



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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

NOV 02 2015

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DECISION

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NOVEMBER 2015 OIL AND GAS LEASE SALE PROTEST OF 42 PARCELS PROTEST DISMISSED in PART PROTEST GRANTED in PART

Between the dates of September 3, 2015 and September 4, 2015, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received four protests to the offering of parcels at the BLM Wyoming November 3, 2015, competitive oil and gas lease sale (CLS) from several parties. WildEarth Guardians (WEG) submitted two individual protests; one protest was submitted jointly with Rocky Mountain Wild. WEG protests the inclusion of all 42 final lease sale parcels listed within the CLS. Two additional protests were received from the Wyoming Outdoor Council (WOC) and The Wilderness Society (TWS). These two protests argue against the inclusion of final parcels WY1511-007, 009, 013 and 015.

BACKGROUND

The BLM received nominations for the November 2015 Sale from September 22, 2014 to December 19, 2014. The November CLS includes Federal fluid mineral estate located in the BLM Wyoming's High Desert District (HDD). 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.

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 (WY IM No. 2012-019), 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 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 area², 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 Instruction Memorandum (IM) No. 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews.

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 A Record of Decision amending nine Resource Management Plans in Wyoming was signed on September 21, 2015. This amendment is entitled Wyoming Greater Sage Grouse Land Use Plan Amendment (ARMP).

The EA (WY-040-EA14-141), along with the draft and unsigned Finding of No Significant Impact (FONSI)³ were released on October 20, 2014, for a 30-day public review period, as required by Washington Office 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 1502.20:⁴

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

Compliance with all 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: NEPA, the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act, the National Historic Preservation Act, the 2005 Energy Policy Act, the Mineral Leasing Act, and the regulations at 43 CFR §3100 and 3160.

NEPA guides the environmental analysis process. Generally, the scope of an analysis relates to the purpose and need for the proposed action. The BLM WY November 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 November 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 November 2015 lease sale.

³ 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.

⁴ See also the BLM's NEPA Handbook H-1790-1 at pages 27-28.

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 50 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 November 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 EA and were 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 Washington Office (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. BLM's policy under WY IM No. 2012-019 replaces the interim management strategies for Greater Sage Grouse outlined within WY IM No. 2012-043⁵.

Following public comments response, the State Director deferred the offering of preliminary parcels 1511-038, -039, -040 and -042. State Director also used her discretion to defer offering portions of parcels 1511-001, -004, -020, -037 and -045 that were located within Priority Habitat Management Areas.⁶ Only those lands remaining outside of PHMA were included in the Final Sale Notice.

As a result of additional information received from the WY Game and Fish Department, the State Director invoked her discretion to defer an additional two (2) parcels (final parcel numbers WY-1511-016, -017) containing approximately 2,720.00 acres. These parcels were included in the CLS; the public was notified of these deferrals via an Information Notice dated August 24, 2015, which was published on the BLM Wyoming public webpage⁷.

Based on all of the above described deferrals, approximately 33.603.260 acres are proposed to

⁵ 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.

⁶ The Greater Sage Grouse Land Use Plan Amendment, Record of Decision, renamed Core Areas as Priority Habitat Management Areas (PHMA). For purposes of clarity, PHMAs are the equivalent of Core Areas and can be assumed to mean such.

⁷ http://www.blm.gov/wy/st/en/programs/energy/Oil_and_Gas/Leasing/2015/11notice1.html

be offered at the November 2015 CLS. All parcels proposed for offering have been determined to be available for lease as they have been designated for multiple-use management, subject to the stipulations identified in the Rawlins ROD and Approved RMP, dated Dec. 24, 2008, at 2-22, Map 2-38 (Oil and Gas Classifications), Green River (Rock Springs) ROD and RMP, dated Aug. 8, 1996 at 12, 89 (Map 13(No Lease Areas)). On September 21, 2015, the BLM issued a ROD for the Greater Sage Grouse Land Use Plan Amendment (ARMPA) for the Casper, Green River, Kemmerer, Newcastle, Pinedale, and Rawlins RMPs⁸, at Appendix A, page 114, Map 2-2: Wyoming Fluid Minerals (Oil and Gas). The EA and draft FONSI prepared for the November 2015 CLS has been updated to tier to this decision since the time that the 30-day protest period began.

The HDD EA considered two additional alternatives but eliminated them from detailed analysis: (1) offer all nominated parcels with a No Surface Occupancy stipulation (NSO) and (2) defer all remaining parcels 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 EA.

Through the analysis in the EA, the HDD also determined whether the proposed parcels were appropriate for leasing. In doing so, BLM screened the parcels for the presence of various resource values, including the presence of wilderness characteristics (at Appendix D) and the Greater Sage-Grouse and/or its habitat (at Appendix A and at 9-12, Table 1).

Consistent with previous protest decisions, 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, the Wilderness Society and the Wyoming Outdoor Council all submitted written comments to the BLM High Desert District (HDD) office during the November 2015 CLS 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.

⁸ The ROD covers several planning areas and is entitled the :Rocky Mountain Region Greater Sage-Grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming, and the Approved Resource Management Plans (RMPs) for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland. The parcels in this sale are subject to the Approved RMP Amendment for Casper, Rawlins, Rock Springs, Pinedale, Newcastle, and Kemmerer Field Offices signed September 21, 2015.

ISSUES –THE WILDERNESS SOCIETY

1. **The Wilderness Society has asked that parcels -007, -009 and -013 be deferred pending compliance with FLPMA and Manual 6310.**

- a. **BLM has not fulfilled its duties under FLPMA and related policies to inventory and evaluating management alternatives for lands with wilderness characteristics. The inventories submitted by TWS and other conservation groups, both prior to the lease sale and again in conjunction with our comments on the Draft EA, as well as the context of this lease triggered BLM's obligation.**

The BLM is impermissibly relying on wilderness inventories that do not comply with applicable law and policy. The BLM's current wilderness inventories for the RFO and RSFO do not comply with FLPMA or Manual 6310. As explained below, among other flaws, those inventories improperly utilized "an overly strict approach to assessing naturalness."

In addition to not comply with FLPMA and Manual 6310, the BLM has yet to evaluate the RSO and RSFO's wilderness inventories and information gathered during those inventories through the land use planning process.

BLM Response:

Section 201 of the FLPMA requires the BLM to maintain, on a continuing basis, an inventory of all public lands and their resources and other values, which includes wilderness characteristics. The BLM Manuals 6310 and 6320 issued on March 15, 2012, clarify that the requirements of Section 201 of FLPMA remain in effect. The manuals identify specific circumstances where the BLM will update or initiate a wilderness characteristics inventory. The BLM Manual 6320 indicates that the BLM will analyze the effects of plan alternatives on lands with wilderness characteristics.

The primary function of an inventory is to determine the presence or absence of wilderness characteristics. The inventory for wilderness characteristics is based on criteria defined in Section 2(c) of the Wilderness Act and incorporated in Section 603 of the FLPMA for sufficient size, naturalness, outstanding opportunities for either solitude or primitive and unconfined recreation, and supplemental values (ecological, geological, or other features of scientific, educational, scenic, or historical values). The BLM inventoried Lands with Wilderness Characteristics for the entire RFO in 2012. A total of 90 units were surveyed, or resurveyed as part of the Wilderness Inventory Unit (WIU) process.

Parcel -007 is contained within WIU WY-030-12N-93W5-2012⁹ (Cherokee Creek East Fork), parcel -009 is contained with WIU WY-040-14N-96W36-2012 (Willow Creek) and parcel 13 is contained within WIU WY-030-26N-96W33-2012 (Cyclone Rim). A portion of parcel 13 is also overlapped by WIU WY-030-25N-95WSW19-2012 (Eagle Nest West¹⁰) and the portion within the RSFO has not yet had an inventory completed. Both of the inventories undertaken for Cherokee Creek and Willow Creek are new inventories conducted in compliance with BLM Manual 6310-Conducting Wilderness Characteristics Inventory (WCI) on BLM Lands which contains policy and guidance for conducting wilderness characteristics inventories under Section 201 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended. The Cyclone Rim and Eagle Nest West WIUs are not new inventories, but updates to an existing inventory originally conducted in 1979; the 1979 inventory was originally conducted to determine which lands may qualify to be managed under the Wilderness non-impairment standard. Several Wilderness Study Areas were identified in that 1979 Inventory and are managed as such still to this day. All four existing inventories have determined that the lands containing parcels -007, -009 and -013, do not have wilderness characteristics. Lack of an inventory for the remainder of -013 does not prevent the BLM from managing the lands in accordance with the existing RMP. In April 2014¹¹, the RFO solicited public comments on the new and updated WCIs as part of the Visual Resource Management RMP Amendment. According to TWS protest, in August, 2015, several groups submitted their own WCI's for lands overlapping the subject parcels stating on page 4 of their protest that

“As of August 2015, TWS has submitted four citizen inventories of lands with wilderness characteristics units for lands managed by the Rock Springs Field Office, including lands overlapping parcels offered up in this lease sale, as detailed below. An additional 11 citizen inventories have been submitted in RSFO by Wyoming Wilderness Association. BLM has yet to consider or respond to any of the 15 citizen-submitted inventories in RSFO”

Parcel -015, according to this information before us, has not yet had a wilderness inventory completed but is in process to be completed in the near future. The WSO has further confirmed that the RSFO is in receipt of a Citizen Proposed Wilderness Inventory (CPW) for the Devil's Playground that overlaps parcel -015; this proposal has not yet been evaluated.

Manual 6310 (page 2, .06 Policy) specifies that “preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of public lands”. Manual 6310 also states (page 3):

⁹ All RFO inventories of LWC are located here:

http://www.blm.gov/wy/st/en/field_offices/Rawlins/LWCI.html (accessed 09/22/2015)

¹⁰ TWS has not raised any protest issues with this inventory or the uninventoried portions of parcel 13 but are included for completeness sake.

¹¹ http://www.blm.gov/wy/st/en/info/news_room/2014/april/16rfo-lwc.html

When new information regarding wilderness characteristics meets the minimum standard for further review, as soon as practicable, the BLM shall evaluate the information regarding the validity of proposed boundaries of the area(s), the existence of wilderness inventory roads and other boundary features, the size of the area(s), and the presence or absence of wilderness characteristics. This evaluation may be based on relevant information available in the office (prior BLM inventories, interdisciplinary team knowledge, aerial photographs, field observations, maps, etc.). Field checking may also be needed. The BLM will compare existing data with the submitted information, determine if the conclusion reached in previous BLM inventories remains valid, determine whether the area qualifies as lands with wilderness characteristics, and document its findings. The BLM will document the rationale for the findings, make the findings available to the public, and retain a record of the evaluation and the findings as evidence of the BLM's consideration.

Because the BLM has not yet reviewed the CPW for parcel -015, the BLM will **GRANT** this portion of the protest and we will defer parcel -015, in compliance with Manual 6310.

Parcels -007 and -009 are wholly within the Rawlins Field Office, portions of parcel 13 have lands within both Rawlins and the Rock Springs Field Offices. Comments submitted to the BLM under the April 2014 public comment request as they related to the RFO VRM RMP amendment do not mention Willow Creek, Cyclone Rim, or Cherokee Creek East Fork WIUs.

All three LWC inventories were prepared utilizing a multi-faceted interdisciplinary team and at the time they were prepared, were subject to Manual 6310 which was in effect March 15, 2012. TWS's comments on the leasing EA do not meet the standards of "new information" as required by Manual 6310. Manual 6310 (page 3), states that the minimum standard that new information must meet in order for the BLM to consider the information during the wilderness characteristics inventory process, requires submission of the following information to the BLM:

- i) A map of sufficient detail to determine specific boundaries of the area in question;
- ii) A detailed narrative that describes the wilderness characteristics of the area and documents how that information substantially differs from the information the BLM inventory of the area's wilderness characteristics; and
- iii) Photographic documentation.

The information TWS provided during the 30-day public comment period on the leasing EA, and again in its protest, does not meet the new information standards specified in Manual 6310. TWS did not include any maps, photographs or detailed narrative explaining why its information substantially differed from the BLM inventory information. Instead, TWS pointed out what it considered to be shortcomings in the BLM inventory, claiming that BLM is taking an "overly strict interpretation of naturalness". For example, TWS claims that "In its inventory, BLM found that the Cherokee Creek East Fork unit did not meet the criteria for lands with

wilderness characteristics because “primitive routes and range improvements” prevented the unit from meeting the naturalness criterion. However, these claims were not backed up with photographic evidence, route analysis forms, or other documentation that might show which routes BLM determined were substantially noticeable.”

While photographs were not on BLM’s website with the inventory, they are cited within the actual inventory report and the RFO specifically notes that its inventory routes are “i.e. oil and gas development roads.”¹² The inventory report further acknowledges that: “While the presence of cattle is compatible with a natural landscape for wilderness inventory purposes, the noticeable presence of the numerous grazing related developments in this unit is not. These improvements give the casual observer a perception that they are visitors to a cattle range rather a wilderness untrammelled by the works of man.” (Cherokee Creek East Fork WY-030-12N93-25-2012).

TWS made similar claims for Parcels -009 and -013. These comments amount to disagreement with the conclusions of the IDT rather than a substantiated violation of policy, regulation, or law. In assessing environmental impacts, BLM properly relies on the professional opinion of its technical experts concerning matters within the realm of their expertise, when that opinion is reasonable and supported by evidence of record. Here, TWS has not shown, by a preponderance of the evidence, any error in the data, methodology, analysis, or conclusion of the ID Team performing the inventory.

The Green River RMP (1987) and the Rawlins RMP (2008) both address management of these lands. Parcels -007 and -009 are located within the Rawlins RMP designated Dispersed Recreation Use Area (DRUA). The management object of the DRUA according to the RMP is that it is to be managed for primitive, middle, and front country recreation desired future use in addition to other multiple uses. The area will be managed for dispersed recreation uses that do not require recreational developments or facilities. Future emphasis will be placed on maintaining an undeveloped recreation setting. Both Parcel -007 and -009 include Controlled Surface Use stipulations providing the BLM with the necessary means to manage any surface disturbing activities associated with oil and gas development to meet the management objective of the RMP, and provide protection to the recreation and visual settings found within the DRUA.

¹² Manual 6310, at 11: Routes that have been improved and maintained by mechanical means to insure relatively regular and continuous use are wilderness inventory roads.

a. Improved and maintained – Actions taken physically by people to keep the road open to vehicle traffic. “Improved” does not necessarily mean formal construction. “Maintained” does not necessarily mean annual maintenance.

b. Mechanical means – Use of hand or power machinery or tools.

c. Relatively regular and continuous use – Vehicular use that has occurred and will continue to occur on a relatively regular basis. Examples are: access roads for equipment to maintain a stock water tank or other established water sources; access roads to maintained recreation sites or facilities; or access roads to mining claims.

Opportunities for primitive recreation experience is only one of the aspects the BLM considered when determining whether the parcel has Lands with Wilderness Characteristics. The existing Rawlins RMP and the preferred alternative in the Draft VRM RMP amendment both call for these parcels to be managed in conformance with a VRM III classification which allows disturbances to be seen but cannot dominate the viewshed. This classification provides for development, including development associated with oil and gas production, but also provides protection to the scenic qualities that may be found within and around the parcels themselves.

The EA (on pages 78-79) notes that Parcels -009 and -011¹³ (final parcel numbers -007 and -009 respectively) are located within the DRUA and subject to the management decisions in the Rawlins RMP. The Rawlins RMP approved in December 2008 determined these “lands to be unmanageable for wilderness character because of preexisting oil and gas leases,¹⁴ the BLM elected to manage lands with wilderness character for multiple uses and not for protection of wilderness character.”

The SD has confirmed through a review of geospatial data that parcels -007 and -009, with one minor exception, are the only remaining unleased lands within the subject WIU's and are surrounded by producing and active oil and gas leases; as well, Parcel -013 is also surrounded by both producing and active oil and gas leases¹⁵.

The Leasing EA stated that the BLM will subject any future development proposal to site-specific analysis should the parcel actually be sold, a lease issued, and receive a subsequent application for permit to drill. BLM retains discretion to mitigate potential impacts to the resources within the parcel at that time under 43 CFR 3101.1-2, and may require additional conditions of approval to protect certain resources in addition to the stipulations that are proposed to be attached to the parcels as described in the Leasing EA. If the parcel is sold, and development proposed, BLM will once again review the lands for wilderness characteristics to insure that previous conclusions remain valid and will be subject to additional, site specific NEPA analysis.

Parcel -013, was addressed in the both the Rawlins RMP and the Green River RMP. A CSU stipulation providing for compliance with RMP direction for the Red Desert Special Management Area (RDSMA) is in place to protect “steep slopes, visual resources, recreational, watershed, cultural and wildlife values” (Leasing EA at Appendix B, preliminary parcel number 15). A portion of the RDSMA is unavailable for oil and gas leasing; however the portion of the RDSMA containing parcel -013 is available for leasing with a CSU stipulation.

¹³ Parcel deferred and not listed in the Notice of Competitive Lease Sale

¹⁴ We find through a review of existing Federal lease data (as of May 2015) that this case remains true. Parcels 7 and 9 are the last unleased lands within the subject inventory units (Cherokee Creek East Fork and Willow Creek).

¹⁵ See Attached Map 1 and Map 2

Therefore for the reasons described above, we deny TWS's protests of Parcels, 007, 009 and 013.

- 2) **The BLM failed to comply with NEPA. The EA lacks a reasonable range of alternatives. The BLM did not consider any alternatives to incorporate protective measures into lease stipulations or provide more specific direction for addressing impacts to lands with wilderness characteristics that would govern APDs.**

BLM Response

Please see our response to TWS protest item number 1. As discussed in the Background portion of this EA, the BLM evaluated two alternatives: a no action alternative and a preferred alternative (Alternative B) that would make 50 parcels containing approximately 76,182.130 acres available for competitive lease sale. The TWS has not provided a specific alternative for consideration and the parcels have been stipulated in accordance with the applicable RMPs as described in Appendix B and in Table 12 of the EA. As noted in the EA, the BLM will subject any future development proposal to site-specific analysis should the parcel actually be sold, issued, and developed. BLM retains discretion to mitigate potential impacts to the resources within the parcel at that time under 43 CFR 3101.1-2 and would be in addition to the stipulations that are proposed to be attached to the parcels as described in the Leasing EA¹⁶. TWS has not provided any new information not already addressed by the BLM and this protest point is therefore dismissed

- 3) **The proposed lease sale will improperly limit the range of alternatives for the ongoing planning process in the Rawlins and Rock Springs Field Office.**

BLM Response

The BLM, in particular the RFO, has reviewed the parcels proposed to be offered for sale for potential conflicts with the ongoing RMP amendment. It was during this review that that preliminary parcel -013, potentially conflicted with direction contained within the draft VRM RMP amendment and should be deferred pending completion of the amendment process. The parcels being protested by TWS in RFO, were subjected to this same review and found to not conflict between the preferred alternative in the Draft EA.

The RSFO has only just begun their RMP process and has not finalized any alternatives. Until this process is done, review for conflicts cannot be conducted.

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):

¹⁶ 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.

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 explains:

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 Handbook¹⁷ 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.

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)).¹⁸

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 *Sierra Club Legal Defense Fund, Inc.* the IBLA recognized that acceptance of the protestor's position would seriously impair the BLM's ability to perform its land management responsibilities. Similarly, here the proposed sale partially implements the goals and objectives in the approved RMPs.

Offering these protested parcels 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.

¹⁷ BLM Handbook H-1790-1 (January 30, 2008) at page 3.

¹⁸ See also *Southern Utah Wilderness Alliance*, 163 IBLA 14, 27 (2004).

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

- 4) **The EA does not take a "hard look" at wilderness values affected by the lease sale and has failed to address significant new information, which also affects the development of a baseline for environmental analysis.**

BLM Response:

In response (1) above, BLM has found that under Manual 6310 the information submitted by TWS in relation to parcels -007, -009 and -013 do not meet the criteria for consideration as new information for Lands with Wilderness Characteristics purposes. In addition, the EA (see pages sufficiently discusses those Lands with Wilderness Characteristics and also acknowledges that those characteristics that make them eligible, could be impacted by surface disturbing activities, but that BLM has made a decision in the applicable RMP to manage these areas for multiple use, which includes fluid mineral development and production. For these reasons we deny this portion of TWS's protest.

ISSUES—WYOMING OUTDOOR COUNCIL

- 1) **We are concerned that leasing these four parcels will constrain and unduly influence the BLM's decision making process with respect to inventory and management of lands with wilderness character, as outlined the Federal Land Policy Management, Act, National Environmental Act, and the BLM Manual 6310. Parcels -007, -009 and -013 are located in the Rawlins Field Office. The BLM's own inventories for these three parcels have been completed and refuse wilderness character, but we contend that these inventories do not conform with Manual 6310. The proposed management for these Rawlins Field Office parcels and the BLMs review of citizen inventories is incomplete.**

The Rock Springs Field Office has completed many inventories for lands with wilderness character, but none for the region around parcel -015. Additionally, these agency inventories do not conform to Manual 6310. Though this is understandable given the recent august 2015 citizen submission, the agency has not responded to the Wilderness Society's or Wyoming Wilderness Association's inventory submissions as mandated by 6310, including the area implicating parcel -015.

Thus, the agency has not yet verified or refused wilderness character. We ask the BLM in this case to defer leasing parcels pending the completion of the mandated inventory of lands with wilderness character.

BLM Response

Please see our response to TWS protest issue number 1. The protest issue submitted by WOC is subject to the same answer. Therefore, this protest issue is dismissed. Parcel -015 will be deferred and parcels -007, -009 and -013 will be offered for sale.

ISSUES – WEG

WEG argues that the BLM failed to (1) quantify greenhouse gas (GHG) emissions that could result from leasing the parcels in the November 2015 Sale and (2) analyze the “social cost of carbon” for GHG emissions. They have protested the inclusion of all 42 proposed parcels.

Final parcels -016 and -017 were deferred at the discretion of the State Director; this decision was provided to the public via Information Notice dated August 24, 2015 on BLM-WY public internet site. WEG’s protest against these parcels is dismissed as moot.

“WildEarth Guardians protests the BLM’s November 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) “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

As noted in footnote 2 of this decision, since the release of this EA for the 30-day protest period, BLM has signed a Record of Decision for the Wyoming Greater Sage Grouse Land Use Plan Amendment (ARMPA) (September 21, 2015). The EA supporting the offering of parcels at the November 3, 2015 CLS has been updated to tier to, and incorporate by reference information contained within the ARMPA. The EA acknowledges 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 the generation of 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 are produced in economical quantities, and eventually combusted. In addition to the EA, the ARMPA also included estimates of the potential GHG emissions that could result from the Reasonably Foreseeable Development prepared for the ARMPA. These estimates can be found generally in section 4.2.4 starting on page 4-10 of the ARMPA Final EIS.

The EA also discussed air quality, specifically GHG and climate change, in its disclosure of the affected environment (at pages 49-53), and noted (at page 29):

Currently, the WDEQ-AQD does not have regulations regarding greenhouse gas emissions, although these emissions are regulated indirectly by various other regulations.¹⁹

The HDD's EA discussed air quality, specifically GHG and climate change, in its disclosure of the affected environment (at pages 47 thru 49).

The EA acknowledges that oil and gas development, and other activities ongoing in these Field Offices, can generate GHG emissions (at page 28, and section 3.2.1.3 at page 53):

Some authorized activities within the Kemmerer, Pinedale, Rock Springs, and Rawlins field offices generate GHG emissions. Oil and gas development activities can generate CO₂ and NH₄ (during processing). Carbon dioxide emissions result from the use of combustion engines for OHV and other recreational activities. Wildland fires also are a source of CO₂ and other GHG emissions, and livestock grazing is a potential source of methane. Other activities in the Kemmerer, Pinedale, Rock Springs and Rawlins Field Office areas with the potential to contribute to climate change include soil erosion from disturbed areas and fugitive dust from roads, which have the potential to darken snow-covered surfaces and cause faster snow melt.

The EA's analysis of impacts for the subject Alternatives 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 71):

A number of pollutants associated with the combustion of fossil fuels are anticipated to be released during drilling/completion operations include: CO, NO_x, SO_x, PM, CO₂, CH₄ and N₂O. Venting may release VOCs/HAPs, H₂S, and CH₄. The amount of increased emissions cannot be quantified at this time since it is unknown how many wells or what type (oil, gas or both) may be proposed for development, the types of equipment needed if a well were to be put into production (e.g., compressor, separator, dehydrator), or what technologies may be

¹⁹ 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 WAIL 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."

employed by a given company. The degree of impact will also vary according to the characteristics of the geologic formations from which production occurs.

The EA also addressed GHG emissions and potential impacts in its treatment of cumulative effects (at page 75), including:

The inconsistency in results of scientific models used to predict climate change at the global scale coupled with the lack of scientific models designed to predict climate change on regional or local scales, limits the ability to quantify potential future impacts of decisions made at this level.

The BLM issued an IM in 2008²⁰ that included draft guidance for the 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.

²⁰ Washington Office IM 2008-171 (“Guidance on Incorporating Climate Change into Planning and NEPA Documents”), issued August 19, 2008.

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.

On December 18, 2014, CEQ issued revised draft guidance for assessing greenhouse gas emissions and climate change impacts (CEQ's 2014 Draft Guidance).²¹ 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."²²

In our review of the November 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.

²¹ Available at: <https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance>

²² 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.

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 at a site-specific level (or even at a regional level), 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 – when actual operations are proposed on an issued lease through an Application for Permit to Drill (APD) or Sundry Notice (SN) --information related to potential GHG emissions will be less speculative. In this case, that is the appropriate point in time to estimate GHG emissions, if necessary and appropriate. Whenever BLM determines it is appropriate to estimate GHG emissions, those emissions levels cannot be translated from the global phenomenon to actual on the ground impacts (either beneficial or not) within the project area. In the EAs, BLM has provided a qualitative discussion of GHG emissions and the expected changes in the region based on current climate models.

In their protest (at pages 7-8), WEG argues that BLM can and should ascertain and analyze the potential GHG emissions for the leases in the November 2015 Sale. Using the Rock Springs Field Office's RMP and its estimation of Reasonably Foreseeable Development (RFD),²³ WEG attempts to demonstrate (at page 9 of its protest) that it “appears reasonably straightforward for the agency to estimate total greenhouse gas emissions, at least on a cumulative basis.” WEG's calculations use figures from a report prepared for the BLM – Colorado State Office, the Colorado Air Resource Management Modeling Study (CARMMS).²⁴

In its calculations, WEG assumes that all 4,804 wells outlined in the Rock Springs 2013 RFD would be drilled and produced. Using these assumptions, WEG calculates the total “potential” emission of CO₂ from construction and production operations to be a total of 1,351,607 TPY (441,480 TPY of CO₂ (construction) plus 1,210,127 TPY of CO₂ (production)).

²³ 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.”

²⁴ Available at: 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 km² 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 near-source AQ impacts of the O&G and other development activities; that will be addressed at the Project level in the future.

However, WEG's calculations are based upon five important assumptions: (1) that the CARMMS report estimates for per-well CO₂ 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) that wells do not differ in emissions of CO₂ regardless of well type or depth, (4) that the well types will be "conventional, and (5) that no level of emissions capture would be used.

As the EA 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 CO₂ emissions that may be generated, depending upon factors such as the type of well, density of development, etc. Overlooking these important limitations and uncertainty of actual development 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 November 2015 Sale are located in four field offices in Wyoming, which encompasses 41 percent of the State of Wyoming and which include existing oil and gas fields with remarkably different conditions, characteristics, operators, well densities, and operational natures. While WEG believes that estimates of GHG emissions at the leasing stage for this sale would be helpful to inform the public and the decision-maker, we disagree and believe the conclusions in the EA explaining the substantial uncertainties about whether and how the November 2015 Sale lease parcels will be developed. This limits the usefulness of estimating GHG emissions at the leasing stage when those emissions cannot be translated into specific impacts that would more importantly inform the Authorized Officer. In addition, the EA has been modified (on page 72) to refer the reader to recently completed analysis within the ARMPA FEIS, specifically section 4.2.4 (beginning on page 4-7) for a discussion of potential impacts to Air Quality resulting from oil and gas development, including potential greenhouse gas emissions which were specifically estimated for each Field Office based on the relevant RFD.

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 November replace lost BLM production with production from other sources are all uncertain. Therefore, the greenhouse gas emissions that November 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.

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 GHGs emitted from lease operations, particularly through the use of Social Cost of Carbon (SCC) protocol.

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 SCC²⁵ estimates, the CEQ's 2014 Draft Guidance instructs agencies (at page 16, footnote omitted):

²⁵ 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 decision-making [footnotes and internal citations omitted]."); see also Southern Utah Wilderness Alliance, 159 IBLA 220, 221 (decided June 16, 2003: "The Board November 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.").

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, especially when SCC estimates only consider one component of the equation (primarily by ignoring the contribution of methane).

For example, in its example of emissions from the Rock Springs Field Office RMP RFD, WEG notes that (depending upon other factors) estimates of SCC by the Interagency Working Group²⁶ 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 \$16,382,156 to \$327,643,129.²⁷ This range represents a 5,000% 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 30,000 percent.

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

²⁶ 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>

²⁷ 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).

emissions from possible exploration or development of the lease parcels in the November 2015 Sale. If it is later determined to be necessary and appropriate, quantified analysis of GHG emissions and SCC would be less speculative once the BLM receives a proposal to conduct actual operations on the leases, if issued, from the November 2015 Sale.

WEG also argues (at page 14) the BLM "...implicitly conclud[ed] that there would be no 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 and also attempted to disclose the potential range of impacts at a regional basis that could occur. Rather than engaging in the wide-ranging speculation as to the specific costs and benefits²⁸ associated with such oil and gas operations, the BLM prudently declined to attempt to quantify the potential societal cost associated with potential GHG emissions. Likewise BLM did not attempt to quantify the financial benefits to society from possible production from the parcels and instead opted to use an economic impact assessment to disclose economic effects based on readily available data and that are reasonably foreseeable in the form of lease bids.

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.

3) BLM needs to defer certain parcels with key sage grouse habitat or at minimum attachment more protective stipulations.

BLM Response

Those portions of preliminary parcels -001, -004, -020, -037 and -045 that remained within PHMA after implementing the leasing screen directed by WY IM No. 2012-019 were deferred via State Director discretion following the public comment review process. All of the proposed acreage to be offered within preliminary parcels -038, -039, -040 and -042 were also deferred via State Director discretion following the public comment review process and were not

²⁸ 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.

included in the CLS. These deferrals were noted in the updated FONSI posted for the protest period and resulted in no acreage being offered within PHMAs for the November 2015 CLS.

On September 21, 2015, the BLM signed the ROD for the ARMPAs which incorporated new Greater Sage Grouse protective measures and the USFWS issued a concurrent not warranted for listing as a Threatened or Endangered Species under the Endangered Species Act decision²⁹. The November Lease Sale EA has been updated to tier to this document, and incorporate relevant information from the ARMPA FEIS. Offering these parcels is in conformance with the respective RMPs, as amended (2015). All portions of parcels within PHMAs for Sage Grouse have been deferred from the November 2015 as a result of implementing WY IM No. 2012-019, and through State Director Discretion as noted.

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

WEG has provided no new information that would cause us to change our previous decision and therefore this portion of its protest is denied.

DECISION

After a careful review, it has been determined that all but one (WY IM No 1511-015) of the 42 protested parcels described in the Notice of Competitive Oil and Gas Lease Sale will be offered at the November 4, 2015 sale. The protests to the other 41 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

²⁹ <https://www.federalregister.gov/articles/2015/10/02/2015-24292/endangered-and-threatened-wildlife-and-plants-12-month-finding-on-a-petition-to-list-greater>

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

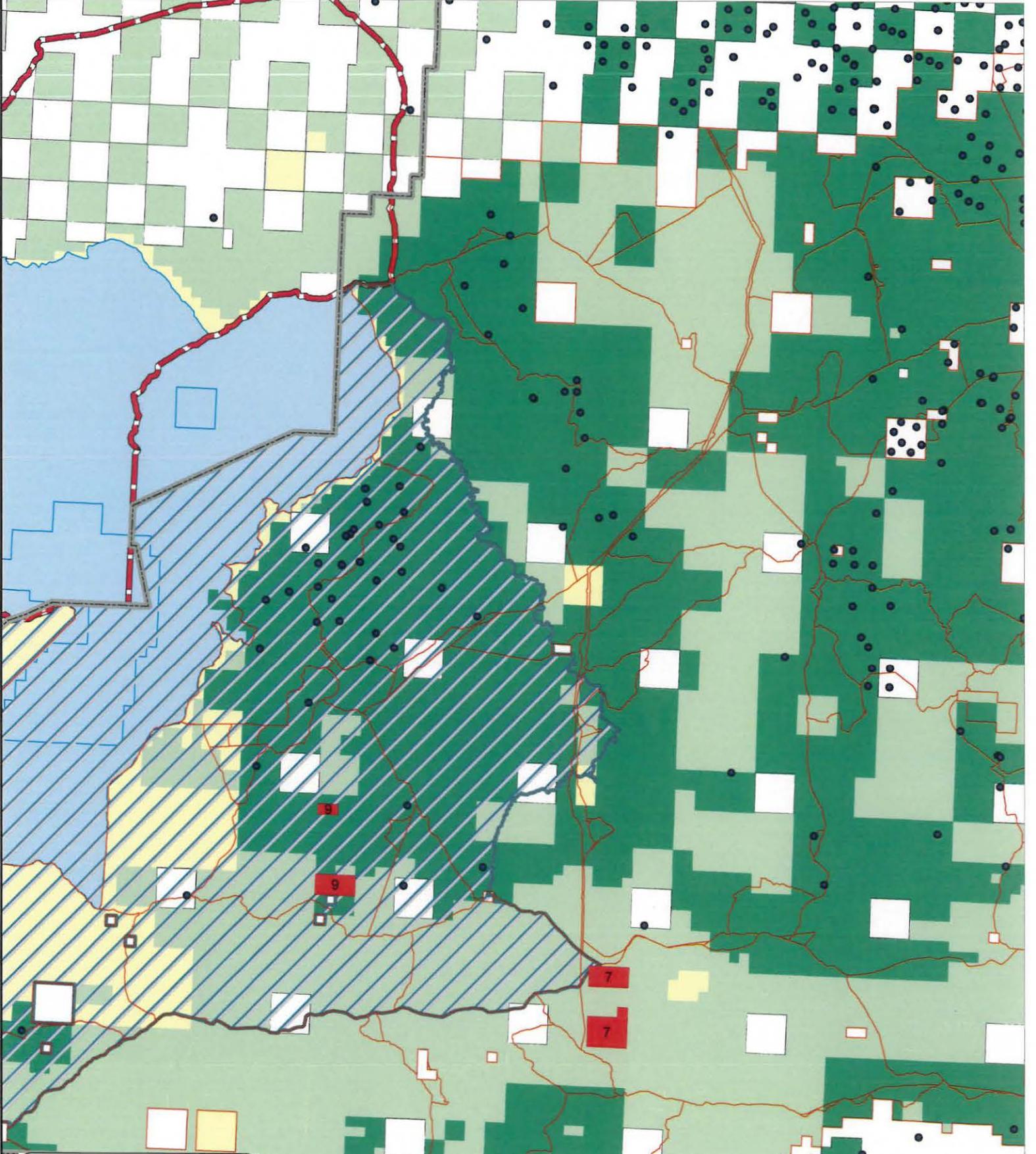
Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

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.



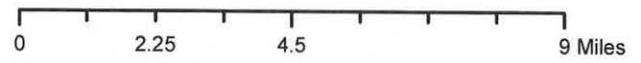
Michael Madrid
Acting Deputy State Director
Minerals and Lands

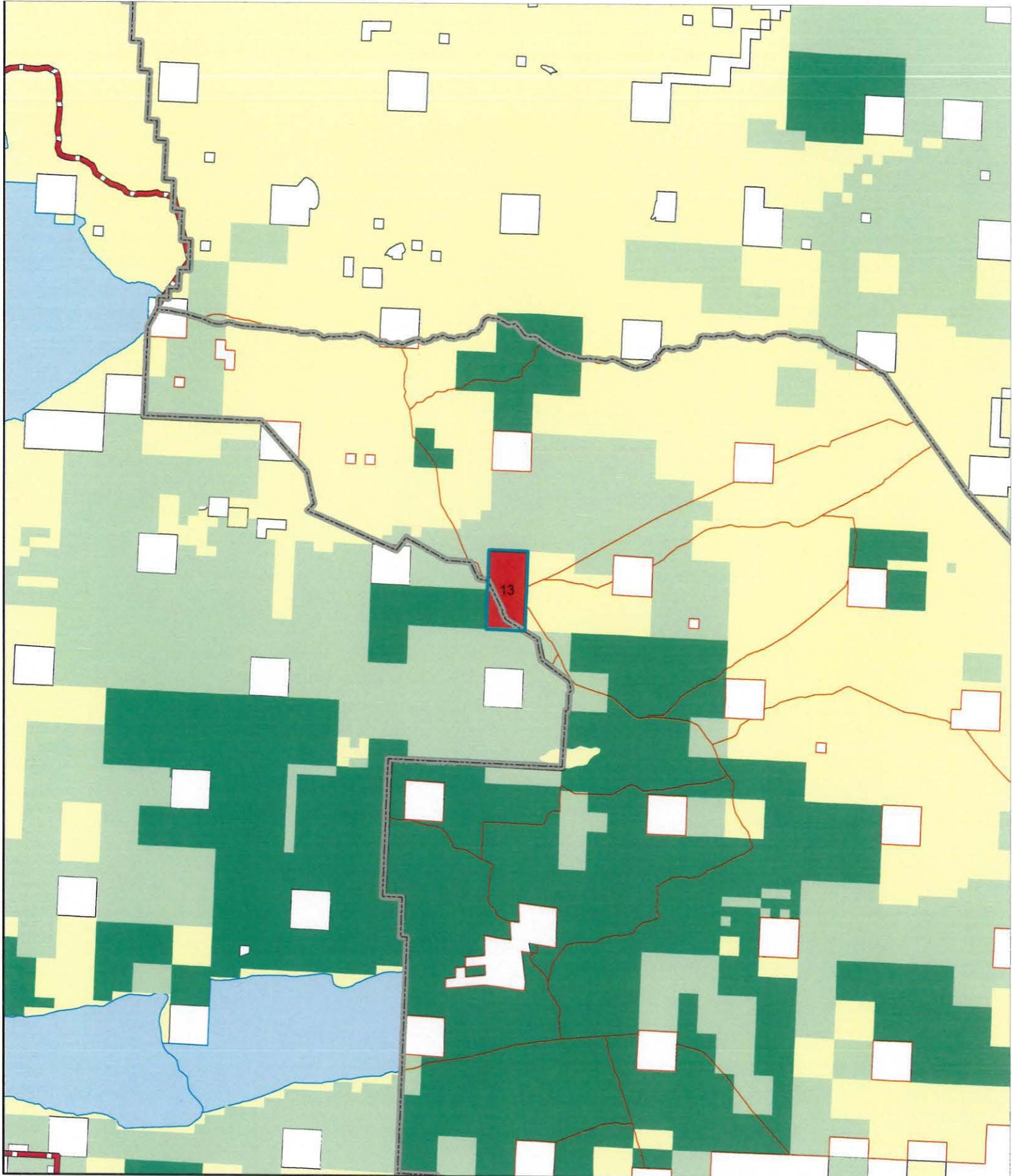
- 3- Attachments
- 1- Form 1 842-1
- 2- Map 1
- 3- Map 2



Map 1: November 2015 Protest

- | | |
|-------------------------|----------------------------|
| STATUS | <all other values> |
| Active Well Location | BLM-WY Lease Status |
| Nov15 Protested Parcels | Active |
| WildernessInventoryUnit | Held by Production |
| AdobeTown_DRUA | |
| RSFO_SRMA | |
| RSFO_SMA | |
| WildernessStudyArea | |





Map 2: November 2015 Protest

WildemessInventoryUnit	<all other values>
Nov15 Protested Parcels	BLM-WY Lease Status
AdobeTown_DRUA	Active
RSFO_SRMA	Held by Production
RSFO_SMA	WildemessStudyArea

