



In Reply Refer to:  
3100 (921Bargsten)  
Aug 2015 Protest

# 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



JUL 29 2015

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Receipt No. 91 7199 9991 7034 0606 1025

John C. Mitchell  
143 Louis L'Amour Lane  
Clark, Wyoming 82435

Jennifer DeSarro  
Greater Yellowstone Coalition  
1285 Sheridan Avenue, Suite 245  
Cody, Wyoming 82414

Deborah Thomas, Clark Resource Council,  
et al.  
920 Road 1 AB  
Clark, Wyoming 82435

Jeremy Nichols  
WildEarth Guardians  
1536 Wynkoop, Suite 310  
Denver, Colorado 80202

Julia Stuble  
Wyoming Outdoor Council  
262 Linclon Street  
Lander, Wyoming 82520-2848

Wendy Park  
Center for Biological Diversity  
1212 Broadway #800  
Oakland, California 94612

## DECISION

### PROTESTS DENIED OR DISMISSED IN PART AND UPHeld IN PART:

### ALL PROTESTED PARCELS WILL BE OFFERED FOR SALE EXCEPT WY-1508-072

Between June 4-5, 2015, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received six protests to oil and gas lease sale parcels planned to be offered in the August 4, 2015 competitive oil and gas lease sale (Aug 2015 Sale). The six protesting parties are: (1) John Mitchell; (2) several individuals and organizations who submitted a single, coordinated protest on behalf of themselves and five organizations including the Clark Resource Council (CRC et al.);<sup>1</sup> (3) Wyoming Outdoor Council (WOC); (4) the Greater Yellowstone

<sup>1</sup> This protest was signed by only two individuals, Deborah Thomas ("Line Creek Resident") and Christina Denney ("Chair, Clark Resource Council"). Six other individuals were also listed on the protest as residents of Line Creek and one individual was

Coalition (GYC); (5) WildEarth Guardians (WEG); and (6) Center for Biological Diversity (CBD). WEG and CBD both protest all 72 parcels included in the Aug 2015 Sale Notice.<sup>2</sup> The remaining protestors challenge only the BLM's decision to offer a single lease parcel, final parcel number WY-1508-072 (preliminary parcel number -237) located in the BLM's Cody Field Office.

## BACKGROUND

The BLM received nominations for the Aug 2015 Sale from June 30, 2014 until September 19, 2014. The Aug 2015 Sale includes Federal fluid mineral estate located in the BLM Wyoming's High Plains District (HPD) and Wind River/Bighorn Basin District (WRBBD). After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the field offices and district offices, 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>3</sup>

During the BLM's review of the Aug 2015 parcels, the WSO screened each of the parcels, confirmed plan conformance,<sup>4</sup> coordinated with the State of Wyoming Governor's Office and Game and Fish Department, confirmed agreement 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>5</sup>

The Aug 2015 Sale EAs (High Plains District EA No. WY-070-EA15-30, Wind River/Bighorn Basin District EA No. DOI-BLM-WY-R000-2015-0001-EA), along with draft, unsigned Findings of No Significant Impact (FONSI)s<sup>6</sup> were released on January 22, 2015 for a 30-day public review period, ending February 23, 2015. The EAs tiered to the existing field office/resource area RMPs and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR 1502.20:

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listed as an "Area Resident." Four individuals were listed as representatives of their organizations which include Shale Test, Earthworks, Earthjustice, and Natural Resources Defense Council. Another organization was listed, Carbon County Resource Council, but the protest did not identify an individual associated with the Council as a representative. John Mitchell is also listed in the coordinated protest, resulting in the submittal of two separate protests by Mr. Mitchell.

<sup>2</sup> This Sale Notice, ("Notice of Competitive Oil and Gas Lease Sale – August 4, 2015") was posted on May 6, 2015. Available at <http://www.blm.gov/style/medialib/blm/wy/programs/energy/og/leasing/2015.Par.68690.File.dat/0815list.pdf>

<sup>3</sup> <http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/2015/August.html>

<sup>4</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>5</sup> See 80 FR 30703-30705, May 29, 2015. In the HPD, a single office is currently engaged in a RMP revision, the Buffalo Field Office. See 80 FR 30709-30710, May 29, 2015. In the WRBBD, the Worland and Cody Field Offices are currently engaged in a joint RMP revision for the "Bighorn Basin" planning area. See 80 FR 30716-30718, May 29, 2015. The Lander Field Office recently completed its RMP revision. See 78 FR 12347-12348, February 22, 2013. See also BLM press release at [http://www.blm.gov/wy/st/en/info/news\\_room/2014/june/26-LanderRMP.html](http://www.blm.gov/wy/st/en/info/news_room/2014/june/26-LanderRMP.html), June 26, 2014.

<sup>6</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).

*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.*

WEG submitted comments to the BLM for both EAs (see Appendix F for the HPD's EA at unnumbered pages 1-18, and Appendix F for the WRBBD's EA at pages 36-76).<sup>7</sup> CBD submitted comments to the BLM only for the WRBBD EA (see Appendix F for the WRBBD's EA at pages 77-99).

As for the protestors to parcel WY-1508-072, which is located in the BLM Cody Field Office's and WRBBD's jurisdictions, CRC et al. (including John Mitchell) submitted comments to the BLM regarding this parcel (see Appendix F for the WRBBD's EA at pages 15-20, listed as "Line Creek Residents"). Pete Dronkers, listed as one of the "Line Creek Resident" protestors, also submitted additional unique comments to the EA (*id.*, pages 9-13). WOC submitted comments to the BLM on the WRBBD's EA for the Aug 2015 Sale (*id.*, pages 99-104), but GYC did not.

The BLM described its purpose and need for the HPD's Aug 2015 Sale EA, (at page 8):

*The purpose of the competitive oil and gas lease sale is to meet the growing energy demands of the United States public through the sale and issuance of oil and gas leases. Continued sale and issuance of lease parcels is necessary to maintain economical production of oil and gas reserves owned by the United States.*

*The need for the competitive oil and gas lease sale is established by the FOGLRA to respond to Expressions of Interest (EOI), the FLPMA, and the MLA. The BLM's responsibility under the MLA, is to promote the development of oil and gas on the public domain, and to ensure that deposits of oil and gas owned by the United States are subject to disposition in the form and manner provided by the MLA under the rules and regulations prescribed by the Secretary of the Interior, where applicable, through the land use planning process.*

*Decision to be Made: The BLM will decide whether or not to offer and lease the nominated parcels of the HPD portion at the August 2015 Competitive Oil and Gas Lease Sale and if so, under what terms and conditions.*<sup>[8]</sup>

The BLM described its purpose and need for the WRBBD's Feb 2015 Sale EA, (at page 1-3):

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<sup>7</sup> The HPD and WRBBD each prepared a single EA for the parcels in their respective jurisdictions. In this, and the remainder of our response, our citations from the EAs refer to Version 2 of the EAs posted on the BLM's website.

<sup>8</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 in order to ensure conformance with the approved land use plan.

*The purpose of this document is to not only verify conformance with existing Land Use Plans but also to defer actions that may limit the selection from a range of reasonable alternatives being evaluated in the Bighorn Basin land use planning efforts.*

*The need is established by the Federal Oil & Gas Leasing Reform Act of 1987 to respond to Expressions of Interest, the Federal Land Policy Management Act, and Mineral Leasing Act of 1920, as amended. The sale and issuance of oil and gas leases is needed to meet the growing energy needs of the United States public. Wyoming is a major source of oil and natural gas for heating and electrical energy production in the lower 48 states, especially for markets in the Eastern United States. Continued sale and issuance of lease parcels is necessary to allow for continued production of oil and gas from public lands.*

The Aug 2015 Sale EAs each considered three alternatives in detail, including a no action alternative.

## STANDING

As described earlier, each of the protesting parties varied in whether or not they took advantage of the opportunity to participate in the public review of the EAs. Several of the protestors' arguments are substantially identical to the comments they provided to the HPD or WRBBD during their review of the EAs; we refer the protestors to the HPD's and WRBBD's responses in Appendix F of the EAs 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; nor does the BLM's Sale Notice or BLM policies.<sup>9</sup> 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 considered 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. The IBLA has determined that, in order to have standing to appeal a BLM protest decision,<sup>10</sup> the appellant must meet a two-pronged test: it must be both a "party to a case" and "adversely affected."<sup>11</sup> As for whether a party is "adversely affected," in *Biodiversity Conservation Alliance et al.* the IBLA 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*

<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."

<sup>10</sup> We recognize that a party's standing to protest (to the BLM) inclusion of parcels in a BLM competitive lease sale may differ from that party's standing to appeal (to the IBLA) a BLM decision on the protests.

<sup>11</sup> See 183 IBLA 97, 107: "Under 43 C.F.R. § 4.410(a), an appellant must demonstrate that it is both a "party to a case" and "adversely affected" by the decision, within the meaning of 43 C.F.R. § 4.410(b) and (d). See *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 81-86 (2005), and cases cited. An appeal must be dismissed if either element is lacking. *Southern Utah Wilderness Alliance*, 140 IBLA 341, 346 (1997); *Mark S. Altman*, 93 IBLA 265, 266 (1986). It is the responsibility of the appellant to demonstrate the requisite elements of standing. *Concerned Citizens for Nuclear Safety*, 175 IBLA 142, 146 (2008); *Colorado Open Space Council*, 109 IBLA 274, 280 (1989)."

*leasing of each parcel to which it objects, in order to be recognized as having standing to appeal the decision to lease that parcel.*

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).

For parcel WY-1508-072, one of the protestors (John Mitchell) indicated that he is a surface owner of the split estate<sup>12</sup> private surface lands over the Federal minerals proposed to be leased (John Mitchell Protest at page 1). Current Park County, Wyoming Assessor’s Office records<sup>13</sup> indicate that the two non-contiguous portions of split estate private surface located on parcel WY-1508-072 are owned by The Cowboy Way, Inc. (T. 58 N., R. 102 W., 6<sup>th</sup> P.M., Section 30, SENW) and John Mitchell (T. 58 N., R. 102 W., 6<sup>th</sup> P.M., Section 30, SESE). Several of the protestors indicated that they own lands nearby proposed parcel WY-1508-072.

Given the BLM’s directions to the public in the Sale Notice regarding submittal of protests, and the lack of specific agency regulations or guidance for determining when an individual or group does not have standing to protest inclusion of lease parcels in a competitive lease sale notice, the BLM has decided to answer the specific arguments made in each of the protests. However, the BLM does so with the reservation that some or all of the protestors may not have standing to bring an appeal to the IBLA of all or parts of our protest decision.

The remainder of our response will address the protestors’ arguments. The BLM has reviewed the protestors’ arguments in their entirety; the substantive arguments are numbered and provided in bold with BLM responses following.

#### **ISSUES – CRC et al. and John Mitchell**

- 1. “[CRC et al.] protest the sale of oil and gas lease sale parcel WY-1508-72... [t]here are six reasons why BLM should not offer parcel WY-1508-072...: [1] Quality of life for area residents, [2] Protection of property values in the area, [3] Protection of natural resources, including air and water, [4] Protection of the natural environment and wildlife habitat, [5] Protection of human health...” (CRC et al. Protest at page 1). “This parcel should be deferred from this lease sale until the agency can demonstrate its procedures for the assessing environmental impacts is complete.” (John Mitchell Protest at page 1).**

#### BLM Response

Section 102(2)(C) of the NEPA requires consideration of the potential environmental impacts of a proposed action in an EIS if that action is a “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The BLM must consider all

<sup>12</sup> Split estate means “lands where the surface is owned by an entity of person other than the owner of the Federal or Indian oil and gas” (Onshore Oil and Gas Order No. 1, Part II, “Definitions”. 72 FR 10330, March 7, 2007).

<sup>13</sup> <http://www.parkcounty.us/countyassessor/assessor.html>

relevant matters of environmental concern, take a “hard look” at potential environmental impacts, and make a convincing case that no significant impact will result that has not already been addressed in the EIS or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. *Wyoming Outdoor Council*, 173 IBLA 226, 235 (2007). The IBLA has found that an appellant seeking to overcome the BLM’s decision carries the burden to demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. *Bales Ranch, Inc.*, 151 IBLA 353, 357 (2000).

In the WRBBD’s EA, the BLM identified, disclosed, and analyzed potential impacts that could arise from offering the proposed parcels, including parcel -072. As previously described, the WRBBD’s Aug 2015 Sale EA tiers to the EIS prepared for the appurtenant approved RMP, the Cody RMP that was prepared in 1990. The BLM is currently revising the RMP for this area, which includes public lands in both the Cody Field Office and the Worland Field Office (the “Bighorn Basin” planning area).

Potential impacts to the resources and values raised by the protestors (numbered 1-5, above) if the parcel is offered, if a successful bid is received, if a lease is issued, and if lease exploration or development operations are proposed and approved by the BLM may include impacts to:

- air quality,
- socioeconomics,
- cultural resources,
- vegetation,
- recreation and visual resources,
- wildlife and fish,
- soils, and
- water resources.

Disclosure of mitigation and potential impacts to these resources and values are addressed in the WRBBD’s EA (see pages 4-28 to 4-48) and the Cody RMP FEIS (see pages 77 to 92). CRC et al. and Mr. Mitchell have not provided objective evidence or otherwise demonstrated that the BLM failed to comply with Section 102(2)(C) of NEPA, or failed to adequately mitigate potential impacts to these resources and values.

Offering parcel WY-1508-072 is in conformance with the approved RMP, and the BLM has determined that offering the parcel would not conflict with the Council on Environmental Quality’s NEPA regulations regarding limitations on actions during the NEPA process (see Appendix F to the WRBBD’s EA at page 101).

For these reasons, we deny this portion of CRC et al.’s and Mr. Mitchell’s protests.

2. “[CRC et al.] protest the sale of oil and gas lease sale parcel WY-1508-72... [t]here are six reasons why BLM should not offer parcel WY-1508-072... [continued]: [6] Inadequate landowner notification.” (CRC et al. Protest at page 1). “I was not notified by the agency that this parcel would be made available for the sale before

**the development of the environmental assessment... If the agency is to take into consideration the views of surface owners of split estate parcels, that communication needs to have happened before the assessment was completed. Because this did not happen... this parcel should be deferred until we can work together to complete the procedure according to the regulations in place.”**

As for CRC et al.’s and Mr. Mitchell’s claims that the BLM did not adequately notify the split estate surface owner of this parcel, the BLM’s current policies require that the agency notify a surface owner before the parcel is offered for sale.

BLM Handbook H-3120-1 (“Competitive Leases”, February 18, 2013)<sup>14</sup> includes policy for when the BLM is adjudicating an Expression of Interest (EOI) nominating split estate lands for lease (at page 2):

*If split estate lands are requested, verify that surface owner’s address is provided. If surface owner information is not provided, return EOI to remitter with letter advising of requirement.*

In 2009, the BLM began routinely notifying surface owners of split estate lands that have been nominated for lease.<sup>15</sup> Due to constraints involved with determining or verifying ownership for split estate lands (including that the ownership records are not maintained by the BLM, are often not readily-available other than by visiting county assessor’s offices, and are subject to change over time), the applicable BLM policy directed the BLM to:

*Use the name and address provided with the EOI to send the notification letter. The [State Offices] are not required to expend any additional effort to verify surface owner name and addresses or research alternative names and addresses if delivery to the provided name and address is unsuccessful.*

While the BLM is not required to verify the surface owner or their information, the current policy requires that the BLM send the courtesy notifications to surface owners whose lands are identified in the EOI.

For the Aug 2015 Sale, the WRBBD field offices sent a letter to all surface owners identified in a list of surface owners collected from the EOIs and sent to the WRBBD by the WSO on October 22, 2014. The WRBBD field offices then sent a notification postcard to these same surface owners at the time the EA was released for the start of its 30-day public comment period. Finally, a “Courtesy Notice” was sent by the WSO to the listed surface owners on May 6, 2015 for parcels anticipated to be offered in the sale (see BLM Handbook H-3120-1 at page 13, Illustration 3 at page 1, and Illustration 8. See also, Aug 2015 Sale Notice at page xi.).

<sup>14</sup> This version of the Handbook incorporates policy guidance from the BLM’s “leasing reform” policy, BLM – Washington Office Instruction Memorandum (IM) No. 2010-117 (“Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews”), dated May 17, 2010. This policy requires, among other things, that the BLM will notify split estate surface owners and also “invite affected split estate surface owners to comment during the 30-day public review and comment period for the Environmental Assessment and unsigned Finding of No Significant Impact” (see endnote xi.).

<sup>15</sup> See BLM – Washington Office IM No. 2009-184 (“Courtesy Notification of Surface Owners When Split Estate Lands are Included in an Oil and Gas Notice of Competitive Lease Sale”), dated July 24, 2009.

In the case of parcel WY-1508-072, the BLM received an EOI from the nominator listing proposed lands to be included in the lease sale, and identifying the surface owner(s) of the lands.<sup>16</sup> In the list of surface owner names and addresses submitted to the district and field offices by the WSO for this sale, a single split estate surface owner, The Cowboy Way, Inc., was identified.<sup>17</sup> However, a review of the EOI submitted to the BLM shows that Mr. Mitchell's name and address were, in fact, listed by the nominator. It appears that Mr. Mitchell's name and address were inadvertently omitted by the WSO from the surface owner list provided to the WRBBD. After they were made aware of this mistake by Mr. Mitchell, the BLM's Cody Field Office prepared a letter and hand-delivered it to Mr. Mitchell on February 24, 2015, one day after the end of the 30-day public comment period for the EA.<sup>18</sup> As described above, Mr. Mitchell apparently coordinated with CRC et al. in submitting comments to the BLM before the end of the comment period, to which the BLM responded in the EA's Appendix F. Mr. Mitchell, in his protest (at page 2), notes his appreciation of the Cody Field Office's attempt to rectify the WSO's mistake, stating: "[w]hile I appreciated this step, it was too late for an opportunity to express my full understanding of the situation and perspective for that comment period, or to work collaboratively with the agency on offering the parcel for sale." He goes on to request that the parcel be deferred "in order for us to work together regarding its possible sale."

While the BLM's courtesy notifications necessarily must respond to the information submitted in the EOI by the nominator, in this case the EOI correctly identified the surface owner and provided the correct address for Mr. Mitchell. The BLM, however, did not correctly send the notifications required under our policies and procedures to ensure public participation. While Mr. Mitchell timely submitted comments on the EA, he explained that because he did not receive notice as a surface owner that he was unable to "express his full understanding of the situation" until after the comment period closed.

For these reasons, we uphold this portion of CRC et al.'s and Mr. Mitchell's protests. Parcel WY-1508-072 will be deferred from the Aug 2015 Sale (but may be re-considered and -posted in a future sale upon completion of the notifications and public participation provided for by BLM policy).

## ISSUES – WOC

1. **“First, we are concerned that leasing this parcel preempts the proper procedure for developing the Absaroka-Beartooth Front Master Leasing Plan in the Bighorn Basin Proposed Resource Management Plan...” (WOC Protest at unnumbered page 2).**

### BLM Response

<sup>16</sup> The EOI for parcel WY-1508-072, with redacted surface owner information, is available on the BLM's public internet site at: [http://www.blm.gov/style/medialib/blm/wy/programs/energy/og/leasing/EOIs/FY14/sep.Par.67175.File.dat/003\\_T058NR100W.pdf](http://www.blm.gov/style/medialib/blm/wy/programs/energy/og/leasing/EOIs/FY14/sep.Par.67175.File.dat/003_T058NR100W.pdf)

<sup>17</sup> In a letter dated May 6, 2015, The Cowboy Way, Inc. was sent a Courtesy Notification letter by the WSO that included links to information and a description of the proposed parcel with anticipated lease stipulations.

<sup>18</sup> Pers. Comm. by author, Travis Bargsten, with David Seward, Cody Field Office Natural Resource Specialist. July 10, 2015.

In the Bighorn Basin Proposed RMP and Final EIS (BHB PRMP/FEIS),<sup>19</sup> the BLM considered two alternatives (see PRMP at page 2-109) whereby the Absaroka Front Master Leasing Plan (MLP) analysis area would be “applied,” leading to the implementation of additional restrictions and stipulations within the MLP analysis area.<sup>20</sup> In other alternatives, the Absaroka Front MLP analysis area would be closed to oil and gas leasing (*id.*). The BHB PRMP/FEIS explains (at page 3-68) that “key management concerns in this area are big game habitat, migration corridors, and dispersed recreational opportunities.”

The Absaroka Front MLP analysis area was carried forward by the BLM from the Draft EIS (DEIS), which stated (at Appendix Y, pages Y-1 to Y-2):

*After development of the alternatives analyzed in detail in the Draft RMP and Draft EIS, several groups nominated areas for MLPs. These areas include the Absaroka-Beartooth Front, Fifteen Mile, and the Big Horn Front. BLM’s review of these proposals found they did not meet the criteria for requiring MLP analysis. However, the BLM identified resources of concern within these areas and has developed Evaluation Areas based upon the geographic location of those concerns. These are generally the same resources of concern in the same geographic areas as those identified during scoping. These Evaluation Areas, Absaroka Front (Figure Y-1), Fifteen Mile (Figure Y-2), and Big Horn Front (Figure Y-3), do not alter the alternatives as presented in Chapter 2 or the impact analysis in Chapter 4, but exemplify incorporation of the MLP concept within the Draft RMP and Draft EIS and serve as notification of potential future MLP areas. Additional MLP areas may be identified and analyzed at BLM’s discretion at any time. MLPs may be more fully incorporated and disclosed in the Final RMP and EIS.*

Using current BHB PRMP/FEIS Geographic Information Systems (GIS) geospatial data,<sup>21</sup> the BLM considered whether any of the proposed Aug 2015 Sale parcels were located in an MLP analysis area and, if carried forward for sale, could potentially conflict with regulations governing actions undertaken during the preparation of the BHB RMP revision. In our review of the current GIS data, we find that this parcel is located approximately 0.7 miles to the east of, not located within, the Absaroka Front MLP analysis area. Offering this parcel would not affect the BLM’s ability to ensure compliance with the applicable regulations.

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.*

<sup>19</sup> Available at: <http://www.blm.gov/wy/st/en/programs/Planning/rmps/bighorn.html>

<sup>20</sup> The Absaroka Front MLP analysis area is not identical to the “Absaroka Front-Beartooth MLP” that was proposed in 2010 to the BLM. However, the original Absaroka Front-Beartooth MLP was not carried into the BHB PRMP/FEIS alternatives. See map at page 24 in the BLM’s 2010 report entitled “Oil and Gas Leasing Reform Master Leasing Plans – Statewide MLP Evaluation” (available at:

<http://www.blm.gov/style/medialib/blm/wy/programs/energy/og/leasing/reform.Par.2836.File.dat/MLPEvaluation.pdf>).

<sup>21</sup> <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=19115>

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.*

In addition, the BLM's NEPA Handbook<sup>22</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.*

Parcel WY-1508-072 is located outside of the Absaroka Front MLP analysis area and the IBLA has held that BLM may offer parcels for lease and issue new leases while 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>23</sup>

*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.*, the proposed sale partially implements the goals and objectives in the approved RMPs.

Offering this protested parcel is in conformance with the approved RMP, and the BLM retains the authority to ensure that potential lease development operations do not limit the BLM's ability to select from a reasonable range of alternatives in the pending RMP revision.

For the reasons described above, we deny this portion of WOC's protest.

2. **“Secondly, we understand that the landowner, John C. Mitchell, who owns the surface estate of this split-estate parcel was not given adequate notice... Furthermore, the Cody Field Office did not communicate with Mr. Mitchell during—or about—the public comment period for the EA until the last day this period was open. Thus, his views were not incorporated into the EA as it was prepared...” (WOC Protest at unnumbered page 2).**

<sup>22</sup> BLM Handbook H-1790-1 (January 30, 2008) at page 3.

<sup>23</sup> See also *Southern Utah Wilderness Alliance*, 163 IBLA 14, 27 (2004).

### BLM Response

In light of our decision to uphold CRC et al.'s and Mr. Mitchell's protests on similar grounds (see above), we dismiss this portion of WOC's protest as moot.

3. **“Lastly, this parcel is implicated by multiple crucial wildlife habitats... It is likely that the pending Proposed RMP will address new understandings about the scope and quality of these habitats and will have updated stipulations.” (WOC Protest at unnumbered page 2).**

### BLM Response

As discussed in our response to WOC's protest item number 1, above, the BLM is not constrained from implementing its approved RMP.

Nonetheless, in the BLM's review of the proposed parcels for the Aug 2015 Sale, the WRBBD evaluated each parcel to ensure that carrying the parcels forward to the sale would not conflict with the applicable regulations governing decisions during the RMP revision.

In the EA's Appendix D (at unnumbered pages 2-8), the WRBBD summarized the results of this review for parcels in the Cody Field Office. The WRBBD recommended (and incorporated into Alternative 3) the deferral of several parcels given the remote potential that including these parcels could possibly limit the decision-maker's ability to select from the reasonable alternatives in the PRMP/FEIS (including alternatives that would change the RMP's allocation decisions related to wildlife habitat protections, such as timing limitation lease stipulations). The BLM did not quantitatively assess the small incremental change to the number and area of leases issued under the stipulations provided for in the current approved RMP that could result from the offering of these parcels. Rather, out of an abundance of caution, the BLM deferred those parcels from the Aug 2015 Sale that presented potential conflicts with specific decisions in the BLM's preferred alternative for the PRMP/FEIS. After completing this review, the WRBBD concluded that parcel WY-1508-072 could be offered at the Aug 2015 Sale.

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

### **ISSUES – GYC**

1. **“No formal public input has been sought on the boundary or management prescriptions for [the Absaroka-Beartooth Front] MLP included in the RMP revision. We believe the BLM should defer this parcel as it is within a proposed master leasing plan area—just as BLM has for other parcels... Landowners adjacent to and near to this parcel were impacted by the Windsor Energy Group's 25-3 gas well blowout in 2006 and have endured negative effects since then to air and water quality, and human health. This is a prime location for the proactive leasing analysis done in the development of [MLPs]... Parcel 1508-072 should be deferred until the public can engage and comment on the MLP, especially for a parcel with such significant wildlife values and amidst a community that is**

**intimately involved with the impacts of oil and gas development.” (GYC Protest at unnumbered page 2).**

### BLM Response

In the WRBBD’s EA (at Appendix F, pages 9, 14, 18, and 103), the District noted that Windsor Energy’s 25-3 well is not a Federal well subject to BLM approval or oversight. Please refer to this and the EA’s other responses to public comments.

As described above in our response to WOC’s protest, the BLM has addressed proposed RMPs in its 2010 evaluation and in the current BHB PRMP/FEIS. Parcel WY-1508-072 is not located within an MLP analysis area currently being contemplated in the RMP revision. Regardless, as described above, offering this protested parcel would be in conformance with the approved RMP and the BLM retains the authority to ensure that potential lease development operations do not limit the BLM’s ability to select from a reasonable range of alternatives in the pending RMP revision.

For these reasons, GYC’s protest is denied.

### **ISSUES – WEG**

WEG argues that the BLM failed to (1) quantify greenhouse gas (GHG) emissions that could result from leasing the parcels in the Aug 2015 Sale and (2) analyze the “social cost of carbon” for GHG emissions:

**“WildEarth Guardians protests the BLM’s August 2015 oil and gas lease sale over the agency’s failure to adequately analyze and assess the climate impacts of the reasonably foreseeable oil and gas development that will result in accordance with the [NEPA].” (WEG Protest at page 3).**

- 1. “In both EAs, the BLM completely rejected analyzing and assessing the potential direct and indirect greenhouse gas emissions, including carbon dioxide and methane, that would result from the reasonably foreseeable development of the proposed leases. Although acknowledging that development of the lease parcels would occur and that greenhouse gas emissions would be produced, no analysis of these emissions was actually prepared.” (WEG Protest at page 5).**

### BLM Response

The EAs both acknowledged that the Federal action under consideration – leasing of the oil and gas for possible exploration and development – could eventually result in a variety of impacts to air quality (including GHG emissions) if the parcels were offered, if the parcels were successfully issued under lease, if the lessee or its operator proposed drilling projects on the leases, if the BLM approved them, and if the projects were initiated and hydrocarbons were produced and eventually combusted..

For example, the WRBBD's EA discussed air quality, specifically GHG and climate change, in its disclosure of the affected environment (at pages 3-1 to 3-5), and noted (at page 3-4):

*Currently, the [Wyoming Department of Environmental Quality, or WDEQ – the state agency with authority to regulate emissions from oil and gas facilities in Wyoming<sup>24</sup>] does not have regulations regarding greenhouse gas emissions, although these emissions are regulated indirectly by various other regulations.*

The EA acknowledges that oil and gas development generate GHG emissions (at pages 3-4 to 3-5):

*Several activities contribute to the phenomena of climate change, including emissions of GHGs (especially carbon dioxide and methane) from fossil fuel development... The lack of scientific tools designed to predict climate change at regional or local scales limits the ability to quantify potential future impacts. However, potential impacts to air quality due to climate change are likely to be varied. Several activities occur within the planning area that may generate greenhouse gas emissions: oil, gas, and coal development, large fires, livestock grazing, and recreation using combustion engines which can potentially generate CO<sub>2</sub> and CH<sub>4</sub>... Oil and gas development activities can generate CO<sub>2</sub> and CH<sub>4</sub>. CO<sub>2</sub> emissions result from the use of combustion engines, while methane can be released during processing.*

The EA's analysis of impacts for Alternative 2 explained, however, that quantifying the potential GHG emissions from possible oil and gas activities on the Federal leases is precluded given the uncertainties with whether, and how, the Federal leases would be explored or developed (at page 4-31, see materially identical explanation in the HPD's EA at page 45):

*The amount of increased emissions cannot be quantified at this time since it is unknown how many wells might be drilled, the types of equipment needed if a well were to be completed successfully (e.g. compressor, separator, dehydrator), or what technologies may be employed by a given company for drilling any new wells. The degree of impact will also vary according to the characteristics of the geologic formations from which production occurs. Emissions of all regulated pollutants (including GHGs) and their impacts will be quantified and evaluated at the time that a specific development project is proposed...*

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<sup>24</sup> As the IBLA determined in *Powder River Basin Resource Council*, 183 IBLA 83, 95 (December 21, 2012, footnote omitted): "This Board has previously held that BLM properly may rely on the State, which is subject to oversight by the EPA, to ensure permitted activities do not exceed or violate any State or Federal air quality standard under the CAA, 42 U.S.C. §§ 7401-7671q (2006). See, e.g., *Wyoming Outdoor Council*, 176 IBLA 15, 27 (2008) ("[I]n approving the Project, BLM properly assumed that emissions would be regulated, and, if necessary, controlled so as to satisfy both Federal and State air quality standards"); *id.* at 30 ("In assessing the potential significant environmental impacts in the EIS, BLM properly relied upon the adequacy of State enforcement to ensure that no CAA violation occurs"); see also *WildEarth Guardians v. Salazar*, 42 ELR 20166 (D.D.C. 2012) (*aff'd* *WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013) (BLM satisfied its FLPMA obligation "by preparing a lease for the WAI tracts requiring compliance with air and water quality standards"). We have held, moreover, that "BLM need not evaluate the potential environmental consequences resulting from noncompliance with Federal and State permitting requirements or assume that violations of Federal and State standards will inevitably occur." *Powder River Basin Resource Council*, 180 IBLA at 57."

*Subsequent development of any leases issued, would contribute a small incremental increase in overall hydrocarbon emissions, including GHGs. When compared to total national or global emissions, the amount released as a result of potential production from the proposed lease tracts would not have a measurable effect...*

*It is unknown what the drilling density may be for these parcels, if they were developed; therefore, it is not possible to predict at this stage what level of emissions would occur.*

As for Alternative 3, the EA stated (at pages 4-38 to 4-39):

*Under this alternative, fewer acres would be offered for lease and thereby few acres available for oil and gas development, than Alternative 2. Therefore, fewer impacts to air quality would result. However, since the level of development is unknown, the reduction in effects cannot be quantified.*

*As fewer acreage is available for oil and gas development, fewer wells are anticipated, therefore, less greenhouse gas emissions are expected than under Alternative 2. However, since the level of development is unknown, the reduction in greenhouse gas emissions cannot be quantified.*

The EA also addressed GHG emissions and potential impacts in its treatment of cumulative effects (at page 4-47), including:

*The average number of oil and gas wells drilled annually in the District and probable GHG emission levels, when compared to the total GHG emission estimates from the total number of Federal oil and gas wells in the State, represent an incremental contribution to the total regional and global GHG emission levels. This incremental contribution to global GHG gases cannot be translated into incremental effects on climate change globally or in the area of these site-specific actions.*

The HPD's EA, while it *characterizes* the extent to which GHG emissions and climate change are addressed differently than the WRBBD's EA, actually takes a fairly similar approach and much of its disclosure and analysis is identical to the WRBBD's.

WEG attempts to broaden minor differences between the two EAs' approaches on this issue by portraying them as "completely different," stating that "In the [WRBBD] EA, the BLM acknowledged that climate change is a very serious issue and that it is likely being fueled by the release of human-produced [GHG] emissions," (WEG Protest at page 4) but that the HPD's EA "refused to even address the potentially significant climate change impacts" (at page 5). This fails to acknowledge that both EAs provide materially similar (in some cases identical) disclosure and analysis of GHG emissions and climate change. The HPD's EA explained that it was eliminating from detailed analysis the effects of "climate change alone" (emphasis added) but nonetheless (at page 14): "GHGs are analyzed in this document as it relates to the overall climate change analysis..." (id.). For example, compare: the WRBBD EA at pages 3-3 to 3-4 ("Greenhouse gases that are included...") with the identical discussions in the HPD EA at pages 22-23; WRBBD EA at page 4-31 ("It is unknown what the drilling density may be...") and the

HPD EA at page 48; the WRBBD EA at page 4-47 (“[the GHG emissions from the average number of wells drilled within the WRBBD] represent an incremental contribution to the total regional and global GHG emission levels...”) and the HPD at page 57.

Importantly both EAs explained (as described above) that there remains substantial uncertainty at the leasing stage whether, or how, the Federal oil and gas leases will be developed.

The BLM issued an IM in 2008<sup>25</sup> that included draft guidance for BLM offices to use in addressing potential impacts related to climate change. The IM expired in 2009, and its effectiveness not been extended by the BLM.

In 2011, the BLM circulated internal draft guidance to its offices entitled “Integrating Climate Change into the NEPA Process” (BLM’s 2011 Draft Guidance). On April 3, 2015, the BLM – Washington Office sent an e-mail notifying the BLM’s leadership and management teams that the BLM’s 2011 Draft Guidance document “remains in effect.”

Acknowledging the “unique challenges” posed by addressing GHG and climate change in NEPA documents, the BLM’s 2011 Draft Guidance provided draft, interim direction to the BLM that the agency has used until further guidance can be finalized. As the BLM’s 2011 Draft Guidance notes (at page 2):

*...it is beyond the scope of existing science to relate a specific source of greenhouse gas emission or sequestration with the creation or mitigation of any specific climate-related environmental effects.*

*...it is currently impossible to determine what specific effect greenhouse gas emissions resulting from a particular activity might have on the environment. Further, since the specific effects of a particular action... cannot be determined, it is equally impossible to determine whether any of these particular actions will lead to significant climate-related environmental effects.*

The BLM’s 2011 Draft Guidance goes on to state, however (at page 3):

*The fact that the cause and effect of specific greenhouse gas emissions on specific climate changes cannot be clearly delineated does not mean that analysis of greenhouse gas emissions and climate change is not relevant and appropriate under NEPA.*

To this end, the BLM’s 2011 Draft Guidance indicates (at page 3):

*As with the assessment of other issues, the decision of whether and to what extent climate change warrants analysis in the NEPA process is left to the expertise and discretion of the agency.*

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<sup>25</sup> Washington Office IM 2008-171 (“Guidance on Incorporating Climate Change into Planning and NEPA Documents”), issued August 19, 2008.

On December 18, 2014, CEQ issued revised draft guidance for assessing greenhouse gas emissions and climate change impacts (CEQ’s 2014 Draft Guidance).<sup>26</sup> This guidance acknowledges that evaluating GHG emissions and climate change is a “particularly complex challenge” (at page 2), and states (at page 3):

*Agencies continue to have substantial discretion in how they tailor their NEPA processes to accommodate the concerns raised in this guidance, consistent with the CEQ Regulations and their respective implementing regulations and policies, so long as they provide the public and decision makers with explanations of the bases for their determinations.*

The CEQ’s 2014 Draft Guidance emphasizes use of the “rule of reason” which (at page 5, footnote omitted):

*...ensures that agencies are afforded the discretion, based on their expertise and experience, to determine whether and to what extent to prepare an analysis based on the availability of information, the usefulness of that information to the decision-making process and the public, and the extent of the anticipated environmental consequences.*

When addressing the extent of the anticipated environmental consequences, the CEQ’s 2014 Draft Guidance also indicates the agency should (at page 10) “...consider both the context and intensity.”<sup>27</sup>

In our review of the Aug 2015 Sale EAs, we find that the WRBBD and HPD appropriately disclosed that GHG emissions could result from Federal lease exploration and development activities (and that such emissions would result in “an incremental contribution” to local and global GHG emissions (WRBBD EA at page 4-47, HPD EA at page 57), but acknowledge that there remains substantial uncertainty whether and how exploration and development of the Federal oil and gas resources would occur. As a result, it is extremely difficult to estimate with accuracy or precision the quantity of GHGs that could be emitted, if a lease is issued, if a proposal to explore or develop the lease is approved by the BLM, if actual operations take place and the ultimate end use and combustion of produced Federal minerals.

Both EAs describe the substantial uncertainty that exists at the time the BLM offers a lease for sale regarding crucial factors that will affect potential GHG emissions, including: well density; geological conditions; development type (vertical, directional, horizontal); hydrocarbon characteristics; equipment to be used during construction, drilling, production, and abandonment operations; and potential regulatory changes pertaining to GHGs over the life of the 10-year primary lease term. Implicit in this acknowledgement is that the BLM will have a point in time when such information is much less speculative and certain – when actual operations are proposed on an issued lease through an Application for Permit to Drill (APD) or Sundry Notice (SN). In this case, that is the appropriate point in time to estimate GHG emissions, if necessary and appropriate.

<sup>26</sup> Available at: <https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance>

<sup>27</sup> As the Guidance notes (at n. 25, citing 40 CFR §§ 1508.27(a) and 1508.28(b)), context is the situation in which something happens, and which gives it meaning; intensity is the severity of the impact.

In their protest (at pages 6-9), WEG argues that it is actually possible to ascertain and analyze the potential GHG emissions for the leases in the Aug 2015 Sale. Using the Casper Field Office's RMP and its estimation of Reasonably Foreseeable Development (RFD),<sup>28</sup> WEG attempts to demonstrate (at page 9 of its protest) that it "appears reasonably straightforward for the agency to estimate total greenhouse gas emissions." WEG's calculations use figures from a report prepared for the BLM – Colorado State Office, the Colorado Air Resource Management Modeling Study (CARMMS).<sup>29</sup>

In its calculations, WEG makes the assumption that the 29,764 acres of lease parcels in the Casper Field Office (under Alternative B) would be fully developed at either 40- or 80-acre well spacing, and would support "conventional" wells (not other types of wells such as coalbed methane wells). Using these assumptions, WEG calculates the total "potential" emission of CO<sub>2</sub> from construction and production operations to be from 133,920 tons per year (TPY) to 267,840 TPY.

However, WEG's calculations are based upon four important assumptions: (1) that the CARMMS report estimates for per-well CO<sub>2</sub> emissions are applicable to eventual operations that may occur on these lease parcels, (2) that the parcels will all be fully developed before expiring or terminating, (3) the well spacing will be either 40- or 80-acre, and (4) that the well types will be "conventional."

As the EAs acknowledged, it would be speculative to predict the manner in which the leases will be developed. Even the CARMMS report, given its purpose and limitations, discloses differences in the potential CO<sub>2</sub> emissions that may be generated, depending upon factors such as the type of well, density of development, etc. Overlooking these important limitations and uncertainty at the leasing stage, WEG contends that there is "no basis" (WEG's Protest at page 9) for claiming that such calculations are speculative.

The proposed parcels in the Aug 2015 Sale are located in six field offices in Wyoming, which encompass over 58,000 square miles, or 59% of the State of Wyoming and which include oil and gas fields with remarkably different conditions, characteristics, operators, well densities, and operational natures. While WEG may believe that estimates of GHG emissions at the leasing stage for this sale would be helpful to inform the public and the decision-maker, we agree with

<sup>28</sup> In an internal summary of the use of RFDs for RMP implementation decisions (dated November 12, 2013), the WSO cites BLM policies, such as Washington Office IM 2004-089 ("Policy for Reasonably Foreseeable Development (RFD) Scenario for Oil and Gas") which notes: "The RFD projection can range from speculative estimates in unexplored frontier areas to estimates with higher levels of confidence in maturely developed producing areas."

<sup>29</sup> Available at: [http://www.blm.gov/co/st/en/BLM\\_Information/nepa/air\\_quality/carmms.html](http://www.blm.gov/co/st/en/BLM_Information/nepa/air_quality/carmms.html)

The CARMMS report was prepared to assist the CSO and BLM – New Mexico State Office (NMSO) in preparing information for pending RMP revisions (at page 1):

*As part of these RMPs, BLM is estimating the air quality (AQ) and air quality related value (AQRV) impacts due to the projected BLM-authorized mineral development activities.*

This estimation occurred through use of models for a 4 km<sup>2</sup> domain (see CARMMS report at page 11) that did not include the major oil and gas development areas in Wyoming. The CARMMS report identified some of its limitations, including (at page 3):

*CARMMS is using a photochemical grid model (PGM) to assess the AQ and AQRV impacts associated with BLM-authorized mineral development on Federal lands within BLM Colorado and the New Mexico Farmington Field Office Planning Areas. CARMMS will not assess the nearsource AQ impacts of the O&G and other development activities; that will be addressed at the Project level in the future.*

the conclusions in the EAs that there is substantial uncertainty about whether and how the Aug 2015 Sale lease parcels will be developed. This limits the usefulness of estimating GHG emissions at the leasing stage.

As an illustration of the uncertainty as to whether a lease parcel, if issued, will be developed, recent GIS data (as of April 2014)<sup>30</sup> indicate that almost two-thirds (64%) of Federal oil and gas leases in Wyoming do not have any active wells located within their boundaries. This raises serious questions about WEG's assumption that all leases are eventually fully developed for purposes of estimating GHG emissions at the leasing stage.

Using the April 2014 GIS data, the spacing of active wells on Federal oil and gas leases ranges in Wyoming from 0 (zero) to 0.51 wells per acre. Where active wells are present, the well spacing on individual leases ranges from 5,495.4 acres per well to 2.0 acres per well ( $\mu = 105.0$ ,  $\sigma_x = 292.6$ ). This, also, casts great doubt on WEG's assumption that the leases will either be uniformly developed at a 80- or 40-acre spacing. The RFDs provided for estimating impacts in RMPs across a planning area are generally much too coarse for predicting impacts that may occur on a handful of leases offered in an individual sale. The salient point from this illustration is that there exists substantial uncertainty as to whether and to what degree leases will be explored or developed at the leasing stage; if a quantified estimate of GHG emissions is warranted,<sup>31</sup> this is more appropriate (if a lease is issued and actual operations proposed) at the time the BLM considers an APD or SN.

While WEG's protest appears to primarily focus on GHG emissions from construction and production operations (see WEG Protest at page 9), to the extent that WEG may believe the BLM should consider potential "downstream" effects from oil and gas leasing, the BLM's 2011 Draft Guidance noted that evaluation of the potential indirect effects arising from GHG emissions generated by commodity production occurring on public lands is not warranted, stating (at page 6):

*The consumption of commodities produced on BLM lands (e.g. coal, oil and gas), would typically not constitute an indirect effect of the proposed action because it is not reasonably foreseeable how those commodities will be used. It is also difficult to discern if the consumption of those or any commodities is actually caused by the BLM's action. For example, how crude oil will be used, whether any or all of the oil will be refined for plastics or other products that will not be burned; the possible mix of ultimate uses with disparate carbon emissions (e.g., auto fuel, bunker oil, diesel, kerosene); and the market forces that may replace lost BLM production with production from other sources are all uncertain. Therefore, the greenhouse gas emissions that may ultimately result from the consumption of products derived from the crude oil generated on BLM lands would not be reasonably foreseeable, and thus would not constitute an indirect effect of a BLM decision to approve the leasing, development, or production of oil in that area.*

<sup>30</sup> The April 2014 data represent the most recent GIS data that provide both existing Federal oil and gas leases and active oil & gas wells for the same month and year.

<sup>31</sup> Given the inherent uncertainty of whether or how the lease will be explored or developed, the BLM cannot reasonably ascertain, for example, that the administrative act of offering the leases in the Aug 2015 Sale would result in GHG emissions exceeding the 25,000 TPY threshold that the CEQ's 2011 Draft Guidance tentatively provides (at page 18).

WEG also points out that other BLM offices and other Federal agencies have attempted to estimate GHG emissions (WEG Protest at pages 7-10), including at the leasing stage; however, the circumstances and information in those offices differ from the Aug 2015 Sale. While those offices or agencies may have reasonably determined that quantifying GHG estimates is appropriate for the actions they were considering, we find that GHG estimates for a lease sale located over such a large area with the heterogeneous conditions and factors present in these six BLM field offices make such estimates prone to substantial uncertainty and are speculative in nature.<sup>32</sup> Furthermore, when applicable and necessary, the BLM will make site- and circumstance-specific estimates of GHG emissions for actual operations proposed on the Aug 2015 Sale parcels, if they are leased and if development is proposed for consideration by the BLM. This approach is consistent with current BLM policy, CEQ's draft guidance, and NEPA's implementing regulations.

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

2. **“Compounding the failure of the BLM to make any effort to estimate the greenhouse gas emissions that would result from reasonably foreseeable oil and gas development is that the agency also rejected analyzing and assessing these emissions in the context of their costs to society. It is particularly disconcerting that the agency refused to analyze and assess costs using the social cost of carbon protocol, a valid, well-accepted, credible, and interagency endorsed method of calculating the costs of greenhouse gas emissions and understanding the potential significance of such emissions.” (WEG Protest at page 10).**

### BLM Response

WEG also argues that the BLM did not comply with NEPA because the agency did not determine the potential costs to society from the potential GHG emitted from lease operations, particularly through the metric of Social Cost of Carbon (SCC).

As for addressing potential costs to society from GHG emissions, the CEQ's 2014 Draft Guidance explains (at page 16):

*Monetizing costs and benefits is appropriate in some, but not all, cases...*

Highlighting the transformative nature of climate change impacts assessment, such as SCC

<sup>32</sup> BLM policy does not require the agency to engage in speculative analysis under NEPA. The BLM's NEPA Handbook (H-1790-1, January 2008) at page 59 states: "...you are not required to speculate about future actions. Reasonably foreseeable future actions are those for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends." We agree with the leasing EAs that development of the subject parcels is not "highly probable." See *Powder River Basin Resource Council*, 180 IBLA 119, 135 (decided November 2, 2010: "NEPA does not require BLM to hypothesize as to potential environmental impacts that are too speculative for a meaningful determination of material significance or reasonable foreseeability. Such an "analysis" would not serve NEPA's goal of providing high quality information for informed decisionmaking [footnotes and internal citations omitted]."); see also *Southern Utah Wilderness Alliance*, 159 IBLA 220, 221 (decided June 16, 2003: "The Board may affirm BLM's conclusion that the possible cumulative impact of a future action need not be considered significant when the reasonably foreseeable future action is speculative.").

estimates, the CEQ's 2014 Draft Guidance instructs agencies (at page 16, footnote omitted):

*When using the Federal social cost of carbon, the agency should disclose the fact that these estimates vary over time, are associated with different discount rates and risks, and are intended to be updated as scientific and economic understanding improves.*

The BLM Washington Office's April 3, 2015 e-mail noted that:

*In response to public comments, some BLM field offices have included estimates of the SCC in project-level NEPA documents. We are working on additional guidance for the field. Until such guidance is provided, if BLM managers believe that public interest or other factors make it appropriate to include the SCC, please contact the BLM WO for technical assistance before issuing any NEPA documents.*

As these statements demonstrate, there remain uncertainties involved with estimating the SCC for GHG emissions. While we agree that some level of uncertainty is unavoidable in assessing impacts from complex environmental systems, in this case that uncertainty is compounded by basing any potential SCC estimates on speculative GHG emissions.

For example, continuing to dissect WEG's example of emissions from the Casper Field Office parcels under Alternative B in the Aug 2014 Sale EA, WEG notes that (depending upon other factors) estimates of SCC by the Interagency Working Group<sup>33</sup> range from \$11 to \$220 per metric ton (a mid-range of approximately \$116).

Using this range of SCC values, the potential SCC estimates for the Casper Field Office parcels provided by WEG would range from \$1,336,394 to \$53,455,743.<sup>34</sup> This range represents a 4,000% difference in potential SCC estimates under WEG's approach. Citing research that indicates some SCC values are too low, WEG advocates in their protest (at page 13) that current estimates of SCC values "should be increased six times for a mid-range value of \$220 per ton." If the upper value of the Interagency Working Group's SCC values advocated by WEG were to be multiplied by six, the range of possible values included in WEG's Protest would differ by 24,000%.

WEG's GHG estimates are based on questionably narrow and speculative assumptions (as described, above) and we find this range to be less than helpful in informing the public and the decision-maker about the consequences of selecting one of the action alternatives. Given the confusion that this speculation and wide range of uncertainties introduces, we find that it is prudent for the BLM to avoid quantifying and analyzing specific estimates of GHG emissions from possible exploration or development of the lease parcels in the Aug 2015 Sale. If it is later determined to be necessary and appropriate, quantified analysis of GHG emissions and SCC would be less speculative at the point in time the BLM receives a proposal to conduct actual

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<sup>33</sup> The Interagency Working Group was formed in order to assist in developing tools for implementation of the President's Executive Order 12866. See February 2010 report prepared by the Group, available at: <https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf>

<sup>34</sup> The short tons used by WEG from the CARMMS report were converted to metric tons using a conversion rate of 1.10231 short tons per metric ton (or 2,204.6 pounds per metric ton).

operations on the leases, if issued, from the Aug 2015 Sale.

WEG ends their argument by stating (at page 14) the BLM "...implicitly conclud[ed] that there would be not cost associated with the proposed oil and gas leasing." This is incorrect; the BLM acknowledged in the EAs that if leases were issued and subsequently developed, GHG emissions would result. Rather than engaging in the wide-ranging speculation as to the specific costs and benefits<sup>35</sup> associated with such oil and gas operations, the BLM prudently declined to hazard a guess as to the potential cost to society from GHG production, and likewise avoided discussion of the financial benefits to society from possible production from the parcels..

As a Federal District Court in Oregon recently held in *League of Wilderness Defenders/Blue Mts. Biodiversity Project v. Connaughton*, 2014 U.S. Dist. LEXIS 170072 (D. Or. Dec. 9, 2014), a SCC analysis is not required to comply with NEPA where there is no clear way to quantify costs and benefits. The BLM also has acknowledged that climate science does not allow a precise connection between project-specific GHG emissions and specific environmental effects of climate change. This approach is consistent with that upheld when considering NEPA challenges to Federal coal leasing decisions. *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 n.5 (D.C. Cir. 2013); *WildEarth Guardians v. BLM*, 8 F. Supp. 3d 17; 34 (D.D.C. 2014).

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

## ISSUES – CBD

CBD argues that the BLM failed to (1) address potential mitigation of impacts to sage-grouse, (2) adequately disclose impacts to air quality and climate change, and (3) discuss the potential public health impacts that could result from hydraulic fracturing operations. As we have pointed out, above, CBD commented on the WRBBD's EA but did not take advantage of the opportunity to do so for the HPD's EA. Thus, whether or not CBD is a party to the case for the 54 parcels located in the HPD is doubtful.

1. **"The Environmental Assessment for the [WRBBD] defers all study and mitigation of impacts on Greater Sage-Grouse, on the grounds that '[s]ite specific NEPA analysis will occur at the development stage that will analyze the resource conflicts and identify mitigation for specific impacts.' [...] Similarly, the [HPD] EA notes that '[s]ince development cannot be reasonably determined at the leasing stage, the impacts cannot realistically be analyzed at this time. At the time of APD development an analysis of these resources will be completed.'" (CBD Protest at page 3).**

## BLM Response

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<sup>35</sup> While the BLM acknowledges that GHG emissions and their contribution to anthropogenic climate change are concerns that warrant consideration in agency decisions, the BLM also has been directed by the Executive (for example, see EO 13605, April 13, 2012) and Legislative (the Energy Policy Act of 2005, Pub. L. 109-58) branches of the U.S. government to encourage responsible domestic production of hydrocarbons from public lands – the production of GHGs such as those in or formed by use of natural gas – for the various benefits energy production provide our nation, including the production of natural gas as a "bridge fuel" until other energy sources can be developed on a scale that responds to the public's demands.

The EAs, rather than deferring “all study and mitigation of impacts” to greater sage-grouse (GSG), both included alternatives that accounted for GSG conservation (see WRBBD EA at page 2-10; see HPD EA at page 17), descriptions of the potential impacts to GSG and mitigation (see WRBBD EA at pages 1-9, 4-35, and 4-43 through 4-45; see HPD EA at pages 4-6, 42-43, and 54-56), and tiered to their respective RMP EISs.

BLM Wyoming IM No. WY-2012-019 (at pages 13-15 and the IM’s attachment number 7) requires the BLM to conduct a GSG 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 BLM Wyoming field offices. Screening criteria are described in the IM and the results are provided for all parcels in the Aug 2015 oil and gas lease sale EAs (WRRBD EA at Appendix C, HPD EA at Appendix A). This screen provides for an objective, repeatable evaluation of nominated parcels to ensure that contiguous blocks of unleased sage-grouse habitat in much of the best GSG habitat are not leased until the BLM’s public RMP revision or amendment processes have been completed and implemented.

Offering and subsequently issuing competitive oil and gas leases at the Aug 2015 Sale is an implementation decision under the applicable RMPs.<sup>36</sup> Of the parcels nominated and reviewed for the Aug 2015 Sale, 43 percent of the reviewed lease parcel acreage was deferred as a result of the BLM-Wyoming GSG screen,<sup>37</sup> and fully 77 percent of the reviewed area was deleted or deferred from the sale because of the GSG screen and other reasons. The EAs describe potential impacts under the various alternatives to sage-grouse and their habitats on these parcels. We believe the EAs and RMP EISs to which they are 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’s 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 (ESA) and the National Historic Preservation Act, (NHPA). 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>38</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.

CBD’s believes (in their protest at page 7) that the BLM should “defer all leasing until the sage-

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<sup>36</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>37</sup> Of the 242 parcels nominated and reviewed for the Aug 2015 Sale (comprised of 305,995.15 acres), 72 parcels were carried forward to be offered (comprised of 69,789.52 acres). A total of 236,205.63 acres were deferred or deleted, or 77% of that area nominated and reviewed.

<sup>38</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.

grouse amendment process for the RMPs governing the lease-sale parcels has been completed.” However, as mentioned above in our response to other protestors, the IBLA has held that BLM may offer parcels for lease and issue new leases while 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>39</sup>

*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.*

Offering the protested parcels would be in conformance with the approved RMP, and the BLM retains the authority to ensure that potential lease development operations do not limit the BLM’s ability to select from a reasonable range of alternatives in the pending RMP revisions and amendments.

In addition, the BLM’s multiple-use mandate requires that the BLM 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...*

CBD has offered no objective evidence that the BLM’s adoption of an interim approach during the period the land use plans are being revised and amended state-wide is not effective at reducing potential and actual impacts to sage-grouse and their habitats.

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.

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.

Often, where the context and intensity of environmental impacts such as those described by CBD remain unidentifiable until exploration activities are proposed, the Application for Permit to Drill (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, the Interior Board of Land Appeals (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...”

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<sup>39</sup> See also *Southern Utah Wilderness Alliance*, 163 IBLA 14, 27 (2004).

(*Colorado Environmental Coalition, et al., IBLA 96-243, decided June 10, 1999*). However, when site-specific impacts are reasonably foreseeable at the leasing stage, NEPA requires the analysis and disclosure of such reasonably foreseeable site-specific impacts (*N.M. ex rel. Richardson v. BLM, 565 F.3d 683, 719-19 (10<sup>th</sup> Cir. 2009)*).

Although certain site-specific impacts remain unforeseeable at this time, the analysis in the lease sale EAs provides additional disclosure and analysis of the anticipated environmental impacts to GSG associated with our decision to offer and possibly issue the leases for these parcels.

For the reasons described above, we deny this portion of CBD's protest.

2. **“...the EAs cannot postpone the discussion of air pollution and climate change impacts until site-specific plans are proposed. ‘Reasonable forecasting’ is possible based on development projections in the RFD for each planning area.... A piecemeal analysis at the APD stage risks sweeping under the rug cumulative impacts of drilling on multiple parcels for lease within the same locale. At the individual APD stage, BLM would have no more information than it does now to analyze the cumulative impacts of developing multiple leased parcels in a given area, except for the development plans for an individual APD.... BLM must discuss these cumulative impacts before the lease sale.” (CBD Protest at page 9).**

#### BLM Response

In response to CBD's protest, we refer them to our response to WEG's arguments related to estimating GHG emissions and evaluating climate change impacts, above. CBD's argument is substantially similar to WEG's, and we do not find any distinctions in the points raised by CBD to reach a different conclusion (and in additional consideration of the extensive treatment the EAs provide regarding impacts to air quality more generally, not specifically limited to GHGs). We would point out, however, that CBD overlooks an important acknowledgment in their assertion that the BLM “would have no more information” at the APD stage than now, at the leasing stage, “except for the development plans for an individual APD....”

By dismissing the APD “development plans,” CBD disregards the importance of those site-specific plans in disclosing, assessing, and developing mitigation for impacts from actual oil and gas development.

As the BLM in Wyoming continues to demonstrate,<sup>40</sup> when site-specific oil and gas lease exploration or development projects are received the BLM will determine the appropriate level of analysis for the circumstances, and will ensure our NEPA obligations are fulfilled. This allows for compliance with NEPA and avoids speculative guesses as to impacts at leasing stage.

For these reasons, and incorporating our response to WEG's protests, we deny this portion of CBD's protest.

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<sup>40</sup> See, for example, the extensive air quality modeling and analysis triggered by the BLM's receipt of lease development plans in the Continental Divide – Creston EIS, available at: [http://www.blm.gov/wy/st/en/info/NEPA/documents/rfo/cd\\_creston.html](http://www.blm.gov/wy/st/en/info/NEPA/documents/rfo/cd_creston.html)

3. **“Both EAs provide a white paper generally discussing the impacts of hydraulic fracturing (of ‘fracking’), but provide no sense of the risk and severity of public health impacts that could potentially result from increased natural gas drilling and hydraulic fracturing operations on the proposed parcels for lease.... The white paper’s cursory discussion does not amount to a ‘hard look’ at the health risks posed by oil and gas development, including hydraulic fracturing.” (CBD Protest at pages 9-10).**

### BLM Response

In their protest, CBD takes issue with the addendum to each EA that includes additional discussion regarding hydraulic fracturing operations (WRBBD EA at Appendix E, HPD EA at Appendix G).

The EAs also acknowledge the possibility that, if the leases are issued and if an operator proposes to explore or develop a lease, hydraulic fracturing operations may be proposed (see WRBBD EA at page 1-8: “Without a discrete development proposal, the use of hydraulic fracturing in the oil and gas development process cannot be predicted.”; see also HPD EA at page 14). The “white paper” discussion on hydraulic fracturing in the EAs’ appendices provides a brief discussion regarding public health and safety (at page 12).

The BLM has developed rules pertaining to the regulation of hydraulic fracturing operations (80 FR 16128-16222, March 26, 2015; see also 80 FR 16577, March 30, 2015). Because of an order in pending litigation in the U.S. District Court for the District of Wyoming, on June 24, 2015, the BLM postponed the effective date of the rule.<sup>41</sup>

We disagree that the leasing EA’s do not adequately address impacts to public health and safety from hydraulic fracturing operations; we agree with the EAs’ conclusions that the BLM cannot disclose or analyze specific, detailed effects from hydraulic fracturing operations at the leasing stage, and that such analysis is more appropriate at the time actual operations are proposed.

For these reasons, we deny this portion of CBD’s protest.

### DECISION

After a careful review, it was determined that all but one (WY-1508-072) of the 72 protested parcels described in the Notice of Competitive Oil and Gas Lease Sale will be offered at the August 4, 2015 sale. The protests to the other 71 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).

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<sup>41</sup> BLM – Washington Office IM 2015-111 (“Hydraulic Fracturing Rule – No Implementation Until Further Notice”), June 24, 2015.

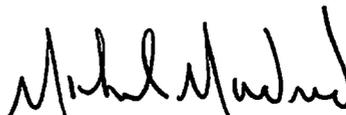
If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your receipt of this decision. The protestor has the burden of showing that the decision appealed from is in error.

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.



Michael Madrid  
Acting Deputy State Director,  
Minerals and Lands

1 - Attachment

1 - Form 1842-1