



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. Box 1828

Cheyenne, WY 82003-1828

[www.blm.gov/wy](http://www.blm.gov/wy)



In Reply Refer To:  
3100 (921 Gamper)  
November 2014 Protests

NOV 03 2014

## **CERTIFIED – RETURN RECEIPT REQUESTED**

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

### **DECISION**

:  
:  
:

### **NOVEMBER 2014 OIL AND GAS LEASE SALE PROTEST OF 71 PARCELS**

### **PROTEST DISMISSED**

On September 5, 2014, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received a protest to the offering of 71 parcels at the BLM Wyoming November 4, 2014, competitive oil and gas lease sale from WildEarth Guardians (WEG). WEG protests the inclusion of lease sale parcels WY-14-11-01, 02, 03, 05, 06, 07, 08, 09, 010, 011, 012, 013, 014, 015, 017, 018, 019, 020, 022, 023, 024, 025, 026, 028, 029, 030, 032, 033, 034, 037, 038, 039, 040, 041, 042, 043, 048, 049, 050, 051, 053, 054, 055, 056, 057, 058, 059, 060, 064, 065, 066, 067, 068, 069, 072, 073, 074, 075, 076, 077, 078, 079, 080, 081, 082, 083, 084, 085, 087, 088, and 090 based on their concerns with leasing lands with key sage grouse habitats and designated Core Areas, potential wilderness, and potential ACECs in the Rock Springs RMP revision.

The BLM received 139 nominations for the November, 2014, competitive oil and gas lease sale between September 23, 2013 and December 20, 2013.

During the BLM's preliminary review of these parcels, the WSO independently screened each of the parcels, checked conformance with the Resource Management Plan (RMP) for each planning

area,<sup>1</sup> coordinated with the State of Wyoming Governor's Office and the Wyoming Game and Fish Department (WGFD), evaluated recent changes to 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.

After preliminary review at the WSO, the parcels were provided to the HDD Office and associated field offices to begin the interdisciplinary review, including field visits to nominated parcels (where appropriate), confirm conformance with the RMP for each planning area, and prepare an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance. The preliminary parcel list was also provided to the WGFD for review, and split estate land owners were notified per Washington Office Instruction Memorandum No. 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews.

The EA (WY-040-EA14-075), along with the draft and unsigned Finding of No Significant Impact (FONSI)<sup>2</sup> were released on May 2, 2014, for a 30-day public review period, as required by IM 2010-117. 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:<sup>3</sup>

*Agencies are encouraged to tier to 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.*

Compliance with all pertinent laws and regulations were considered in the drafting of the current RMP EIS' and associated Record of Decisions. For leasing and development of fluid minerals, these include, but are not limited to: National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act, the Endangered Species Act, the National Historic Preservation Act, the 2005 Energy Policy Act, the Mineral Leasing Act, and the regulations at 43 CFR §3100 and 3160.

NEPA guides the environmental analysis process. Generally, the scope of an analysis relates to the purpose and need for the proposed action. The BLM-WY November 2014 Sale EA described its purpose and need as (HDD EA v.2 at page 3):

<sup>1</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>2</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.

<sup>3</sup> See also the BLM's NEPA Handbook H-1790-1 at pages 27-28.

*The BLM's purpose for offering parcels and subsequent issuance of leases in the May 2013 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. Wyoming is a major source of natural gas for heating and electrical energy production in the United States. The offering for sale and subsequent issuance of oil and gas leases is needed to meet the requirements of MLA, FLPMA, and the minerals management objectives in the Kemmerer, Pinedale, Rawlins, and Green River Resource Management Plans (RMP). Oil and gas leasing provides the opportunity to expand existing areas of production and to locate previously undiscovered oil and gas resources to help meet the public's energy demands.*

*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 at the May 2013 lease sale.*

The EA considered two alternatives in detail:

- The No Action alternative (Alternative A) which considered not offering any of the nominated parcels available for lease
- The Proposed Action alternative (Alternative B) which included offering certain parcels (whole or in part) and deferring others (whole or in part)

Under WY IM 2012-019, Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands Including the Federal Mineral Estate, 46 parcels (whole or partial containing 79,491.350 acres) were deferred from the November sale and were not analyzed in detail. This IM provides guidance to BLM WY FOs regarding management consideration of Greater Sage-Grouse habitats for proposed activities until resource management planning updates are completed. This guidance is in place of direction provided in Washington Office (WO) IM No. 2012-043 concerning interim management policies and procedures for Greater Sage-Grouse. Specifically, this IM addresses all BLM WY programs and provides all necessary interim program direction consistent with WO IM No. 2012-043. BLM's policy under IM 2012-019 replaces the interim management strategies for Greater Sage Grouse outlined within IM 2012-043<sup>4</sup>.

In addition to the Fluid Mineral Leasing Screen deferrals, the State Director has used his discretion to temporarily defer offering 13 parcels (whole or partial) containing approximately another 6,598.550 acres in the interest of conservation of the Greater Sage-

---

<sup>4</sup> The BLM field offices do not need to apply the conservation policies and procedures described in this IM in areas in which (1) a state and/or local regulatory mechanism has been developed for the conservation of the Greater Sage-Grouse in coordination and concurrence with the FWS (including the Wyoming Governor's Executive Order 2011-5, Greater Sage-Grouse Core Area Protection); and (2) the state sage-grouse plan has subsequently been adopted by the BLM through the issuance of a state-level BLM IM. If BLM programs are not addressed in the adopted state Greater Sage-Grouse plan then program direction will default to the policies and procedures set forth in this WO IM.

Grouse and three additional whole parcels totaling 1,920.000 acres were deferred at the discretion of the State Director pending resolution of bonding liability for unplugged wells and completion of the RFO VRM RMP amendment.

Based on all of the above described deferrals, 88,009.900 acres were deferred from the November 2014 competitive lease sale.

The HDD EA also considered two additional alternatives but eliminated them from detailed analysis: (1) offer all nominated parcels with a No Surface Occupancy Stipulation (NSO) and (2) defer all remaining parcels within sage grouse core area(s). These alternatives were dismissed from further review because they: (1) would not be in conformance with the applicable RMPs; (2) were within the range of alternatives analyzed; and (3) would not meet the purpose and need as identified in the HDD EA.

## ISSUES – WILDEARTH GUARDIANS (WEG)

WEG participated in the 30-day public review period for the HDD November 2014 Sale EA and HDD provided a response to WEG's written comments in Appendix F of the EA (v.2). Many of WEG's arguments addressed in this protest are identical to the comments they provided as a result of their review of the EA. The WSO refers WEG to Appendix F of the HDD EA (v.2) for additional detail.

WEG's arguments are numbered and provided in bold below, with BLM responses following.

**1. "We protest parcels WY-1411-003, 006, 010, 055 and 088 which are at least partially in a sage grouse Core Area and appear to be slated for leasing."**

**"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 leasing these lands for a ten-year period" (Request for SDR, page 3).**

### BLM RESPONSE

The subject protested parcels are all located either partially or wholly within a Sage Grouse Core Area as defined by Executive Order 2011-05, and adopted by the BLM under WY IM 2012-019, Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands Including the Federal Mineral Estate.

The parcels were subjected to an intensive interdisciplinary team (IDT) review in preparation of the November 4, 2014, lease sale EA. The IDT has made the recommendation that these parcels be offered for lease in compliance, and/or consideration, of all applicable rules, regulations, laws and land use planning documents.

Based on our review of the record, it does not appear that WEG's arguments vary significantly from previous protest points raised in their May 2012, August 2012, May 2013, August 2013, or May 2014 lease sale protests. As WEG is aware, the IBLA rejected its nearly identical arguments in the May 2012 lease sale *Biodiversity Conservation Alliance, et al* 183 IBLA 97 (January 8, 2013). Because WEG raises arguments previously addressed by IBLA, and has not brought up any new information regarding this protest issue, we incorporate by reference our previous responses in full. WEG's arguments are subject to summary disposition. See, *Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

- a. **...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. (Request for SDR, page 4)**

BLM Response

Based on our review of the record, it does not appear that WEG's arguments vary significantly from previous protest points raised in their May 2012, August 2012, May 2013, August 2013, or May 2014 lease sale protests. As WEG is aware, the IBLA rejected its nearly identical arguments in the May 2012 lease sale *Biodiversity Conservation Alliance, et al* 183 IBLA 97 (January 8, 2013). Because WEG raises arguments previously addressed by IBLA, and has not brought up any new information regarding this protest issue, we incorporate by reference our previous responses in full. WEG's arguments are subject to summary disposition. See, *Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

WEG has provided no new information that would cause us to change our previous decision.

- b. **The BLM Sage-grouse National Technical Team has issued a Report on National Greater Sage-Grouse Conservation Measures... 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." (WEG Protest at page 4-5).**

BLM Response

Based on our review of the record, it does not appear that WEG's arguments vary significantly from previous protest points raised in their May 2012, August 2012, May 2013, August 2013, or May 2014 lease sale protests. As WEG is aware, the IBLA rejected its nearly identical arguments in the May 2012 lease sale *Biodiversity Conservation Alliance, et al* 183 IBLA 97 (January 8, 2013). Because WEG raises arguments previously addressed by IBLA, and has not brought up any new information regarding this protest issue, we incorporate by reference our previous responses in full. WEG's arguments are subject to summary disposition. See, *Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

WEG has provided no new information that would cause us to change our previous decision.

- c. **"...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) increase 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." (WEG Protest at page 5-6).**

BLM Response

Based on our review of the record, it does not appear that WEG's arguments vary significantly from previous protest points raised in their May 2012, August 2012, May 2013, August 2013, or May 2014 lease sale protests. As WEG is aware, the IBLA rejected its nearly identical arguments in the May 2012 lease sale *Biodiversity Conservation Alliance, et al* 183 IBLA 97 (January 8, 2013). Because WEG raises arguments previously addressed by IBLA, and has not brought up any new information regarding this protest issue, we incorporate by reference our previous responses in full. WEG's arguments are subject to summary disposition. See, *Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

WEG has provided no new information that would cause us to change our previous decision.

- d. **"It is clear from the scientific evidence that the current [sage-grouse] 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...**

**If the BLM and other federal agencies intend to keep the sage-grouse from accelerating beyond other listing priorities, more protective measures... must be undertaken now. In the interim, deferral of leasing is the appropriate course of action." (WEG Protest at pages 6 and 7, respectively).**

BLM Response

Based on our review of the record, it does not appear that WEG's arguments vary significantly from previous protest points raised in their May 2012, August 2012, May 2013, August 2013, or May 2014 lease sale protests. As WEG is aware, the IBLA rejected its nearly identical arguments in the May 2012 lease sale *Biodiversity Conservation Alliance, et al* 183 IBLA 97 (January 8, 2013). Because WEG raises arguments previously addressed by IBLA, and has not brought up any new information regarding this protest issue, we incorporate by reference our previous responses in full. WEG's arguments are subject to summary disposition. See, *Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

WEG has provided no new information that would cause us to change our previous decision.

- 2. WEG also protests the sale of parcels: WY-1411-037, 038, 039, and 049, located within lands designated as Lands with Wilderness Characteristics by BLM and under**

**consideration for protection under the Rawlins RMP Plan Amendment. (WEG Protest, page 12)**

**WEG states that Parcels 040, 049, 050 and 058 are partially or fully within the Adobe Town citizens' proposed wilderness, Adobe Town Very Rare or Uncommon Area, and Monument Valley Management Areas. WEG further states "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. (WEG Protest, page 12)**

BLM Response

Parcels 37, 38 and 39 are located in the Rawlins FO. However, parcel 49 is located in the Rock Springs FO and the protest raised by WEG for this parcel is dismissed as it is outside the scope of WEG's comment regarding the Rawlins RMP Plan Amendment. Lands with wilderness characteristics are adequately addressed in Sections 3.2.3 and 4.2.3 of the EA. The EA and the maintenance of LWC inventories are in compliance with BLM Manuals 6310, Conducting Wilderness Characteristics Inventory on BLM Lands and Manual 6320, Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process.

Further, offering parcels without waiting for the Rawlins RMP VRM amendment to be completed is in compliance with the BLM Land Use Planning Handbook H-1601-1, Section VII.E. which states, "Existing land use plan decisions remain in effect during an amendment or revision until the amendment or revision is completed and approved. The decisions of existing land use plans do not change. For example, if current land use plans have designated lands open for a particular use, they remain open for that use. Land use plan decisions may be changed only through the amendment or revision process." WEG's protest of the offering of the subject parcels is dismissed.

The RFO RMP EIS analysis of wilderness characteristics is consistent with the agency's policy and guidance. Further, the BLM is not required to manage for wilderness characteristics just because they may exist. BLM Manual 6310 states in part: "...the preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of public lands." As such, parcels that have been found to possess wilderness characteristics will be managed according to the approved Rawlins RMP. We have properly disclosed this information in the record and all parcels proposed to be offered at the November 4, 2014, lease sale are located in areas open to oil and gas leasing in accordance with the land use plans.

Regarding parcels 40, 49, 50, and 58, BLM Wyoming is still working on the Rock Springs RMP revision and none of the alternatives have been finalized. In any event, numerous IBLA and court cases have confirmed BLM's authority to continue implementing any RMP-level decisions even while a revision is being contemplated or actively being revised<sup>5</sup>. WEG's protest of the

---

<sup>5</sup> The Department of the Interior's (DOI's) NEPA regulations at 43 CFR 46.160 explains:

offering of the subject parcels is dismissed.

- 3. WEG argues that “IM 2004-110 Change 1 requires BLM to “evaluate the application of BMPs when taking leasing actions.” (See also WO IM 2004-194). The EA prepared by the Field Offices where these parcels are located give no indication there was any evaluation of applying BMPs to the CWP and WSA parcels in order to protect their values. (WEG Protest, page 13)**

#### BLM Response

BLM Wyoming refers WEG to 171 IBLA 313 (2007) at 316-318, and 171 IBLA153 (2007) at 157-59. IBLA has rejected this argument and BLM has addressed it in numerous protest responses. WEG has provided no additional information that would cause us to reconsider any previous decision(s). As such, this protest point is dismissed.

**DECISION:** For the reasons explained above, WEG’s protest of the November 4, 2014, oil and gas lease sale is hereby dismissed.

#### **Appeal Information**

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 (copy attached).

If an appeal is taken, your notice of appeal must be filed in this office 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 on the attached document. Copies of the notice of appeal and petition for a stay must be submitted to the Interior Board of Land Appeals and the appropriate Office of the Solicitor (see 43 CFR §4.413) at the same time the original documents are filed with this office. Copy of the notice of appeal and petition for a stay must also be submitted to each adversely affected party named in this decision 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.

---

*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.*

Additionally, the BLM’s NEPA Handbook<sup>5</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.*

### Standards for Obtaining a Stay

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

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

You will find attached to this decision a "Competitive Oil and Gas Lease Sale Results" which contains a list of persons who have purchased the protested parcels at the August 2010 sale and are, therefore, adverse parties who must be served with any pleadings.



Larry Claypool  
Deputy State Director,  
Minerals and Lands

2 Attachments:

1 - Appeal Form (1842-1)

cc:

High Desert District

HDD Field Offices

DSD (920)

DSD (930)

J. Weaver (923)

S. Moberley (923)

M.Gamper (921) e-mail of final and a letterhead copy