives being analyzed under the NEPA until the NEPA process is complete (40 CFR 1506.1). However, this requirement does not apply to actions previously analyzed in a NEPA document that are proposed for implementation under an existing land use plan.*

Offering and subsequently issuing competitive oil and gas leases at the May 2014 Sale is an implementation decision under the applicable RMPs.<sup>16</sup> Of the parcels nominated and reviewed for the May 2014 Sale, 23 percent of the reviewed lease parcel acreage was deleted or deferred, primarily as a result of the BLM-Wyoming Greater sage-grouse screen.<sup>17</sup> The EA describes potential impacts under

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strategy as updated through a subsequent Executive Order (“If fully implemented, we believe the Revised Strategy can provide the conservation program necessary to achieve your goal of precluding listing of the Greater sage-grouse in Wyoming.”).

<sup>15</sup> BLM Handbook H-1790-1 (January 30, 2008) at page 3.

<sup>16</sup> See BLM’s Land Use Planning Handbook (H-1601-1, dated March 11, 2005) at Appendix C, page 24: “Implementation Decisions: Offer leases with appropriate stipulations.”

<sup>17</sup> Of the 61 parcels nominated and reviewed for the May 2014 Sale (comprised of 68,425.86 acres), 53 parcels were carried forward to be offered (comprised of 52,348.29 acres). A total of 16,077.57 acres were deferred or deleted, or 23% of that area

Alternative B to sage-grouse and their habitats on these parcels (see May 2014 Sale EA at pages 63-65). We believe the EA and RMP EISs to which it is tiered provide adequate disclosure for the decision-maker regarding the potential impacts to sage-grouse and their habitats from leasing the protested parcels.

Oil and gas leasing is an important implementation decision arising from the approved RMPs, granting certain rights to the lessee. However, the BLM also regulates the lessee or operator's actions on the lease (43 CFR 3101.1-2 and 43 CFR 3162.5-1(a)). The BLM also complies with procedural requirements of NEPA and other applicable substantive laws such as the Endangered Species Act and the National Historic Preservation Act. As required by law and regulation, the lessee or their operator must first submit a plan and obtain approval from the BLM in order to initiate surface-disturbing activities on their lease.<sup>18</sup> At that time, the BLM will prepare an environmental record of review to determine, among other things, the appropriate terms and conditions of approval for the plan of operations submitted by the operator.

The Core Area strategy also comports with the Secretary of the Interior's recent Secretarial Order 3330,<sup>19</sup> which encourages strategies that include landscape-scale and regional approaches to mitigation. The State of Wyoming's Core Area strategy includes elements of compensatory mitigation over landscape and regional scales, whereby certain land uses are allowed in areas with sage-grouse habitat and populations, if the impacts can be compensated through reducing or limiting certain land uses elsewhere. A similar approach is considered by the BLM in undertaking land use allocation decisions in RMPs, which allocate certain land uses in portions of the planning area while allocating other portions of the planning area to other certain land uses. While the RMP amendments and revisions that will more fully address regional sage-grouse conservation strategies are not yet complete, the BLM will, in the meantime, defer leasing decisions in accordance with existing policies to ensure that we do not limit the range of reasonable alternatives in ongoing planning efforts..

WildEarth's position (in their protest at unnumbered page 4) that all leasing in "Priority Habitats" (Core Areas) should be deferred until the RMP amendments are completed would result in the temporary closing of over 10 million acres of BLM-administered oil and gas estate within Core Areas in Wyoming. However, the BLM's multiple-use mandate requires that the BLM also weigh other considerations, to ensure public lands (Section 103(c) of FLPMA):

*are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions...*

WildEarth has offered no evidence that the Core Area strategy, including BLM's adoption of an interim approach during the period the land use plans are being revised state-wide, is not effective at reducing potential and actual impacts to sage-grouse and their habitats. In fact, the area encompassed by Federal

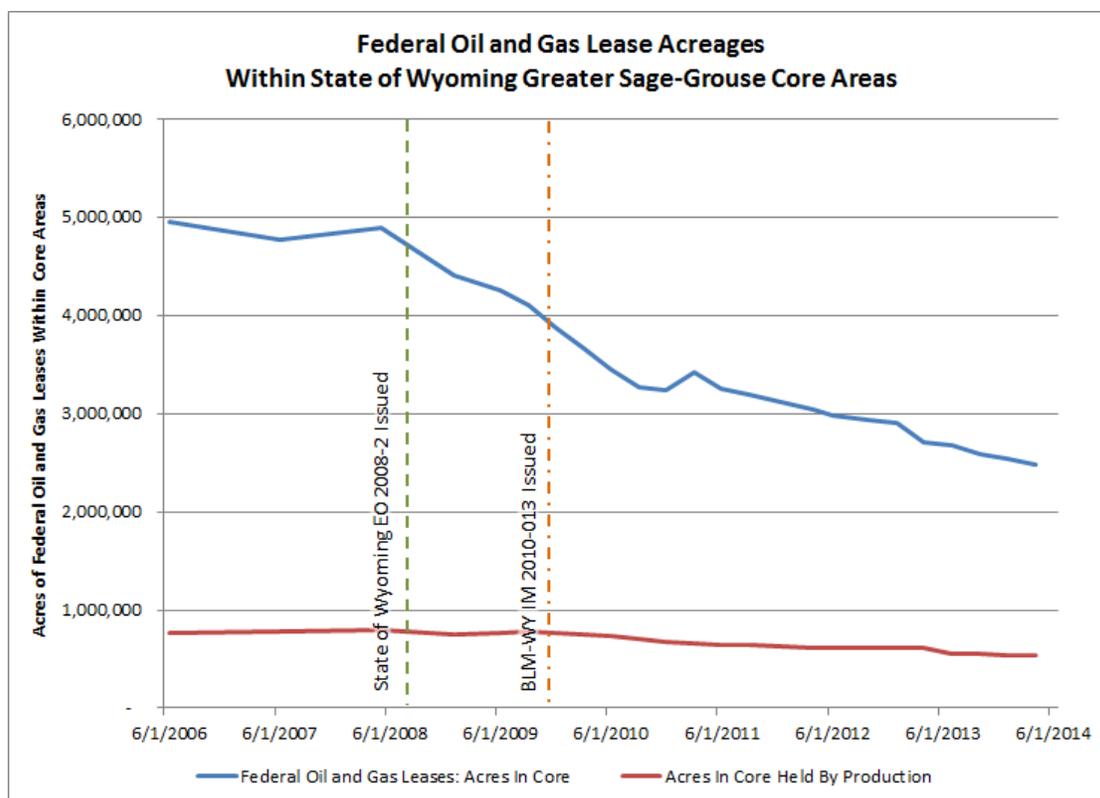
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nominated and reviewed. Of the 61 parcels nominated and reviewed for this sale, 23 intersected Core Areas (comprised of approximately 22,986 acres located within Core Areas); after completion of the sage-grouse screens by the Wyoming State Office, 11 parcels remained that intersected Core Areas (comprised of approximately 7,238 acres within Core Areas).

<sup>18</sup> See the Mineral Leasing Act of 1920, as amended. 30 U.S.C. § 226(g): "No permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area." See also Onshore Oil and Gas Order No. 1 parts IV and VII. See also 43 CFR 3162.3-1(c) and 3162.3-3.

<sup>19</sup> "Improving Mitigation Policies and Practices of the Department of the Interior" (October 31, 2013).

oil and gas leases within Core Areas is currently the lowest it has been since before the Core Area strategy was issued by the Governor of Wyoming, and as adopted by the BLM:<sup>20</sup>



Due to lease expirations, lease terminations, and the reduced pace of new leasing in Core Areas, the amount of Federal oil and gas estate leased by the BLM in Core Areas has fallen by 49 percent since the time the State of Wyoming issued the first sage-grouse Core Population Area Executive Order in 2008. The reduced pace of new leasing in Core Areas is the direct result of the application of the BLM's sage-grouse leasing screen, whereby many parcels in recent sales have been deferred from sale until the sage-grouse RMP amendments and on-going plan revisions are completed.

The BLM's cautious decision-making with regards to leasing in Core Areas has materially and substantially reduced the potential for adverse effects to sage-grouse habitat on public lands in Core Areas, during the period that the BLM is amending or revising its RMPs to ensure appropriate sage-grouse conservation measures are adopted range-wide.

<sup>20</sup> These data represent GIS analysis of the BLM's Federal oil and gas leasing data from June 1, 2006 through April 1, 2014. To obtain these data, the WSO utilized twenty-three GIS shapefiles representing the extent of Federal oil and gas leasing within Wyoming at varying (but generally 3-month) intervals. The shapefiles were clipped to Version 3 Core Area boundaries, and the total acreages of the Federal oil and gas leases in Core Areas were calculated, first for all leases and second for those leases held by production. These data indicate that approximately 16% of the 15.3-million acre Core Area is leased (as of April 2014) for Federal oil and gas development, down from a high of approximately 32% in May of 2008. These same data indicate that approximately 4% of the Core Area is currently in held by production status under a Federal oil and gas lease.

We find that the BLM has provided “reasoned analysis containing quantitative or detailed qualitative information” (BLM’s NEPA Handbook at page 131) in the EA and RMP EISs to which it tiers. We believe the BLM has taken a hard look at the effects of offering the protested parcels, and has satisfied NEPA’s procedural requirements.

If the protested parcels were offered and successfully sold, the protested acreage located in Core Areas is approximately equal to three-hundredths of one percent of the total sage-grouse Core Areas; we disagree with WildEarth’s argument that issuance of these parcels with the stipulations provided under the current RMPs could somehow “foreclose on options for greater protection of sage grouse habitats within the plan amendments and/or revisions” (WildEarth Protest at unnumbered page 4). Offering these parcels is in conformance with the approved RMPs, complies with current BLM policy, and a rational basis exists for offering these parcels while the on-going RMP revisions and amendments are being considered. For the reasons described above, we deny this portion of WildEarth’s protest.

2. **“Leases should pass through this screen [of BLM National Technical Team 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...”** (WildEarth Protest at unnumbered page 5)

#### BLM Response

In this argument, WildEarth refers to the BLM’s National Technical Team (NTT) report, released in BLM – Washington Office IM No. 2012-044. WildEarth argues that several conservation measures for “Priority Habitats” or Core Population Areas be applied to the parcels offered in the May 2014 Sale. First, the IM describes the intent of the report:

*The BLM must consider all applicable conservation measures when revising or amending its RMPs in Greater Sage Grouse habitat. The conservation measures developed by the NTT and contained in [the NTT Report] must be considered and analyzed, as appropriate, through the land use planning process...*

The NTT Report also emphasizes the intent of the conservation measures in the report for land use planning purposes (at page 5):

*The conservation measures described in this report are not an end point but, rather, a starting point to be used in the BLM’s planning processes*

The NTT Report does not weigh the conservation measures relative to the BLM’s multiple-use and sustained yield mandate. As such, it would be premature for the BLM to apply alternatives or recommendations from the NTT Report to the May 2014 Sale. As described by the IM and NTT Report, the RMP revisions or amendments will consider the NTT Report’s conservation measures relative to other land use objectives;<sup>21</sup> on a Greater sage-grouse range-wide basis; and through coordination with the states (and the states’ wildlife management agencies), the FWS, other cooperating agencies, and the public. The

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<sup>21</sup> Where there are competing resource values in the same area, Section 103(c) of FLPMA (43 U.S.C. §1702(c)) requires that the BLM manage the public lands and their various resource values so that they are utilized in the combination that will best meet our multiple use and sustained yield mandates.

conservation measures in the NTT Report must be considered and analyzed through the BLM's land use planning process, and were not intended or designed to be applied to implementation decisions (such as leasing decisions) prior to their evaluation through the RMP process. Offering lease parcels subject to the numerous conservation measures described in the NTT Report (some of which, we note, are described as "alternatives" in the NTT Report) would not be in conformance with the current, approved RMPs, and so the BLM will not apply those measures until the plan revisions or amendments are completed.

For these reasons, and considering our response to WildEarth's related arguments in Issue No. 1, this portion of WildEarth's protest is denied.

3. **“[I]mpacts 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.” (WildEarth Protest at unnumbered page 5). “The restrictions contained in IM No. WY-2010-012 [sic] come nowhere close to offering sufficient on-the-ground protection to sage-grouse leks (WildEarth Protest at unnumbered page 7)**

#### BLM Response

See previous responses above.<sup>22</sup> The BLM Wyoming's RMP revisions and amendments are currently evaluating (through the public NEPA process) potential impacts to sage-grouse arising from energy development on public lands, and in consideration of recent scientific inquiries regarding impacts to sage-grouse and the appropriate conservation measures to avoid or reduce impacts from energy development. The BLM is in the process of updating current sage-grouse conservation measures in the applicable plans (through the statewide amendment or revision of RMPs' sage-grouse habitat management decisions).

The BLM regulates the lessee or operator's actions on the lease, as described in our regulations (such as 43 CFR 3101.1-2 and 43 CFR 3162.5-1(a)),<sup>23</sup> in accordance with the lease terms (such as standard lease term Sec. 6 on the BLM Lease Form 3100-11) and stipulations, and under applicable laws (such as FLPMA). Should a parcel be offered, a successful bid received, a lease issued, and oil and gas development be proposed, the BLM will have the ability to apply protection measures for sage-grouse and their habitats on the Federal oil and gas leases. IM No. WY-2012-019 provides several timing, distance, and disturbance conservation measures for benefit of sage-grouse, and requires (at page 8):

*All recommendations, mitigation and conservation measures will be considered in site-specific documentation of NEPA compliance. As appropriate, these measures may be incorporated into COAs of permits, plans of development, and/or other use authorizations.*

<sup>22</sup> This exact argument was made by Eric Molvar (then representing Biodiversity Conservation Alliance) in the May 2012 Sale, who then appealed our protest response to the IBLA where the Board affirmed the protest decision (183 IBLA 97). Since WildEarth now reincarnates this argument without explaining why or how the circumstances differ for the May 2014 Sale, we refer WildEarth to the IBLA's decision. See also the HDD's response to WildEarth's identical comment on the draft EA at Appendix F, Comment #12.

<sup>23</sup> See also *Yates Petroleum Corporation*, 176 IBLA 144 (September 30, 2008): “When making a decision regarding discrete surface-disturbing oil and gas development activities following site-specific environmental review, BLM has the authority to impose reasonable measures to minimize adverse impacts on other resource values, including restricting the siting or timing of lease activities.”

Prior to surface-disturbing activities on the parcels (should they be leased) the BLM requires a detailed plan of operations for development of the lease. Prior to approval of the plan of operations, BLM conducts site-specific environmental review and all Application for Permit to Drill (APDs) are posted for public review (see 43 CFR 3162.3-1(g)). The BLM retains substantial authority to regulate environmental aspects of Federal oil and gas lease operations through approval (see 43 CFR 3162.3) of APDs or Sundry Notices, and through the issuance of orders and instructions of the authorized officer (see 43 CFR 3161.2).

The HDD's lease sale EA analyzed and disclosed the purpose and need, alternatives, affected environment, and environmental consequences (to the extent reasonably foreseeable) of offering the parcels and possibly issuing leases as described in the Notice. The EA included site-specific review of individual parcels and potentially-affected resources.

Often, where the context and intensity of environmental impacts such as those described by WildEarth remain unidentifiable until exploration activities are proposed, the APD may be the first useful point at which a site-specific environmental appraisal can be undertaken (*Park County Resource Council, Inc. v. U.S. Department of Agriculture*, 10<sup>th</sup> Cir., April 17, 1987). In addition, IBLA has decided that, "the BLM is not required to undertake a site-specific environmental review prior to issuing an oil and gas lease when it previously analyzed the environmental consequences of leasing the land..." (*Colorado Environmental Coalition, et al., IBLA 96-243, decided June 10, 1999*). Although certain site-specific impacts remain unforeseeable at this time, the analysis in the lease sale EA provides additional disclosure and analysis of the anticipated environmental impacts associated with our decision to offer and possibly issue leases for these parcels.

For these reasons we deny this portion of WildEarth's protest.

4. **[L]easing 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. (WildEarth Protest at unnumbered pages 6-7)**

#### BLM Response

While it is not clear what provisions of NEPA WildEarth alleges violation of, WildEarth overlooks that the BLM did undertake an EIS (actually, three RMP EISs) prior to deciding to offer these parcels – the May 2014 Sale EA is tiered to the RMP EISs for the Rawlins, Rock Springs, and Kemmerer field office planning areas. As we explained, above (see footnote No. 5), the BLM's draft, unsigned FONSI represents a finding of no new significant impacts.

WildEarth also overlooks the BLM's authority to review proposed lease operations whereby, upon completing the appropriate environmental record of review, the BLM may require modifications to siting and timing of lease operations and other reasonable measures to mitigate impacts to sage-grouse.

We find that offering the lease parcels described in the Notice is in conformance with the approved land use plans. The lease stipulations described in the Notice provide adequate protection measures for those parcels to be offered in sage-grouse habitat, and given the authority the BLM has to condition approval of lease development actions with reasonable measures to protect natural resources and environmental quality. We believe the BLM has taken a hard look at the effects of offering the protested parcels, and

has satisfied NEPA's procedural requirements. For these reasons, we deny this portion of WildEarth's protest.

- 5. "The parties protest Parcels WY-1305 [sic]-37, 44, and 45, located in the Adobe Town citizens' wilderness proposal area and Monument Valley Management Area." (WildEarth Protest at unnumbered page 11)**

#### Additional Background

The three remaining parcels protested by WildEarth are located outside of the Adobe Town Wilderness Study Area (WSA) in the Rawlins and/or Rock Springs field offices.<sup>24</sup> All the protested parcels are located within the "checkerboard" land ownership pattern – an area where alternating sections are non-federal lands. The parcels are located in an area with numerous Federal oil and gas leases, most of which are held by production.

All of final parcel numbers WY-1405-044- and -045 and only a portion of parcel -037 (not including the portion within the Rawlins Field Office) are located within the Adobe Town citizens' proposed wilderness area. To the extent that portions of parcel -037 are not located in the Adobe Town citizens' wilderness proposal area, WildEarth's protest pertaining to those portions of the parcel are dismissed.

All three parcels are located partially or entirely within the Monument Valley Management Area (MVMA). The 69,940-acre MVMA was designated in the BLM's 1997 Green River RMP (see Green River RMP at page 37). The RMP's management objective for the MVMA is (*Id.*):

*to provide protection of wildlife, geologic, cultural, watershed, scenic, and scientific values (paleontological and cultural).*

The 1997 Green River RMP further explains (*Id.*):

*The area is open to: 1) consideration for mineral leasing, exploration, and development provided mitigation can be applied to retain the resource values...*

We now will address WildEarth's arguments related to these three parcels.

- 6. "As [the MVMA] is an [Area of Critical Environmental Concern, or 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." (WildEarth Protest at unnumbered page 11)**

#### BLM Response

In this argument, WildEarth contends that because the BLM has initiated an RMP revision in the Rock Springs Field Office the BLM should refrain from issuing these leases. However, the IBLA has held that BLM may offer parcels for lease and issue new leases when an RMP is being revised, if the leasing decision conforms to the existing RMP (see *Sierra Club Legal Defense Fund, Inc.*, 124 IBLA 130, 140 (1992)):<sup>25</sup>

<sup>24</sup> A map of the protested parcels, the Adobe Town WSA, the citizens'-proposed wilderness area, and other information is provided in Attachment 5.

<sup>25</sup> See also *Southern Utah Wilderness Alliance*, 163 IBLA 14, 27 (2004).

*Acceptance of appellants' position that once BLM has decided to prepare a new land use plan for an area, it must suspend action in conformance with the prevailing plan would seriously impair BLM's ability to perform its management responsibilities. We therefore reject this challenge to BLM's decision.*

In this decision, the IBLA recognized that acceptance of the protestor's position would "seriously impair" the BLM's ability to perform its land management responsibilities. As in *Sierra Club Legal Defense Fund, Inc.*, there is no dispute here that the proposed sale implements certain goals and objectives in the approved RMPs.

Furthermore, the BLM has not determined there is a need to add to, delete, or modify the constraints identified in the approved RMPs, has found that the lease stipulations provide adequate resource protection, and has proposed and substantiated a finding of no (new) significant impacts based upon the context and intensity of impacts described in the EA (see draft unsigned FONSI at pages 4-7).<sup>26</sup>

Given the location of the protested parcels (in checkerboard land ownership pattern and adjacent to numerous existing oil and gas leases and active wells), and considering the need for the BLM to implement its RMPs in order to accomplish its multiple-use mandate, we deny this portion of WildEarth's protest.

- 7. "The proposal of Very Rare or Uncommon lands has not been analyzed thoroughly... 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." (WildEarth Protest at unnumbered page 11)**

### BLM Response

The Wyoming Environmental Quality Council's (EQC's) April 10, 2008, designation of this area as "Very Rare or Uncommon" did not result in any cognizable effect to the Federal government's ability to manage public lands. The EQC's designation (at Finding of Fact No. 38) states "[t]he designation protects the area from non-coal surface mining only.... The designation does not limit oil and gas leasing, exploration, drilling, production or related construction." Lastly, the State of Wyoming legislature passed legislation in 2011 (Wyo. Stat. §35-11-112(a)(v)) revoking the EQC's ability to designate lands in this manner, primarily in response to the designation of Adobe Town by the EQC.<sup>27</sup>

The EA explained, at page 67:

*BLM management of the Adobe Town area, including the Adobe Town WSA, Adobe Town DRUA, and Monument Valley Management Area meets or exceeds the management protections of the State of Wyoming "very rare or uncommon" designation (Rawlins RMP, 2008).*

<sup>26</sup> The BLM's responsibilities in this manner are also clearly described in BLM-Washington Office IM 2010-117 ("Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews" dated May 17, 2010): "...the field office will evaluate whether oil and gas management decisions identified in the RMP (including lease stipulations) are still appropriate and provide adequate protection of the resource values.... If the lease stipulations do not provide adequate resource protection, it may be necessary to develop new lease stipulations or revise existing ones. A lease stipulation may be revised consistent with modification criteria found in the RMP.... Generally, the creation or revision of a lease stipulation that is not clearly consistent with the terms, conditions, and decisions of the approved RMP, or a stipulation that is revised to change from a moderate to a major constraint may not be in conformance with the RMP...; therefore, a plan amendment may be necessary...." (at page 8).

<sup>27</sup> See [http://trib.com/news/state-and-regional/article\\_94742b51-a2c0-51b2-b9c9-ad8647e306a5.html](http://trib.com/news/state-and-regional/article_94742b51-a2c0-51b2-b9c9-ad8647e306a5.html)

Offering the parcels located within this EQC-designated area is in conformance with the applicable approved RMPs.

For the reasons described above, this portion of WildEarth's protest is denied.

- 8. "Because neither the EA nor the underlying [RMPs] evaluated the application of [Best Management Practices, or BMPs] to these parcels, IM 2004-110 Change 1... was violated. No evaluation of the potential application of BMPs has occurred prior to offering the parcel for sale." (WildEarth Protest at unnumbered page 12). "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." (WildEarth Protest at unnumbered pages 12-13)**

#### BLM Response

In this argument, WildEarth states their belief that the BLM has "violated" an internal BLM policy from 2004 and has erred by not evaluating BMPs such as "requirements for camouflage painting and construction of roads to a standard "no higher than necessary."

Onshore Oil and Gas Order No. 1 defines a BMP as (72 FR 10329):

*[P]ractices that provide for state-of-the-art mitigation of specific impacts that result from surface operations...*

The Order requires that when approving a proposal such as an APD, the BLM (72 FR 10334) "will incorporate any mitigation requirements, including [BMPs], identified through the APD review and appropriate NEPA and related analyses, as Conditions of Approval to the APD."

WildEarth overlooks the extensive mitigation that the BLM considered in the EA, including lease stipulations (EA at pages 56-57) and mitigation measures that would be further evaluated at the time a site-specific proposal for surface disturbing operations is submitted in accordance with Onshore Oil and Gas Order No. 1 (see mitigation measures described in the EA for each corresponding resource at pages 62-63, 66-67, 68, 68-69, 69, 70, 72, 72-73, 73, 74, 74-75, and 75).

Once a site-specific proposal for surface disturbing operations on a Federal oil and gas lease is submitted to the BLM, the responsible agency personnel will prepare an environmental record of review, ensure compliance with applicable environmental laws, and require mitigation measures in accordance with Onshore Oil and Gas Order No. 1 and applicable BLM policy.

Given the great variety of surface operations that could be proposed (involving different types of equipment, varying footprint of operations, duration of activities, and the different traffic design requirements for access roads, etc.), the numerous environmental settings (such as visual setting, soils, topography, plant community, etc.) at which operations may be proposed on an individual lease, and the possibility that current mitigation practices may no longer be "state-of-the-art" over the life of a Federal oil and gas lease, it would not be effective for the BLM to evaluate the types of mitigation measures for which WildEarth argues.

For these reasons, this portion of WildEarth's protest is denied.

## **DECISION**

After a careful review, it was determined that all of the 9 protested parcels described in the Notice of Competitive Oil and Gas Lease Sale will be offered at the May 6, 2014 sale. The protests to these 9 parcels are denied or dismissed for the reasons described, above.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (Attachment 6). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your receipt of this decision. The protestor has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the protestor's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

*/s/ Larry Claypool*

Larry Claypool  
Deputy State Director,  
Minerals and Lands

### 6 - Attachments

- 1 – Map of Protested Parcels (WY-1405-017 & -018)
- 2 – Map of Protested Parcels (WY-1405-022 & -024)
- 3 – Map of Protested Parcels (WY-1405-026)
- 4 – Map of Protested Parcels (WY-1405-052)
- 5 – Map of Protested Parcels (WY-1405-037, 044, & -045)
- 6 – Form 1842-1

cc:

(email only, no hard copy)

State Offices

District Manager, High Desert District

Field Manager, Kemmerer Field Office

Field Manager, Pinedale Field Office

Field Manager, Rawlins Field Office

Field Manager, Rock Springs Field Office

District Manager, High Plains District

District Manager, Wind River/Bighorn Basin District

Deputy State Director, Division of Minerals and Lands (920)

Deputy State Director, Division of Resources (930)

Chief, Branch of Fluid Minerals, Land, and Appraisal (921)

Chief, Branch of Leasing and Adjudication (923) e-mail & final copy on letterhead

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

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