



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office
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In Reply Refer to:
3100 (921Bargsten)
Feb 2015 Protest

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

FEB 02 2015

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WildEarth Guardians
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DECISION

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

On December 5, 2014, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received a single protest to specific oil and gas lease sale parcels planned to be offered in the February 3, 2015 competitive oil and gas lease sale (Feb 2015 Sale) from WildEarth Guardians and Rocky Mountain Wild (WildEarth/RMW).

The BLM received nominations for the Feb 2015 Sale until September 19, 2014. The Feb 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.¹

During the BLM's review of the Feb 2015 parcels, the WSO screened each of the parcels, confirmed plan conformance,² coordinated with the State of Wyoming Governor's Office and Game and Fish Department, confirmed compliance with national and state BLM policies, and considered on-going efforts by the BLM in Wyoming to revise or amend RMPs for planning areas subject to this sale, including the BLM's on-going planning efforts related to the management of greater sage-grouse habitat on public lands.³

¹ <http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/2015/febr.html>

² 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.

³ See 75 FR 30054-30055, May 28, 2010. See also 76 FR 77008-77011, December 9, 2011. In the HPD, a single office is currently engaged in a RMP revision, the Buffalo Field Office. See 78 FR 39010-39012, June 28, 2013. In the WRBBD, the Worland and Cody Field Offices are currently engaged in a joint RMP revision for the "Bighorn Basin" planning area. See 78 FR 41947-41949, July 12, 2013. 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, June 26, 2014.

The Feb 2015 Sale EAs (High Plains District EA No. WY-070-EA14-291, Wind River/Bighorn Basin District EA No. DOI-BLM-WY-R050-EA-14-49), along with draft, unsigned Findings of No Significant Impact (FONSI)s⁴ were released on July 21, 2014, for a 30-day public review period, ending August 20, 2014. WildEarth/RMW submitted comments to the BLM for both EAs (see Appendix F for the HPD's EA v.2 at unnumbered pages 2-8, and Appendix F for the WRBBD's EA v.2 at unnumbered pages 1-26). The EAs tiered to the existing field office/resource area RMPs and their respective Environmental Impact Statements (EISs).

Of the 118 parcels protested by WildEarth/RMW, one is located within the jurisdictional boundaries of the Cody Field Office, which is also located within the WRBBD. The remaining 117 protested parcels are located in the Casper and Newcastle field offices, which are located within the HPD.

A total of nine comment letters were received by the HPD and three comment letters were received by the WRBBD. 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:

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

The BLM described its purpose and need for the HPD's Feb 2015 Sale EA,⁵ (at pages 7-8):

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 FOOGLRA 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 issue the nominated parcels of the HPD portion at the February 2015 Competitive Oil and Gas Lease Sale and if so, under what terms and conditions. ^[6]

⁴ 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).

⁵ The HPD and WRBBD each prepared a single EA for the parcels in their respective jurisdictions. In the remainder of our response, our citations from the EAs will refer to Version 2 of the EAs posted on the BLM's website.

⁶ While a decision to be made includes what stipulations will be placed on the parcels offered for lease, this is intended as a means to ensure conformance with the decisions in the approved RMPs (see the BLM's Land Use Planning Handbook H-1601-1 at Appendix C, page 23). To the extent that the BLM may consider adding to, deleting, or modifying the constraints or stipulations identified in the approved RMP, the BLM may need to first amend the RMP.

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

The single protest challenges a total of 118 parcels (103,701.59 acres) described in the WSO's Notice of Competitive Oil and Gas Lease Sale for February 3, 2015 (Notice) that was published and released to the public on November 5, 2014.⁷ As WildEarth/RMW explains in their protest (at page 1):

This protest is based on concerns over leasing lands within key sage grouse habitats and designated Core Areas.

Of the 118 parcels protested by WildEarth/RMW, only 15 of the protested parcels or portions of those parcels remain in Core or Connectivity areas (comprised of approximately 9,600 acres).

The remainder of our response will address WildEarth/RMW's arguments for the 118 protested parcels. The BLM has reviewed WildEarth/RMW's arguments in their entirety; the substantive arguments are numbered and provided in bold with BLM responses following.

ISSUES

WildEarth/RMW participated in the public review of the EAs, and provided comments to which the HPD and WRBBD responded in Appendix F of the EAs. Several of WildEarth/RMW's arguments are substantially identical to the comments they provided the HPD or WRBBD during their review of the EAs; we refer WildEarth/RMW 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.⁸ Recently, the issue of standing for purposes of appealing a BLM decision to dismiss and deny lease sale protests was addressed by the Interior Board of Land Appeals (IBLA). In *Biodiversity Conservation Alliance et al.* (183 IBLA 97, decided January 8, 2013), the IBLA evaluated the standing of the appellants to challenge the BLM's decisions to dismiss and deny protests related to certain oil and gas lease sale parcels, and determined (183 IBLA 97, 108):

...since the BLM decision at issue involves the leasing of several parcels of land for oil and gas

⁷ See press release, available at: http://www.blm.gov/wy/st/en/info/news_room/2014/november/05-ogparcelpost.html

⁸ 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."

purposes, each of the appellants must show an adverse effect as a result of the leasing of each parcel to which it objects, in order to be recognized as having standing to appeal the decision to lease that parcel.

The IBLA explained that a party appealing a lease sale protest decision must provide “colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, sufficient to establish a causal relationship between the approved action and the injury alleged” (183 IBLA 97, 107). WildEarth/RMW’s protest describes that their members (at page 2) “utilize land and water resources within and near these areas for hiking, camping, recreational, scientific study, photography, and aesthetic uses.” However, it is not clear that a legally cognizable interest can be demonstrated by WildEarth/RMW for certain parcels included in their protest, in particular where their access to the parcels may be impeded by land ownership patterns, including the parcels where the surface estate is privately-owned. Of the 118 parcels protested by WildEarth/RMW, all but two (WY-1502-045 and -138) are located on lands having split-estate private surface.

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

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

BLM Response

The four parcels described in the Feb 2015 Sale Notice that WildEarth/RMW protests in this argument (parcels WY-1502-043, -115, -117, and -153) are partially or entirely located in State of Wyoming-designated greater sage-grouse Core Population Areas (Core Areas).⁹ The total area of these four parcels located in Core Areas is approximately 3,967 acres. Greater sage-grouse are a BLM-listed sensitive species.¹⁰

On August 1, 2008, the Wyoming Governor issued Executive Order 2008-2,¹¹ establishing a “core population area strategy” for sage-grouse in Wyoming, an approach accommodated by the BLM on public lands, including in BLM-Wyoming’s Instruction Memorandum (IM) No. WY-2012-019.¹² The Core Population Area strategy has been endorsed by the U.S. Fish and Wildlife Service (FWS)¹³:

The Service does indeed believe the “core population area strategy,” as outlined in the

⁹ The State of Wyoming’s current Core Area and Connectivity Area boundaries are described by the State as “Version 3.” See <http://gf.state.wy.us/web2011/wildlife-1000382.aspx>

¹⁰ See BLM-Wyoming IM 2010-027 (“Update of the Bureau of Land Management, Wyoming, Sensitive Species List – 2010”), April 5, 2010.

¹¹ Wyoming Office of the Governor, Executive Order 2008-2 “Greater Sage-Grouse Core Area Protection.” This Executive Order has since been re-issued (most recently June 2, 2011 as EO 2011-5) and the core population area strategy remains in place.

¹² IM No. WY-2012-019 (“Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Included the Federal Mineral Estate”), dated February 10, 2012.

¹³ Letter from Brian Kelly (FWS Wyoming Field Supervisor) to Ryan Lance (Wyoming Office of the Governor), dated May 7, 2008. By letter to the Wyoming Office of the Governor, dated November 10, 2010, the FWS again supported the Core Area strategy as updated through a subsequent Executive Order (“If fully implemented, we believe the Revised Strategy can provide the conservation program necessary to achieve your goal of precluding listing of the Greater sage-grouse in Wyoming.”).

Implementation Team's correspondence to the Governor, is a sound framework for a policy by which to conserve greater sage-grouse in Wyoming.

BLM Wyoming IM No. WY-2012-019 (at pages 13-15 and the IM's attachment number 7) requires the BLM to conduct a sage-grouse screen on every reviewed oil and gas parcel to determine if the parcel should be offered for sale or deferred pending completion of the on-going RMP amendments and plan revisions in BLM Wyoming field offices. Screening criteria are described in the IM and the results are provided for all parcels in the Feb 2015 oil and gas lease sale EA (Appendix C). This screen provides for an objective, repeatable evaluation of nominated parcels to ensure that contiguous blocks of unleased sage-grouse habitat in Core Areas are not leased until the BLM's public RMP revision or amendment processes have been completed and implemented. This approach recognizes the need (1) to provide energy production from public lands and the jobs energy production provides and (2) to ensure the outcomes of the RMP EISs are not prejudiced and the decision-maker's ability to select from a range of reasonable alternatives designed to enhance protection of sage-grouse habitat is not impeded.

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

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

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

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

Lastly, the BLM's NEPA Handbook¹⁴ provides:

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

Offering and subsequently issuing competitive oil and gas leases at the Feb 2015 Sale is an implementation decision under the applicable RMPs.¹⁵ Of the parcels nominated and reviewed for the Feb 2015 Sale, 48 percent of the reviewed lease parcel acreage was deleted or deferred, primarily as a result of the BLM-Wyoming Greater sage-grouse screen.¹⁶ 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

¹⁴ BLM Handbook H-1790-1 (January 30, 2008) at page 3.

¹⁵ 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."

¹⁶ Of the 249 parcels nominated and reviewed for the Feb 2015 Sale (comprised of 303,937.44 acres), 153 parcels were carried forward to be offered (comprised of 157,115.43 acres). A total of 146,822.01 acres were deferred or deleted, or 48% of that area nominated and reviewed. Of the 249 parcels nominated and reviewed for this sale, 104 intersected Core or Connectivity Areas (comprised of approximately 141,883 acres located within Core or Connectivity Areas); after completion of the sage-grouse screens by the Wyoming State Office, 18 parcels remained that intersected Core or Connectivity Areas (comprised of approximately 12,767 acres within Core or Connectivity Areas). Not all of the parcels with areas remaining in Core or Connectivity Areas were protested by WildEarth/RMW.

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.¹⁷ At that time, the BLM will prepare an environmental record of review to determine, among other things, the appropriate terms and conditions of approval for the plan of operations submitted by the operator.

The Core Area strategy also comports with the Secretary of the Interior's recent Secretarial Order 3330,¹⁸ which encourages strategies that include landscape-scale and regional approaches to mitigation. The State of Wyoming's Core Area strategy includes elements of compensatory mitigation over landscape and regional scales; whereas certain land uses are allowed in areas with sage-grouse habitat and populations, these impacts may be compensated through reducing or limiting certain land uses elsewhere. A similar approach is considered by the BLM in undertaking land use allocation decisions in our RMPs, which allocate certain land uses in portions of planning areas while allocating other portions of the planning areas to other certain land uses. While the RMP amendments and revisions that will more fully address regional sage-grouse conservation strategies are not yet completed and implemented, the BLM will, in the meantime, defer leasing decisions in accordance with our policies to ensure that we do not limit the range of reasonable alternatives.

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

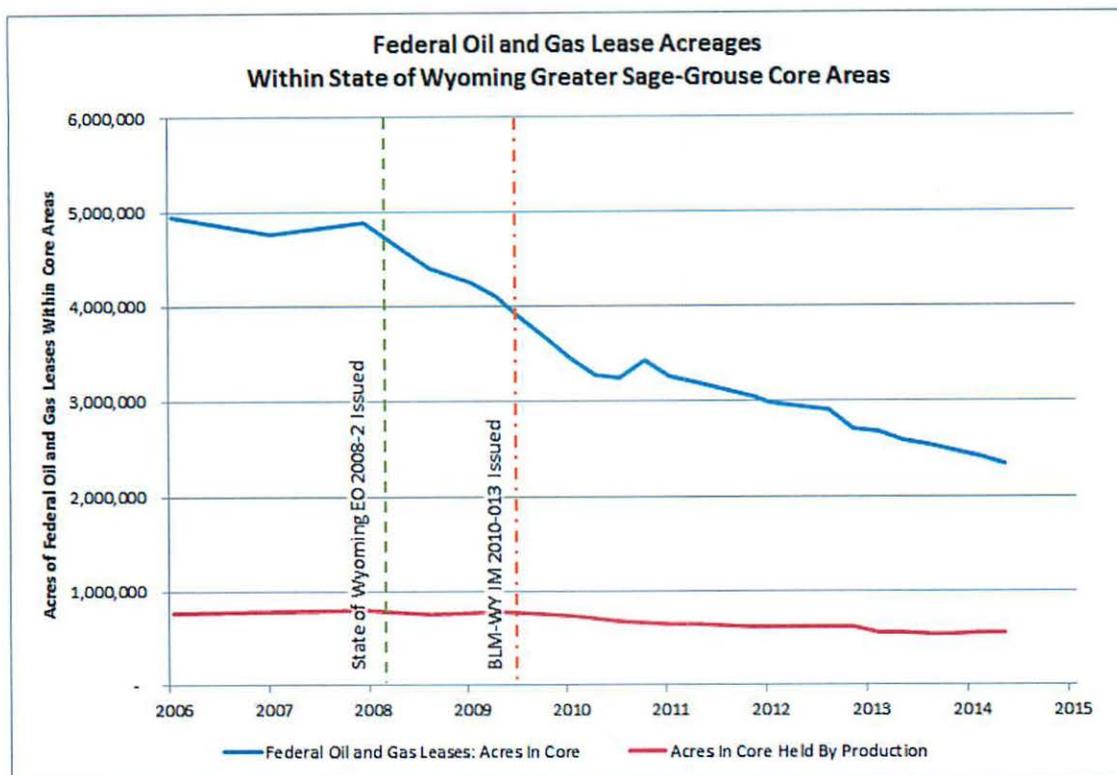
are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to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

WildEarth/RMW has offered no evidence that the Core Area strategy, including BLM's adoption of an interim approach during the period the land use plans are being revised state-wide, is not effective at reducing potential and actual impacts to sage-grouse and their habitats. In fact, the area encompassed by Federal oil and gas leases within Core Areas is currently the lowest it has been since before the Core Area strategy was issued by the Governor of Wyoming, and as adopted by the BLM:¹⁹

¹⁷ 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.

¹⁸ "Improving Mitigation Policies and Practices of the Department of the Interior" (October 31, 2013).

¹⁹ These data represent GIS analysis of the BLM's Federal oil and gas leasing data from June 1, 2006 through October 1, 2014. To obtain these data, the WSO utilized twenty-five GIS shapefiles representing the extent of Federal oil and gas leasing within Wyoming at varying (but generally 3-month) intervals. The shapefiles were clipped to Version 3 Core Area boundaries, and the total acreages of the Federal oil and gas leases in Core Areas were calculated, first for all leases and second for those leases held by production. These data indicate that approximately 15% of the 15.3-million acre Core Area is leased (as of October 2014) for



Due to lease expirations, lease terminations, and the relatively subdued pace of new leasing in Core Areas, the amount of Federal oil and gas estate leased by the BLM in Core Areas has fallen by 52 percent since the time the State of Wyoming issued the first sage-grouse Core Population Area Executive Order in 2008. The relatively subdued pace of new leasing in Core Areas is the direct result of the application of the BLM’s sage-grouse leasing screen, whereby many parcels in recent sales have been deferred from sale until the sage-grouse RMP amendments and on-going plan revisions are completed.²⁰

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

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

If the protested parcels were offered and successfully sold, the protested acreage located in sage-grouse Core Area is approximately equal to three-hundredths of one percent of the total sage-grouse Core Area;

Federal oil and gas development, down from a high of approximately 32% in May of 2008. These same data indicate that approximately 4% of the Core Area is currently in held by production status under a Federal oil and gas lease.

²⁰ It is not possible to ascribe a single causative factor to this observed decline; many factors likely have contributed, including the implementation of BLM policies adopting the Governor’s Core Area strategy and national or regional economic trends. While the BLM does not claim that BLM policies are the sole factor contributing to this decline, it is evident that by deferring and deleting parcels from the Feb 2015 and previous lease sales, the BLM’s cautious approach to leasing in Core Areas has contributed to this decline.

we disagree with WildEarth/RMW's argument that issuance of these parcels with the stipulations provided under the current RMPs could somehow "foreclose on options for greater protection of sage grouse habitats within the plan amendments and/or revisions" (WildEarth/RMW Protest at page 4). Offering these parcels is in conformance with the approved RMPs, complies with current BLM policy, and a rational basis exists for offering these parcels while the on-going RMP revisions and amendments are being considered. For the reasons described above, we deny this portion of WildEarth/RMW's protest.

2. **"Leases should pass through this screen [of BLM National Technical Team recommendations] before being offered, in order to prevent the BLM from foreclosing on management options available to the agency under the Sage Grouse Plan Amendment process as well as revision of the Green River RMP..." (WildEarth/RMW Protest at page 5).**

BLM Response

In this argument, WildEarth/RMW refers to the BLM's National Technical Team (NTT) report, released in BLM – Washington Office IM No. 2012-044. WildEarth/RMW argues that several conservation measures for "Priority Habitats" or Core Population Areas be applied to the parcels offered in the Feb 2015 Sale. First, the IM describes the intent of the report:

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

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

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

The NTT Report does not weigh the conservation measures relative to the BLM's multiple-use and sustained yield mandate. As such, it would be premature for the BLM to apply alternatives or recommendations from the NTT Report to the Feb 2015 Sale. As described by the IM and NTT Report, the RMP revisions or amendments will consider the NTT Report's conservation measures relative to other land use objectives;²¹ on a Greater sage-grouse range-wide basis; and through coordination with the states (and the states' wildlife management agencies), the FWS, other cooperating agencies, and the public. The conservation measures in the NTT Report must be considered and analyzed through the BLM's land use planning process, and were not intended or designed to be applied to implementation decisions (such as leasing decisions) prior to their evaluation through the RMP process. Offering lease parcels subject to the numerous conservation measures described in the NTT Report (some of which, we note, are described as "alternatives" in the NTT Report) would not be in conformance with the current, approved RMPs, and so the BLM will not apply those measures until the plan revisions or amendments are completed.

For these reasons, and considering our response to WildEarth/RMW's related arguments in Issue No. 1,

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

this portion of WildEarth/RMW's protest is denied.

3. “[I]mpacts of oil and gas development to sage-grouse include (1) direct habitat loss from new construction, (2) increased human activity and pumping noise causing displacement, (3) increased legal and illegal harvest, (4) direct mortality associated with reserve pits, and (5) lowered water tables resulting in herbaceous vegetation loss. These impacts have not been thoroughly evaluated with full NEPA analysis.” (WildEarth/RMW Protest at pages 5-6). “The restrictions contained in IM No. WY-2010-012 [sic] come nowhere close to offering sufficient on-the-ground protection to sage-grouse leks (WildEarth/RMW Protest at page 7).

BLM Response

See previous responses, above;²² the BLM Wyoming's RMP revisions and amendments are currently evaluating (through the public NEPA process) potential impacts to sage-grouse arising from energy development on public lands, and in consideration of recent scientific inquiries regarding impacts to sage-grouse and the appropriate conservation measures to avoid or reduce impacts from energy development. The BLM is in the process of updating current sage-grouse conservation measures in the applicable plans (through the statewide amendment or revision of RMPs' sage-grouse habitat management decisions).²³

The BLM regulates the lessee's or operator's actions on the lease, as described in our regulations (such as 43 CFR 3101.1-2 and 43 CFR 3162.5-1(a)),²⁴ in accordance with the lease terms (such as standard lease term No. 6 on the BLM Lease Form 3100-11) and stipulations, and under applicable laws (such as FLPMA). Should a parcel be offered, a successful bid received, a lease issued, and oil and gas development be proposed, the BLM will have the ability to apply protection measures for sage-grouse and their habitats on the Federal oil and gas leases. IM No. WY-2012-019 provides several timing, distance, and disturbance conservation measures for benefit of sage-grouse, and requires (at page 8):

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

Prior to surface-disturbing activities on the parcels (should they be leased) the BLM requires a detailed plan of operations for development of the lease. Prior to approval of the plan of operations, BLM conducts site-specific environmental review, and any APD will include (at a minimum) public posting (see 43 CFR 3162.3-1(g)). The BLM retains substantial authority to regulate environmental aspects of Federal oil and gas lease operations through approval (see 43 CFR 3162.3) of APDs or Sundry Notices

²² This exact argument was made by Eric Molvar (then representing Biodiversity Conservation Alliance) in the May 2012 Sale, who then appealed our protest response to the IBLA where the Board affirmed the protest decision (183 IBLA 97). Since WildEarth/RMW now reincarnates this argument without explaining why or how the circumstances differ for the Feb 2015 Sale, we refer WildEarth/RMW to the IBLA's decision. The BLM notes that WildEarth/RMW's arguments are largely recycled from previous protests; in several instances, WildEarth/RMW did not even bother to change the sale date from previous protests, or cite the correct RMPs.

²³ As noted above, the Lander RMP was finalized in June 2014; since the Lander RMP implementation plan was being developed concurrently with the processing of lease sale parcels for the February 2015 sale (nominations for the February 2015 sale were accepted beginning December 23, 2013, prior to approval of the Lander RMP), the BLM continued to defer parcels in that field office under the sage-grouse screens for the February 2015 sale.

²⁴ See also *Yates Petroleum Corporation*, 176 IBLA 144 (September 30, 2008): “When making a decision regarding discrete surface-disturbing oil and gas development activities following site-specific environmental review, BLM has the authority to impose reasonable measures to minimize adverse impacts on other resource values, including restricting the siting or timing of lease activities.”

(SNs), and through the issuance of orders and instructions of the authorized officer (see 43 CFR 3161.2).

Aside from completing the approved RMP EISs, the lease sale EAs analyzed and disclosed the purpose and need, alternatives, affected environment, and environmental consequences (to the extent reasonably foreseeable) of offering the parcels and possibly issuing leases as described in the Notice. The EAs included site-specific review of individual parcels and potentially-affected resources.

Often, where the context and intensity of environmental impacts such as those described by WildEarth/RMW 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*, 10th 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...” (*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 (10th 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 associated with our decision to offer and possibly issue leases for these parcels.

For these reasons we deny this portion of WildEarth/RMW’s protest.

4. “[L]easing of the parcels in question will result in significant impacts to greater sage grouse should the BLM adopt its Preferred Alternative for the Wyoming Sage-Grouse RMP Amendment EIS, rendering the decision to issue the leases in question under a Finding of No Significant Impact (FONSI) a violation of NEPA.” (WildEarth/RMW Protest at page 8).

BLM Response

While it is not clear what provisions of NEPA WildEarth/RMW alleges violation of, WildEarth/RMW overlooks that the BLM did undertake an EIS (actually, several RMP EISs) prior to deciding to offer these parcels – the Feb 2015 Sale EA is tiered to the RMP EISs for the Casper, Buffalo, Newcastle, Lander, Grass Creek, Washakie, and Cody planning areas. As we explained, above (see footnote No. 4), the BLM’s draft, unsigned FONSI represents a finding of no new significant impacts.

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

We find that offering (and subsequently issuing, should a successful bid be received by the BLM) the lease parcels described in the Notice is in conformance with the approved land use plans, and the lease stipulations described in the Notice provide adequate protection measures for those parcels to be offered in sage-grouse habitat, and given the substantial authority the BLM has to condition approval of lease development actions with reasonable measure to protect natural resources and environmental quality. We believe the BLM has taken a hard look at the effects of offering the protested parcels, and has satisfied NEPA’s procedural requirements. For these reasons, we deny this portion of WildEarth/RMW’s protest.

DECISION

After a careful review, it was determined that all of the 118 protested parcels described in the Notice of Competitive Oil and Gas Lease Sale will be offered at the February 3, 2015 sale. The protests to these 118 parcels are denied or dismissed for the reasons described, above.

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

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

Standards for Obtaining a Stay

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

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



Brenda V. Neuman
Acting Deputy State Director,
Minerals and Lands

cc: (by e-mail unless otherwise noted)

State Offices

District Manager, High Plains District

Field Manager, Buffalo Field Office

Field Manager, Casper Field Office

Field Manager, Newcastle Field Office

District Manager, Wind River/Bighorn Basin District

Field Manager, Cody Field Office

Field Manager, Lander Field Office

Field Manager, Worland Field Office

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

Deputy State Director, Division of Resources (930)

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

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

Kelly Roberts (923) e-mail & final copy on letterhead

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

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL.....

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL..... Bureau of Land Management
5353 Yellowstone Road, Cheyenne, WY 82009 or P. O. Box 1828, Cheyenne, WY 82003

WITH COPY TO SOLICITOR... U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region, 755 Parfet St., #151, Lakewood, CO 80215

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR..... U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region, 755 Parfet St., #151, Lakewood, CO 80215

4. ADVERSE PARTIES.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). 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 Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). 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 also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (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 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 the parties if the stay is granted or denied, (2) the likelihood of the appellant'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.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821—GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)