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

In Reply Refer To:
3100 (921 Gamper)
May 2015 Protests

MAY 04 2015

CERTIFIED – RETURN RECEIPT REQUESTED

Erik Molvar
WildEarth Guardians
319 S. 6th Street
Laramie, WY 82070

Matthew Sandler
Rocky Mountain Wild
1536 Wynkoop St., Suite 303
Denver, CO 80202

Mr. Frank Maurer
Leisure Properties
643 Sky Hy Circle
Lafayette, CA 94549

DECISION

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MAY 2015 OIL AND GAS LEASE SALE PROTEST OF 35 PARCELS

PROTEST DISMISSED in Part
PROTEST DISMISSED as Moot

On March 4, 2015, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received a protest to the offering of 35 parcels at the BLM Wyoming May 5, 2015, competitive oil and gas lease sale from WildEarth Guardians. WildEarth Guardians submits their protest with Rocky Mountain Wild and on behalf of Frank Maurer, a private individual (collectively referred to as WEG). WEG protests the inclusion of final lease sale parcels WY-1505-001, 002, 003, 007, 018, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 042, 046, 047, 048, 049, 050, 051, 055, 056, 057, 058, 059, 063, 067, 068, 071, 072, 073, 074 and 075 based on their concerns with leasing lands "within key sage grouse habitats (Preliminary General Habitats) and designated Core Areas."

On March 4, 2015 WSO timely received a protest from Mr. Frank Maurer protesting the inclusion of parcel WY-1505-003 in the May 2015 competitive lease sale.

The BLM received 75 nominations for the May 2015 competitive oil and gas lease sale between March 24, 2014 and June 27, 2014.

During the BLM's preliminary review of these parcels, the WSO independently screened each of the parcels for consistency with Wyoming (WY) Instruction Memorandum (IM) No. 2012-019, Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands Including the Federal Mineral Estate, checked conformance with the Resource Management Plan (RMP) for each planning area,[1] coordinated with the State of Wyoming Governor's Office and the Wyoming Game and Fish Department (WGFD), evaluated recent changes to national and State BLM policies, and considered on-going efforts by the BLM in Wyoming to revise or amend RMPs for planning areas subject to this sale, including the BLM's on-going planning efforts related to the management of greater sage-grouse habitat on public lands.

After preliminary review at the WSO, those parcels that could be offered consistent with WY IM No. 2012-019 were provided to the High Desert District (HDD) Office and associated Field Offices to begin the interdisciplinary review, including field visits to nominated parcels (where appropriate), confirm conformance with the RMP for each planning area, and prepare an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance. The preliminary parcel list including the results of the WY IM No. 2012-019 review results, were provided to the WGFD for review, and split estate land owners were notified per Washington Office (WO) IM No. 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews.

The EA (WY-040-EA14-141), along with the draft and unsigned Finding of No Significant Impact (FONSI)[2] were released on October 20, 2014, for a 30-day public review period, as required by WO IM No. 2010-117. The EA tiered to the existing Field Office/resource area RMPs and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR 1502.20:[3]

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

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[1] 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.

[2] 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.

[3] See also the BLM's NEPA Handbook H-1790-1 at pages 27-28.

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

NEPA guides the environmental analysis process. Generally, the scope of an analysis relates to the purpose and need for the proposed action. The BLM WY May 2015 Lease Sale EA described its purpose and need as (HDD EA v.2 at page 3):

> *The BLM's purpose for offering parcels and subsequent issuance of leases in the May 2015 lease sale is to provide for exploration and development of additional oil and gas resources to help meet the nation's need for energy sources, while protecting other resource values in accordance with guiding laws, regulations, and Land Use Planning decisions. Wyoming is a major source of natural gas for heating and electrical energy production in the United States. The offering for sale and subsequent issuance of oil and gas leases is needed to meet the requirements of MLA, FLPMA, and the minerals management objectives in the Kemmerer, Pinedale, Rawlins, and Green River Resource Management Plans (RMP). Oil and gas leasing provides the opportunity to expand existing areas of production and to locate previously undiscovered oil and gas resources to help meet the public's energy demands.*
>
> *Decisions to be made based on this analysis include which parcels would be offered for lease, which parcels would be deferred, which parcels are not available for leasing, and what stipulations will be placed on the parcels that would be offered for lease at the May 2015 lease sale.*

The EA considered two alternatives in detail:

- The No Action alternative (Alternative A) which considered not offering any of the nominated parcels available for lease
- The Proposed Action alternative (Alternative B) which included offering 35 parcels (whole or in part).

After review under WY IM No. 2010-019, 39 parcels (whole or partial containing 82,714.500 acres) were deferred from the May 2015 sale and were not analyzed in detail; in addition, the State Director chose to defer one additional parcel, and portions of 3 parcels containing approximately 1,760.000 acres in the interest of conservation of the Greater Sage Grouse. These 40 whole or partial parcels were not analyzed in detail in the subject Environmental Assessment and are deferred pending completion of the Greater Sage Grouse RMP amendment process ongoing in all four Field Offices within the High Desert District. WY IM No. 2012-019 provides interim guidance to BLM WY FOs specific to management considerations of Greater Sage-Grouse habitats until resource management planning updates are completed. This guidance is in place of direction provided in WO IM No. 2012-043

concerning interim management policies and procedures for Greater Sage-Grouse. WY IM No. 2012-019 addresses all BLM WY programs and provides all necessary interim program direction consistent with WO IM No. 2012-043. The BLM's policy under WY IM No. 2012-019 replaces the interim management strategies for Greater Sage Grouse outlined within IM No. 2012-043[4].

As a result of comments received on the May 2015 Competitive Lease Sale EA, the State Director is also using her discretion to defer portions of 5 parcels (parcel numbers WY-0515-28, 30, 31, 32 and 42) containing approximately 3,247.8 acres, until BLM can undertake additional review of potential conflicts between private uranium processing operations and facilities, and the development of the Federal mineral estate.

Based on all of the above described deferrals, approximately 33.603.260 acres are proposed to be offered at the May 2015 competitive lease sale.

The HDD EA also considered two additional alternatives but eliminated them from detailed analysis: (1) offer 35 parcels with a No Surface Occupancy Stipulation (NSO) and (2) defer all remaining parcels that contain or are within sage grouse core area(s). These alternatives were dismissed from further review because they: (1) would not be in conformance with the applicable RMPs; (2) were within the range of alternatives analyzed; and (3) would not meet the purpose and need as identified in the HDD Environmental Assessment (EA).

If a protester did not submit written comments to the BLM during the 30-day leasing EA comment period, or otherwise could not demonstrate standing, the BLM would deny any protest subsequently filed by that protester. The record shows that WildEarth Guardians submitted written comments to the BLM HDD Office during the May 2015, competitive lease sale EA comment period. However, Rocky Mountain Wild did not provide any comments or otherwise participate in the 30-day public comment period. Therefore, the issues raised by Rocky Mountain Wild are subject to summary dismissal and will not be addressed further in this protest decision.

Mr. Frank Maurer has provided documentation that he holds a conservation easement, along with a Ms. Lenora A. Timm (not a protesting party) that was granted to the Wyoming Land Trust on Township 21 North, Range 91 West, Section 2 SW, and Section 11 SE, and Section 12 NW. As such, we have determined that Mr. Maurer has standing to protest.

ISSUES – WILDEARTH GUARDIANS (WEG)

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

WEG participated in the 30-day public review period for the HDD May 2015 Sale EA and HDD provided a response to WEG's written comments in Appendix F of the EA (v.2). Many of WEG's arguments addressed in this protest are identical to the comments they provided as a result of their review of the EA. The WSO refers WEG to Appendix F of the HDD EA (v.2) for additional detail.

WEG's arguments are numbered and provided in bold below, with BLM responses following. While WEG claims that the parcels listed correspond to those included in the competitive sale notice, we find this assertion is incorrect, with the exception of parcel 003. As such, protests arguments regarding all parcels but parcel number 003 are dismissed[5].

On April 16, 2015 the State Director of WY issued a decision exercising her discretion and has chosen to defer from the sale Parcels WY-1505-003, 004 and 0027 until the RMP amendment/revision process is completed. Because Parcel WY-1505-003 is deferred from offering, WEG's protest concerning this parcel is dismissed as moot.

DECISION: For the reasons explained above, WEG's protest, as well as Mr. Maurer's protest of the May 5, 2015, oil and gas lease sale are hereby dismissed.

Appeal Information

This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (copy attached).

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

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

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[5] Pages viii and ix provide direction on submitting a protest to the BLM for any competitive lease sale. These directions specifically instruct a protestor that: "A protest must reference the parcel number identified in **this** sale notice. Use of any other parcel number will result in the protest being dismissed."

Standards for Obtaining a Stay

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

(1) The relative harm to parties if the stay is granted or denied,

(2) The likelihood of the protesters' success on the merits,

(3) The likelihood of the immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Michael Madrid
Acting Deputy State Director
Minerals and Lands

1 Attachment:
1 - Appeal Form (1842-1)

cc:
District Manager, High Desert District Office
Field Managers, HDD Field Offices
DSD (920)
DSD (930)
C. Hite (923)
S. Moberley (923)
M.Gamper (921) e-mail of final and a letterhead copy

Form 1842-1
(September 2006)

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.

(Continued on page 2)