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March 5, 2014

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

MAR 06 2014

SD	RP&M
ASD	M&LA
OC	DSS
EEO	CF
LAW	LEAD Resp.

RE: PROTEST OF CERTAIN PARCELS TO BE OFFERED AT BLM'S MAY 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) May 2014 competitive oil and gas lease sale.

The parcels under protest are numbered WY-1405-17, 18, 22, 24, 26, 37, 44, 45, and 52. 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 Rock Springs RMP revision. All lease parcel numbers described in this protest are unless otherwise stated numbered in this protest according to the crosswalk list and should reflect the numbers in the Competitive Lease Sale Notice. This renumbering by BLM is unnecessarily confusing to the public and is bound to wreak havoc on lease protests through no fault of the protestors, and we urge BLM to maintain consistent numbering of lease parcels throughout the entire process in the future; we see no difficulty with presenting lease parcels for auction with non-sequential numbering. The Core Area parcels are likely to be included in the BLM's RMP amendment process and/or parallel RMP revision processes and are part of a proposed Sage Grouse ACEC 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.

We appreciate the fact that the BLM has begun to implement the Interior leasing reforms. We are pleased to have had the opportunity to comment on the EA prior to the lease sale. However, some of our concerns remain insufficiently addressed by the NEPA documents thus far, and so we are protesting certain parcels to be offered at the May 2014 lease auction. We also appreciate that BLM has elected to defer in full or in part parcels WY-1405-6, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 56, 57, 58, 59, 60, and 61 as numbered in the original EA. The removal of

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these lands, situated in sage grouse Core Areas and/or lands withdrawn from leasing under the Rawlins RMP, are a credit to the BLM's effort to move toward balance.

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

I. THE PARTIES

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. RMW passionately believes that all species and their natural communities have the right to exist and thrive. Rocky Mountain Wild uses the best available science to forward its mission through participation in policy, administrative processes, legal action, public outreach and organizing, and education.

II. THE ISSUES

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

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

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

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

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

We protest Parcels WY-1405-17, 18, 22, 24, 26, and 52, 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. The Core Areas in question was identified by the BLM as candidate areas for a Sage Grouse Area of Critical Environmental Concern (ACEC) designation under Alternatives B and C of the Plan Amendment EIS, which was slated for a "no future leasing" management strategy. Leasing these lands on the eve of plan revision decisions would remove the potential for these lands to remain unleased, and would instead commit the agency to 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. 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) until the completion of the RMP Amendment process, under which BLM will determine whether and under what conditions oil and gas leasing will occur (if at all) inside Core Areas.

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

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

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

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

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

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

- 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 decline over a recent 20-years period.[5] These declines are attributable at least in part to habitat loss due to mining and energy development and associated roads, and to habitat fragmentation due to roads and well fields. Oil and gas development poses perhaps the greatest threat to sage-grouse viability in the region. The area within 2 to 3 miles of a sage-grouse lek is crucial to both the breeding activities and nesting success of local sage-grouse populations. In a study near Pinedale, sage-grouse from disturbed leks where gas development occurred within 3 km of the lek site showed lower nesting rates (and hence lower reproduction), traveled farther to nest, and selected greater shrub cover than grouse from undisturbed leks.[6] According to this study, impacts of oil and gas development to sage-grouse include (1) direct habitat loss from new construction, (2) increased human activity and pumping noise causing displacement, (3) increased legal and illegal harvest, (4) direct mortality associated with reserve pits, and (5) lowered water tables resulting in herbaceous vegetation loss. These impacts have not been thoroughly evaluated with full NEPA analysis.

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

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

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

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

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

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).[10] The minimum scientifically supportable metric for NSO buffers would be 2 miles from the lek to

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

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

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

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

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

[10] 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.

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,[11] 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.[12] 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.[13] BLM has too great an abundance of data to the contrary to continue with scientifically unsound stipulations as used in IM WY-2010-012 and the current Notice of Competitive Oil and Gas Lease Sale. This is especially clear in light of the U.S. Fish and Wildlife Service's recent finding that listing the greater sage-grouse as endangered or threatened under the Endangered Species Act is warranted, but precluded by other priorities. If the BLM and other federal agencies intend to keep the sage-grouse from accelerating beyond other listing priorities, more protective measures, in adherence with the scientific recommendations of 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

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[11] 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.

[12] 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.

[13] *Id.*

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,

> In the event post-lease development without appropriate stipulations were to occur on leases in Sage-Grouse habitat, it could potentially result in surface disturbing and/or disruptive activities within 2 miles or greater of a grouse lek or other known nesting habitats during the nest period, within winter concentration areas, and/or within ¼ mile or greater of leks during the breeding season and could cause substantial impacts to Greater Sage-Grouse. Impacts could include reduced breeding success and/or nest abandonment as well as causing the Greater Sage-Grouse to move to less suitable winter habitat.

May 2014 Lease EA Version 2 at 64.

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., Lease Notice at 8. 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-Grouser 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.[14] 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.

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[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.

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.[15] The Wyoming Sage-Grouse RMP Amendment DEIS Preferred Alternative limits wellpad density to one wellpad per square mile using a Disturbance Density Calculation Tool (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)[16], 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.[17]

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.

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[15] 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.

[16] 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.

[17] 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.

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 even if such conservation measures were adequate 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.

In 2004, BLM published its National Sage-Grouse Habitat Conservation Strategy ("Strategy").[18] 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")[19] 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

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[18] 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.

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

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.

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.

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

The parties protest Parcels WY-1305-37, 44, and 45, located in the Adobe Town citizens' wilderness proposal area and Monument Valley Management Area.

Parcels 37, 44, and 45 are partially or fully within the Adobe Town citizens' proposed wilderness, Adobe Town Very Rare or Uncommon Area, and Monument Valley Management Area (MVMA). The MVMA is described in the Green River RMP as an ACEC candidate area for its scenic, archaeological, and cultural resources. Green River RMP at 37. The Management Objective is "to provide protection of wildlife, geologic, cultural, watershed, scenic, and scientific values (paleontological and cultural)." *Id.* As this area is an ACEC candidate under the Rock Springs RMP, BLM should avoid committing the area through oil and gas leasing, and should defer these parcels pending the outcome of the Rock Springs RMP.

The proposal of Very Rare or Uncommon lands has not been analyzed thoroughly. Leasing these parcels without No Surface Occupancy (NSO) stipulations could irretrievably destroy the scenic character of these areas. Therefore, BLM will violate NEPA if these lands are leased in this sale. Before leasing these parcels, BLM must analyze impacts to visitors' experiences, recreation values, and scenic values. *See e.g., Pennaco Energy, Inc. v. Department of the Interior*, 377 F.3d 1147 (10th Cir. 2004). The regulations implementing NEPA provide that federal agencies shall, to the fullest extent possible, "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e). Such alternatives should include reasonable alternatives to a proposed action that will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. *Id.*; *Headwaters, Inc. v. BLM,* 914 F.2d 1174, 1180-81 (9th Cir. 1990); *City of Aurora v. Hunt*, 749 F.

2d 1457, 1466-67 (10th Cir. 1984). The purpose of NEPA's alternatives requirement is to ensure agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Envnt'l Defense Fund, Inc. v. U.S. Army Corps of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); *see also Or. Envtl. Council v. Kunzman*, 614 F.Supp. 657, 660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would "avoid or minimize" adverse environmental effects).

The Green River RMP committed the BLM to considering the Monument Valley management Area (MVMA) for ACEC status, noting that insufficient information was available during the 1990s to determine whether the area meets relevance and importance criteria. A great deal of information has been brought to light during the past 15 years, much of which was highlighted in the state designation of this an other areas as Very Rare or Uncommon in 2007. This area was once again nominated for ACEC protection in scoping comments for the Rock Springs RMP revision process, which is currently underway. In order to maintain the full range of management alternatives under the RMP revision process, including the potential for ACEC designation, these lease parcels must be deferred from the lease auction at least until the Rock Springs RMP revision is completed.

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

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

There is no indication BLM identified or evaluated the BMPs referenced in IM 2004-194 in the context of the site-specific conditions and circumstances presented by the delineated lease parcels being offered for sale. BLM did not even evaluate the application of BMPs that should be "considered in nearly all circumstances," such as requirements for camouflage painting and construction of roads to a standard "no higher than necessary." Certainly such BMPs can be

identified, evaluated, and required, as effectively at the leasing stage as the application for permit to drill (APD) stage. Indeed, a front-end analysis of BMPs provides a measure of certainty for the lessee and, most importantly, may reveal that BMPs, alone, may be inadequate to mitigate impacts within acceptable limits, thus indicating the need for more robust lease stipulations. Moreover, it may behoove BLM to require the BMPs as a lease stipulation rather than as a condition of approval. Additionally, front-end evaluation of BMPs may indicate that BLM may be unable to mitigate impacts within acceptable limits and, therefore, the lease should either be subject to an NSO stipulation or withdrawn from sale (i.e., through selection of a "no action" alternative).

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

V. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, BCA requests that the protested parcels not be offered for sale at the May 2014 competitive oil and gas lease sale. Sage grouse Core Area and MVMA parcels need to be deferred pending completion of the RMP amendment/revision process. If BLM declines to withdraw the protested wilderness parcels, then we request that at the minimum, ***adequate*** protective stipulations be placed on the leases before the lease sale in order to provide protection for wildlife, air quality, water quality, and other special resources.

Respectfully submitted,

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Attachments

1. 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.

2. 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

3. 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