In Reply Refer To:
3100 (921 Gamper)
WY20184Q/Supplemental February 2019 Sale

February 22, 2019

CERTIFIED – RETURN RECEIPT REQUESTED

Receipt No. 91 7199 9991 7036 1885 1773
Bruce Pendry
The Wilderness Society
440 East 800 North
Logan, UT 84321

Receipt No. 91 7199 9991 7036 1885 1797
Michael Saul
Center for Biological Diversity
153 Wynkoff St., Suite 421
Denver, CO 80202

Receipt No. 91 7199 9991 7036 1885 1810
Kelly Fuller
Western Watersheds Project
PO Box 779
Depoe Bay, OR 97341

Receipt No. 91 7199 9991 7036 1885 1834
Jen Sall
National Outdoor Leadership School
284 Lincoln St.
Lander, WY 82620

Receipt No. 91 7199 9991 7036 1885 1780
Rebecca Fischer
WildEarth Guardians
2590 Walnut Street
Denver, CO 80205

Receipt No. 91 7199 9991 7036 1885 1803
Connie Wilbert
Sierra Club/Wyoming Chapter
PO Box 1736
Laramie, WY 82073

Receipt No. 91 7199 9991 7036 1885 1827
John Weisheit
Living Rivers
PO Box 466
Moab, UT 84532

DECISION

FEBRUARY 25, 2019 OIL AND GAS SALE PROTEST

PROTESTS DISMISSED OR DENIED
565 PARCELS WILL BE OFFERED
From December 21, 2018 to January 28, 2019, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received four protests to the offering of parcels at the 4th Quarter 2018/Supplemental February 25, 2019 Competitive Oil and Gas Lease Sale (CLS).

On January 22, 2019, the WSO timely received a protest to the offering of 568 parcels from The Wilderness Society (TWS) on behalf of the Wyoming Outdoor Council, the National Audubon Society, and the Wyoming Wilderness Association (collectively referred to as TWS). These parties protest the offering of all 568 parcels.

On January 22, 2019, the WSO timely received a protest to the offering of 568 parcels from the Center of Biological Diversity (CBD), filed on behalf of Sierra Club, Western Watersheds Project, Living Rivers and WildEarth Guardians (WEG) (collectively referred to as CBD). These parties protest the offering of all 568 parcels.

On January 22, 2019, the WSO timely received a second protest to the offering of 568 parcels from WEG, filed on behalf of CBD and Western Watersheds Project (collectively referred to as WEG). These parties protest the offering of all 568 parcels.

Also on January 22, 2019, the WSO timely received a protest to the offering of eight (8) parcels from the National Outdoor Leadership School (NOLS).

In addition, the WSO received 81 form letter protests generated through a Facebook invitation by WildEarth Guardians. No substantive comments are included in the form letters. For the web-based form protests, the BLM's response (this Decision) will be posted at this BLM website:
https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=174032

BACKGROUND

Expressions of interest reviewed for this sale were received through June 1, 2018. This sale includes Federal fluid mineral estate located in eight of ten BLM Wyoming (WY) Field Offices (FOs). After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the Field and District Offices (DOs) interdisciplinary teams for new data, and to confirm application of stipulations in conformance with the underlying RMPs. The BLM in coordination with the FO/DOs, prepared an EA and FONSI documenting National Environmental Policy Act (NEPA) compliance.

During the BLM’s preliminary review of these parcels, each parcel was reviewed for conformance with the applicable RMP, coordinated with the State of Wyoming Governor’s Office, the Wyoming Game and Fish Department (WGFD), and considered recent changes to National BLM policies including ongoing efforts by BLM Wyoming to revise or amend the RMPs for planning areas subject to this sale.

The preliminary parcel list was provided to the WGFD for review and comment, and split estate landowners were notified per Washington Office IM No. 2009-184.

1 The protest period for the Supplemental 2019 sale began December 21, 2018 and was scheduled to end on January 22, 2019. However, due to a lapse in appropriations, the Bureau of Land Management was prevented from being open for business. By necessity, the protest period ended at 4 p.m. the first business day the government reopened (January 28, 2019).
The EA (DOI-BLM-WY-D000-2018-0004-EA), along with the draft and unsigned Finding of No Significant Impact (FONSI) was released for an initial 14 Calendar Day comment period from August 29 – September 12, 2018. The original modified proposed action as discussed in the unsigned FONSI would have offered 581 parcels comprised of 578 parcels in Greater Sage-grouse (GSG) habitat, and three parcels in non-GSG habitat.

On September 21, 2018, the District of Idaho issued a Preliminary Injunction Order in W. Watersheds Project v. Zinke, No. 1:18-cv-00187-REB, 2018 U.S. Dist. (D. Idaho Sep. 21, 2018)) requiring BLM to provide additional public comment and a 30-day protest period for parcels in GSG habitats to be offered at the December 2018 and succeeding competitive oil and gas lease sales.

Following the Order, BLM-WY modified the original unsigned FONSI to only offer the three non-GSG habitat parcels at our regularly scheduled 4th Quarter 2018 sale (December 11, 2018). The protest period for these three parcels concluded on December 5, 2018; no protests were received and all parcels were sold.

The BLM WY then reposted the EA and an updated unsigned FONSI that would offer the 578 parcels in GSG habitats, for an extended 16-calendar day comment period that ran from October 24, 2018 – November 9, 2018. The extended comment period combined with the initial 14 Calendar Day comment period implements the Order requiring a 30-day public comment period. Following review and response to public comments, and making edits to the EA as necessary, the Competitive Sale List and the updated EA/FONSI were posted on December 21, 2018 for a 30-day protest period.

Through the public comment period, the WGFD requested that the BLM defer 7 whole parcels and portions of one more all located in either the Baggs or Red Desert to Hoback Mule Deer Migration Corridors. The BLM incorporated these deferrals into the EA and unsigned FONSI and posted them for the protest period.

The subject EA is tiered to the existing Field Office/Resource Area RMPs, as amended (2015) and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR §1502.20:

> 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.

The current RMP EISs and associated RODs considered compliance with all applicable laws and regulations. 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 (ESA), the National Historic Preservation Act (NHPA), the 2005 Energy Policy Act (EPAct), the Mineral Leasing Act (MLA), and the regulations at 43 CFR § 3100 and § 3160.

The 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 4th Quarter 2018/February 2019 CLS EA described its purpose and need as (EA at page 1-4):

> It is the policy of the BLM as derived from various laws, including the Mineral Leasing Act of 1920, as amended (MLA) and the Federal Land Policy and Management Act of 1976 (FLPMA)
to make mineral resources available for disposal and to encourage development of mineral resources to meet national, regional, and local needs. Continued sale and issuance of lease parcels in conformance with the approved Resource Management Plans (RMPs) would allow for continued production of oil and gas from public lands and reserves.

*The need is to respond to Expressions of Interest, as established by the Federal Onshore Oil & Gas Leasing Reform Act of 1987 (FOOGLRA), MLA, and FLPMA.*

The EA considered three alternatives in detail:

- The No Action alternative, which considered not offering any of the 674 parcels that are available for lease.
- The Proposed Action alternative, which included offering 584 parcels (completely or in part).
- The Lease All Action alternative, which included offering 674 parcels.

On February 12, 2019, the BLM WY issued an Information Notice notifying the public that the BLM was deferring an additional two whole parcels, and portions of 10 parcels, under State Director discretion in response to an additional comment letter received from the WGFD on December 20, 2018. The BLM also notified the public that final parcel 533 had been determined to not be available for lease and was deleted from the sale. These additional deferrals have been incorporated into the final signed FONSI; any protests to the extent they involve the deferral of these lands are dismissed as moot.

Further, the BLM review also resulted in correction of a typographical error in the number of parcels to be offered in the 4th Quarter sale as a result of these additional deferrals. By necessity, the FONSI prepared for this sale addresses the offering of 577 2 parcels within GSG habitats.

As described in the FONSI, after the deferrals, deletions, and the sale of the three non GSG habitat parcels, 565 parcels containing approximately 758,197.74 acres are proposed to be offered at the Supplemental February 2019 CLS under a modified Alternative B. All parcels proposed for offering have been determined to be available for leasing as they have been designated for multiple-use management, subject to the stipulations identified in the applicable RMP RODs. On September 21, 2015, the BLM issued a ROD for the GSG ARMPA for the Casper, Green River, Kemmerer, Newcastle, Pinedale, and Rawlins RMPs, at Appendix A, page 114, Map 2-2: Wyoming Fluid Minerals (Oil and Gas). The EA and draft FONSI prepared for the Supplemental February 2019 CLS also tiers to these decisions and incorporates by reference specific information in the GSG ARMPA, and a Hydraulic Fracturing White Paper contained in Attachment 5.6 of the EA. All of the associated attachments were circulated with the EA and unsigned FONSI, and subjected to public comment.

The EA considered three additional alternatives but eliminated them from detailed analysis. One alternative would offer all nominated parcels with a No Surface Occupancy stipulation (NSO); this alternative was dismissed from further review because it would not be in conformance with the applicable RMPs and would unnecessarily constrain oil and gas occupancy in areas where the applicable RMPs, as amended (2015), have determined that less restrictive stipulations would adequately mitigate the anticipated impact. An additional alternative was considered but not analyzed in detail; this alternative would defer offering all parcels located within GSG PHMA and/or GHMA. This alternative was not analyzed in detail because it would not be in conformance with the respective RMPs as amended.

2 Corrected from 578 that was identified in the unsigned draft FONSI posted at the beginning of the protest period for this Supplemental February 2019 lease sale.
(2015). A third alternative was analyzed that would offer all parcels subject to the standard lease terms and conditions only; this alternative was not analyzed in detail because it would not be in conformance with the authorizing RMP(s).

Through the analysis in the EA, we also analyzed whether the proposed parcels were appropriate for leasing. In doing so, the BLM reviewed the parcels for the presence of unidentified resource values and/or unresolved conflicts, including the presence of lands with wilderness characteristics and pending Citizen Proposed Wilderness Areas that have not yet been reviewed for new information (see Attachment 5.5), and applied appropriate stipulations controlling the surface occupancy and/or use of the individual parcels (see Attachment 5.1). Response to public comments is found in Attachment 5.10 of the EA; all changes made to the EA as a result of public comments were posted with the draft updated FONSI at the beginning of the protest period. These changes have been accepted in the EA record.

Consistent with previous protest decisions, if a protester did not submit written comments regarding the adequacy of the EA 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 if they were protesting on grounds that the NEPA was insufficient. All protesters identified below, participated in the decision-making process by submitting comments during the EA comment period.

ISSUES – WYOMING OUTDOOR COUNCIL, NATIONAL AUDUBON SOCIETY, THE WILDERNESS SOCIETY, WYOMING WILDERNESS ASSOCIATION (TWS)

TWS is protesting the offering of 568 parcels that would cover approximately 768,942 acres of public lands.

1. The BLM Has Not Prioritized Leasing Outside Of Sage-Grouse Habitats As Required By Its Land Use Plans And It Has Not Required Compensatory Mitigation.
   A. “There is no doubt the RMP prioritization requirements are mandatory. [T]here is no choice but for BLM to comply with the prioritization requirement, which it has not done here, IM 2018-026 notwithstanding.”

**WSO Response:**
The BLM also responded to a similar comment from the National Wildlife Federation (comment response #153). In that response we provided the following: “The Rocky Mountain ROD at pg. 1-40, specifically directed the BLM to prepare Instruction Memoranda (IM) to guide how the BLM would implement specific provisions of the ROD: “Instructional Memoranda- Additional instruction and management direction will be necessary to implement certain land allocation decisions and management direction included in the ARMPAs and ARMPs. For example, additional guidance will be provided to clarify how the BLM will implement the objective of prioritizing future oil and gas leasing and development outside of GRSG habitat. IMs and related guidance will be completed by the BLM Washington Office. The BLM shall complete IMs for the following management direction and intends to complete these IMs within 90 days of the RODs: oil and gas leasing and development prioritization and livestock grazing.”

These Instruction Memoranda included both Washington Office IM No. 2016-143 Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization and then Washington Office IM No. 2018-026 Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and
Development Prioritization Objective. Both WO IM 2016-143 and WO IM No. 2018-026 were issued as a result of the ROD; neither the Rocky Mountain ROD nor the subject IMs direct the BLM to defer any parcels in PHMA or GHMA, nor do they obligate the BLM to even consider deferring parcels in PHMA or GHMA. TWS does not specifically articulate how the BLM’s action is not in conformance with the subject RMPs other than repeating to disagree with BLM’s action of leasing parcels of land that have been nominated, and that are specifically available for oil and gas development within the subject Field Offices according to the subject RMPs.

WO IM No. 2016-143 states: “when considering the GHMA/PHMA lands for leasing, the BLM State Offices will ensure that a decision to lease those lands would conform with the conservation objectives and provisions of the GRSG Plans (e.g., Stipulations). The IM then explains that BLM will consider, as appropriate, a combination of what applies from the identified prioritization factors and noted that the specific factors were not presented in any particular order of importance. On December 27, 2017, WO issued IM No. 2018-026, which replaced policy direction in WO IM No. 2016-143. WO IM No. 2018-026 clarified that “where the BLM has a backlog of EOIs, the BLM will prioritize its work first in non-habitat management areas, followed by lower priority habitat management areas, and then higher priority habitat management areas (PHMA).” It further specifies, “BLM will use the stipulations to encourage lessees to acquire leases outside of GRSG PHMA due to fewer restrictions in those areas than in higher PHMAs. Consistent with the GRSG Plans, however, parcels may be leased within GRSG habitat management areas without first leasing parcels in non-habitat areas.” While IM’s do not rise to the level of statute or regulation, in this specific case the AO decided that issuing an IM to guide interpretation of the prioritization was appropriate and made it part of his ARMPA/ARMP RODs. The protestor has not shown how the BLM has not complied with the provisions of the ARMPA ROD, as interpreted by policy.

Not offering any combination of parcels in either GHMA or PHMA is within the range of alternatives analyzed. A similar argument was subject to disposition by the Interior Board of Land Appeals (IBLA) in Biodiversity Conservation Alliance, 183 IBLA 97. In 183 IBLA 97, Audubon specifically argued that BLM should have considered a “sage-grouse conservation alternative,” which would have deferred leasing all of the parcels that encompassed public lands in Core Areas. Citing, as an example, Biodiversity Conservation Alliance, 171 IBLA at 238, IBLA found that “the BLM clearly considered the alternative advanced by Audubon in the course of considering the no action alternative... Subsumed under the no action alternative was not leasing all of the parcels within Core Areas...or the multitude of combinations of these parcels. BLM is not required to devise a multitude of alternatives that specifically involve not leasing different groupings of the various parcels proposed for leasing.”

The BLM reiterates that by policy (See BLM NEPA Planning Handbook H-1790-1), it is the management actions specified in the ARMPA which are designed to meet the objective(s) and we incorporate into this response, our response to protests submitted by WOC for the December, 2017 CLS. In this specific instance, the pertinent management actions are the required stipulations for oil and gas leasing in PHMA and/or in GHMA, as the case may be. In conformance with the ARMPA ROD, the BFO RMP ROD, and the Bighorn Basin RMP ROD, BLM is further implementing prioritization through the application of the subject stipulations (See EA, Table 4-1 and Appendix B).”

3 Rocky Mountain ROD pg. 1-40: Instructional Memoranda—Additional instruction and management direction will be necessary to implement certain land allocation decisions and management direction included in the ARMPAs and ARMPs. For example, additional guidance will be provided to clarify how the BLM will implement the objective of prioritizing future oil and gas leasing and development outside of GRSG habitat. IMs and related guidance will be completed by the BLM Washington Office. The BLM shall complete IMs for the following management direction and intends to complete these IMs within 90 days of the RODs: oil and gas leasing and development prioritization and livestock grazing.
Finally, as discussed in our response to comments, the subject RMPs considered several alternatives including closing PHMA to oil and gas development and/or only making lands available within PHMA with a No Surface Occupancy stipulation. These alternatives were analyzed in full, but were ultimately not selected. They do not need to be reconsidered for every subsequent lease sale.

There is no pending action(s) or additional information that the BLM is awaiting before offering the subject lands. TWS has provided no new information that the BLM has not already considered regarding the resources involved in the parcels themselves, potential impacts of leasing and/or development of the subject lands.

This protest issue is dismissed.

B. Because many of the proposed lease parcels in the February 2019 lease sale cover PHMA and GHMA, BLM must attach a stipulation to those leases imposing the net conservation gain/compensatory mitigation requirement in PHMA and providing for use of compensatory mitigation in GHMA that may soon be eliminated from the ARMPA. Applying these requirements as terms of the leases is necessary to prevent unnecessary or undue degradation of the PHMA and GHMA lands being leased and to meet BLM’s obligation to prioritize leasing outside of sage-grouse habitats.

WSO Response:
Until a decision is issued for the GSG Amendment currently under consideration, the 2015 GSG decisions remain in full force and effect. This decision, while requiring the BLM to achieve a net conservation gain, are not being implemented via the stipulations outlined in the RMP RODs. To apply such a stipulation would not be in conformance with the RMP decisions in place.

Further, the language of the ROD is specific to when BLM is reviewing/authorizing third party actions “that result in GRSG habitat loss and degradation” (Rocky Mountain ROD, pg. 1-27). The stated purpose of the EA is to respond to submitted Expressions of Interest and there are no surface disturbing activities proposed that will result in habitat loss and degradation. The parcels have been appropriately stipulated to control surface use. As such, this protest point is dismissed.

2. BLM Has Not Taken A Hard Look At Impacts To Mule Deer

A. “Impacts to Mule Deer migration corridors and crucial winter ranges are not adequately considered.”

WSO Response:
CERF rule 40 C.F.R. § 1502.9(c). That rule compels that if “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” arise, a new NEPA statement is required before an action is approved. Center for Native Ecosystems, 170 IBLA at 346.

Further, BLM is required by NEPA's implementing regulations to supplement an EIS, or the EIS to which an EA is tiered, "if . . . [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1). However, it is said that "an agency need not supplement an EIS every time new information comes to light after the EIS is finalized," but that, applying the rule of reason, "if the new information is sufficient
to show that the remaining [major Federal] action will 'affec[t] the quality of the human environment' in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared." *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373-74 (1989). As the court stated in *State of Wisconsin v. Weinberger*, 745 F.2d 412, 418, 420 (7th Cir. 1984): "[A Supplemental EIS is required when] the new [circumstances or] information present[] a seriously different picture of the likely environmental consequences of the proposed action not adequately envisioned by the original EIS." (Emphasis added.) See, e.g., *Center for Biological Diversity*, 181 IBLA 325, 344 (2012).

While, TWS does not demonstrate that the actual designation of these corridors, or the study results cited within their protest constitutes significant new information showing that BLM's decision to offer the subject parcel, would impact big game resources, or any other aspect of the environment in a significant manner or to a significant extent not already addressed in the RMPs. The BLM has included additional clarification of big game resources, including mule deer crucial winter range, and migration corridor information in the EA. This information is provided as an Errata and is located within the DR’s Addendum for this sale (beginning on page 6 of the DR).

In consideration, this protest point is dismissed.

B. “The EA fails to disclose cumulative impacts to mule deer.”

**WSO Response:**

In the EA, the BLM acknowledged that statewide, mule deer numbers were generally down and significant impacts have occurred to populations occurring within intensively developed areas, such as the Pinedale Anticline. The EA acknowledged the designation of the Red Desert to Hoback and Baggs Mule Deer Migration Corridors (MDC), and disclosed that certain parcels were proposed to be offered overlapping the MDCs and containing Mule Deer Crucial Winter Ranger (CWR). It further provided current leasing levels statewide and noted that of parcels leased, approximately 50 percent of them are never developed. BLM further verified that existing development levels are within what was forecast in the underlying RMP EIS’.

However, while we are not granting this protest, we have clarified the information contained in the EA for mule deer, mule deer, crucial winter range, and migration corridors. This information is contained within the Addendum to the DR for this sale, as an Errata.

In consideration, this protest point is dismissed.

C. The omission of a required stipulation (Crucial Winter Range TLS) is an additional basis for the protest of parcels -475, -481, -483, -542, and -568. (Protest, Exhibit 1, unpaginated 1)

**WSO Response:**

While not specifically called out as a point of protest within the body of TWS’ argument, the BLM has reviewed the subject parcels and agrees in part. Thank you for bringing this error forward. The subject stipulation has been added to parcels 475, 481 and 542 (preliminary parcel numbers 601, 607 and 677, respectively). A review of the record indicates that the TLS is already attached to parcel 568 (preliminary parcel 66) and per the Bighorn Basin RMP, Worland ROD, the TLS is not to be applied to parcel 483 (preliminary parcel 609) because it is in a designated development area. This is disclosed in the EA at page 3-21. As a result, this protest point is dismissed.
TWS calls out in footnote 2 on page 1 of the protest, that the EA states 99 parcels are located in mule deer crucial winter range, but the protester's data indicates 91 parcels. We also appreciate the protestor pointing this out to us. While 91 is within the 99 analyzed, this correction is shown on page 5 of the DR Addendum. Resultantly, this protest issue is dismissed.

3. The BLM has not considered a reasonable range of alternatives in the EA in violation of the National Environmental Policy Act. The BLM is failing to consider reasonable middle-ground alternatives. For example, the EA fails to evaluate an alternative that would defer leasing in PHMA and/or GHMA for Greater sage grouse. The BLM has also failed to fully consider deferring parcels in Lands with Wilderness Characteristics and big game migration corridors and crucial winter ranges. Finally, BLM should have considered an alternative that deferred the leasing of parcels within the Rock Springs Field Office in order to preserve decision space for the upcoming RMP review.

WSO Response:
In regards to the protestor’s argument that the BLM should have analyzed an alternative that would defer leasing in PHMA and/or GHMA for GSG, we refer the protestor to our response to TWS Issue #1. We further acknowledge that this is an argument that we previously responded to and we incorporate to the extent applicable our protest decisions from December 2017 through 3rd Quarter 2018.

Because TWS raises arguments regarding whether the BLM should have analyzed an alternative that deferred parcels in GSG habitats, previously addressed without showing how those arguments remain viable in light of previous decisions, we incorporate by reference our previous responses in full. TWS's arguments are subject to summary disposition See, Powder River Basin Resources Council, 183 IBLA 83, 89-93 (December 21, 2012).

The BLM has repeatedly responded to protests regarding whether or not the BLM needs to defer parcels containing LWC when they have not been addressed in the RMP (even though the protester doesn’t make this distinction in their arguments). There is nothing in policy, regulation or law that prevents the BLM from continuing to implement its RMP and the protester does not explain how analyzing an alternative deferring parcels containing LWC is a necessary action. We incorporate our response to TWS Issue #7C and 7D here.

As discussed in our response to comments, the Rock Springs Field Office (RSFO) reviewed the parcels and recommended deferring parcels that were in potential conflict with management actions being considered in their ongoing revision process. BLM has acknowledged within its protest that certain parcels are being deferred in the RSFO. No additional deferrals were determined to be necessary and the protester does not raise any new arguments that the BLM has not previously responded to.

For the foregoing reasons, this protest issue is dismissed.

4. The BLM has not taken a hard look at environmental impacts in the EA.

   A. The environmental effects of reasonably foreseeable future actions analyzed in the 2015 ARMPA were premised on the implementation of the conservation measures contained in the plan amendments, including, importantly, prioritizing oil and gas leasing and development outside of PHMAs and GHMAs, implementing the net
conservation gain requirement, requiring compensatory mitigation, requiring effective noise controls in GHMA as well as PHMA, mineral withdrawals in sagebrush focal areas, compliance with required design features, etc. For the analysis of impacts to be accurate, it must examine the direct, indirect and cumulative effects of habitat-disturbing actions in sage-grouse habitat without the implementation of those conservation measures, which have recently been abandoned by the BLM or may be abandoned in the near future.

**WSO Response:**
The parcels proposed to be offered are correctly stipulated in conformance with the existing RMP decisions. TWS' arguments are similar to those which argue that the BLM cannot continue with implementation decisions while an RMP is undergoing revision; this argument has been denied multiple times. While the Sage Grouse management actions are being revised to ensure greater consistency with the State Sage Grouse Core Area Strategy, that environmental document will examine any potential changes in impacts to the GSG or its habitat. This protest issue lacks merit and is dismissed.

**B.** Moreover, the BLM cannot rely for this sale on the plan-level analysis conducted for the ARMPA. Tiering is only appropriate when a subsequent NEPA document incorporates by reference earlier general matters into a subsequent narrower statement; but it does not allow a subsequent analysis to ignore the specific environmental issues that are presented in the later analysis. 40 C.F.R. § 1508.28. The ARMPA does not address the site-specific impacts associated with issuing these particular lease parcels. On the contrary, by requiring a prioritization analysis the ARMPA contemplates that such an analysis will occur at the leasing stage.

Given the scope of the proposed sale, it is highly likely that many of the parcels lie near or adjacent to existing development. An assessment of existing wells would allow the BLM to forecast the number of wells likely to be drilled, the well spacing likely to occur in those areas, and make a forecast of reasonably foreseeable impacts, which BLM must do to meet its hard look obligation.

**WSO Response:**
The BLM has previously responded to the protesters arguments regarding the authority, or the ability, of the BLM to tier to its underlying documents.

The BLM did not "entirely defer" analysis of development impacts "to future NEPA documents," as asserted by TWS, but BLM has asserted that the analysis in the EA cannot be "more specific". BLM considered the effects of reasonably foreseeable development in connection with the parcels, leaving more specific analysis to the consideration of APDs and plans for field development. Such an approach complies with NEPA. See *State of New Mexico v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009) ("[A]n agency's failure to conduct site-specific analysis at the leasing stage may be challenged, but . . . a 'particular challenge' lacked merit when environmental impacts were unidentifiable until exploration narrowed the range of likely drilling sites," citing *Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 973, 977-78 (9th Cir. 2006)); e.g., EA at 1-3, 3-18, 4-2 ("Often, where environmental impacts remain unidentifiable until exploration narrows the range of likely well locations, filing of an Application for Permit to Drill (APD) may be the first useful point at which a site-specific environmental appraisal can be undertaken.").
To the extent possible, the BLM has identified the impacts associated with oil and gas operations, and in a manner that is site-specific. For example, as it relates to GSG, the EA provides a detailed description of the resources present on each of the parcels (at page 3-22 and Attachment 5.2, which provides 21 pages summarizing the resources known or suspected to be present based upon the available data, and the applicable lease stipulations designed to protect resources identified in the affected environment portion of the EA under the Proposed Action, and the Lease All Parcel alternatives.

As described in the EA, for the BLM to provide a more site-specific and detailed analysis of the impacts from lease development activities would require the BLM to speculate on the density of drilling locations, the number, characteristics, and specifications of related production equipment, and the rate at which the leases would be developed.

TWS also asserts that it is possible that many of the parcels “lie near or adjacent to existing development” While this may be true, there is a Controlled Surface Use stipulation which requires development levels to remain at 1 per 640 acres, and no more than 5 percent surface disturbance as determined by using the DDCT process for projects within PHMA or Connectivity habitats, in coordination with the WGFD. This analysis by necessity, considered the cumulative impact of existing development levels and reasonably foreseeable future actions across GSG habitats in WY, including all of the parcels in this lease sale. Because all parcels are stipulated to control surface use, impacts from development have already been considered. The protester has not raised any new information that would result in a change in impacts to GSG not already considered resulting from the leasing and potential future development of the proposed parcels.

The BLM will consider the Intensity and Context of any future proposed action in consideration of the GSG status at that time, as described in the FONSI and EA.

Resultantly, we disagree with TWS that the BLM “failed” to consider site-specific impacts in the EA, and find that the BLM provided a site-specific review of the parcels to the extent that conditions have changed; we have further considered information from the WGFD 2016-2017 JCR Report on GSG. The BLM will, as described elsewhere in our protest response, have opportunity to analyze the site-specific impacts of development activities should they be proposed, and consistent with the law, our regulations, and BLM policy. TWS may request further administrative review of those decisions in accordance with 43 CFR 3165.3.

We further incorporate our response to TWS Issue #1 into this answer. For these reasons, we deny this portion of TWS’ protest.

5. The BLM has failed to consider the cumulative impacts of leasing.

The BLM must analyze and disclose the cumulative impacts of this wave of leasing and oil and gas projects on the Greater sage-grouse and its habitat. BLM (in the Rocky Mountain Region Record of Decision and Wyoming "Nine Plan" Amendments and Revisions) and numerous authorities, such as Dr. Holloran (see Exhibit 2), have recognized the importance of addressing sage-grouse conservation on a comprehensive range-wide basis, and accounting for connectivity between State and regional populations and habitats, habitat fragmentation, and other impacts.
Under NEPA, the BLM cannot lease hundreds of parcels covering many thousands of acres in Montana, Wyoming and other states without considering the cumulative and trans-boundary impacts to the greater sage-grouse and other resources.

The RMPs only considered leasing in a general sense, not at a site or lease-specific level. The EA claims relative to both sage-grouse and big game crucial winter range cumulative impacts that, "[i]mpacts (direct and/or indirect) beyond those analyzed in the underlying RMP FEIS' and the ARMPA FEIS, are not expected due to the continual expiration of existing federal leases whether because they lack production in paying quantities or are never explored." Id But this contention ignores the millions of acres of new leases that the BLM is proposing to issue, and the potential for impacts from those leases. The BLM cannot rely on projections that leases will expire to avoid a cumulative impacts analysis when it provides no data showing the level of expirations, and just as important, the acreages that are kept under lease despite a lack of development activities through actions such as lease suspensions which have caused millions of acres of leases to be "stockpiled" at a cost to taxpayers.

The BLM says the cumulative impacts analysis was done in the RMPs, particularly the Rocky Mountain ROD. It also says proposed leasing actions in other states are not reasonably foreseeable; only the parcels in this lease sale matter. But the leasing in other states has already occurred in many instances, there is nothing hypothetical about it. And as discussed, the earlier RMPs did not consider the impacts that might occur from issuing these specific lease parcels; there was no consideration of the "uncertainty" that exists regarding impacts when BLM offers a lease or the "crucial factors that will affect potential impacts." EA at 4-1.

**WSO Response:**

We incorporate our response to WOC Issue #4 above, into our answer here. We interpret TWS' argument as generally challenging the intensity and the context of the action as it relates to cumulative impacts. The BLM has adequately discussed these issues in the FONSI prepared for this sale and TWS has not taken issue with any of the conclusions provided therein.

The BLM is not relying on projections that leases will expire to avoid a cumulative impacts analysis. Please see page 3-24 of the EA for information regarding the decrease in total leases, and leases held by production within PHMA: “On a cumulative basis, the development and implementation of the current sage-grouse conservation strategy began in 2008, there has been a 74 Percent reduction in Federal oil and gas leases in PHMAs. Similarly, there has been a 57 Percent reduction in the area of Federal oil and gas leases that are Held by Production (HBP) within PHMAs.” The BLM has clarified information in the EA through the Errata to the DR for issues related to Big Game. This information addresses the issue raised by the protester.

As to the uncertainty of impacts discussed on page 4-1, the RMPs did not analyze these because of the programmatic nature of that document, and the assessment of impacts is by necessary guided by the RFD. Rightly so, the impact analysis in the RMPs assumed development would proceed as predicted. The information in the EA has verified that those RFD predictions are generally accurate but the BLM has disclosed, that at the lease sale stage, there is no guarantee that the lease will be sold, issued, and development proposed. Even by issuing a lease, this is not a guarantee that an APD will be submitted,
that it will be approved, and that the well will actually be drilled. Based on the information contained within the EA at page 4-1, the uncertainty involved does not allow for speculation about how or where development will occur.

As it relates to arguments regarding whether or not the BLM should take into account leasing actions in other states, there is no NEPA regulation or case law that the BLM is aware of that requires this level of analysis and BLM maintains that these types of concerns were addressed in the underlying GSG Amendments that occurred through the range of sage grouse and resulted in the Rocky Mountain and Great Basin RODs, and in the USFWS finding that listing was not warranted. See specifically page 4-499 of the ARMPA FEIS: “The cumulative effects analysis study area extends beyond the planning area boundary and consists of WAFWA sage-grouse Management Zones (MZ) 1, II and VII.” As the WSO has already stated in previous protest decisions, and response to comments: 1) those lease sales are underlain by their own specific RMPs; 3) it would be improper for BLM WY to make assumptions regarding the reasonable foreseeability of those actions; and 4) those actions are not connected actions under NEPA. The BLM has properly determined that the cumulative impacts analysis that the protester is requesting has already been done and BLM does not need to repeat that analysis here. We incorporate our response to TWS Issue #4 to the extent this issue raises the same arguments, singularly or in combination.

Resultantly, this protest point is dismissed.

6. The BLM has not complied with the multiple use mandate of the Federal Land Policy and Management Act.

Since land use plan decisions only set a basic framework for land management, and do not make project specific decisions, it is clear the leasing stage is when decisions should be made about whether issuing a lease parcel would meet BLM’s multiple use responsibilities, and this must be reflected in the NEPA analysis at the leasing stage, which has not occurred here.

Thus, any action by the BLM that seeks to prioritize oil and gas leasing and development as the dominant use of public lands would violate FLPMA. BLM must therefore consider a reasonable range of alternatives for this lease sale that considers and balances the multiple uses of our public lands, consistent with NEPA and FLPMA.

BLM claims in the Response to Comments (Number 117) that the RMPs considered multiple use and that "those [decisions] cannot be addressed here and the time for administrative appeal has expired." But even if multiple use decisions were made in the RMPs, that does not mean that multiple use should not be considered at the leasing stage.

MZ1 spans four states: Wyoming, Montana, North Dakota and South Dakota, and continues into Canada (USFWS 2013).” (Id at 4-499); MZ II contains Wyoming, Montana, Idaho Utah and Colorado, and MZ VII contains Utah, Colorado, and small portions of Arizona and New Mexico (USFWS 2013) Id at 4-502.

E.g. WY 20182Q Protest Decision at 25-26
WSO Response:
The BLM has adequately considered the impacts from the proposed leasing action, and the impacts from development to the extent reasonably foreseeable. Multiple-use decisions were made in the underlying RMPs, as revised or amended, in compliance with FLPMA. BLM cannot prioritize energy development over other uses unless the RMP decisions have precluded all other uses (See also 43 CFR 3000.7 Multiple Development). The decisions regarding use of all lands within the planning area have already been made; offering the subject lands for lease is in conformance with the RMPs. For these reasons, this protest issue is denied.

7. Issues related to wilderness quality lands and historic trails.

A. The EA lacks appropriate leasing stipulations to parcels overlapping the Cherokee Trail in violation of the approved Rawlins RMP and NEPA.

"The EA and Notice of Competitive Oil and Gas Lease Sale for this sale do not accurately attach leasing stipulations for the Cherokee Trail. The 2008 ROD for Rawlins RMP states: "An area within one-quarter mile or the visual horizon of the trails, whichever is closer, is open to oil and gas leasing with an NSO Stipulation." 2008 Approved Rawlins RMP at page 2-13. When the shapefile for the final parcel list is overlaid with the shapefile for the Cherokee Trail (provided by the State BLM Office), we identify the following parcels that are ¼ mile or less from the Cherokee Trail: 2, 39, 40, 41, 49, 50, 51, 63, 84, 88 and 103, all of which should have the NSO stipulation. However, the Notice of Competitive oil and Gas Lease Sale notes that the following parcels as having the NSO stipulation ¼ mile of the Cherokee trail: 2, 51, 56, 57, 58, 65 and 71. We are wondering why the sale notice applies the NSO stipulation to parcels not even near the Cherokee Trail and why parcels 39-50, 63-84-88 and 103 are missing the NSO stipulation altogether"

WSO Response:
As we did in response to comments submitted on the EA during the extended public comment period, the BLM has confirmed that a No Surface Occupancy stipulation for the protection of resources associated with the Cherokee Trail have been attached to the appropriate parcels (final parcel numbers 2, 51, 56, 57, 58, 65 and 71).

The subject ¼ mile NSO buffer is shown on map 2-47 of the Rawlins ROD. Based on communications with the RFO archaeologist:

"We only manage the southern route for the Cherokee Trail, there is a "northern" route but we do not know the location of it and will never be able to definitively locate it. The northern route is somewhere up around Wamsutter. As a result, we are referring to the southern route when we refer to this trail."

While the protester claims that the information they are using in their analysis came from the WSO, the RFO is the office of record and the protester has not provided BLM any information to dispute the information used by the RFO in determining which stipulations should apply to the subject parcels.

As a result, this protest is dismissed.
B. The EA has not adequately addressed lands wilderness characteristics, in violation of NEPA and FLPMA.

"We identified 3 additional parcels that overlap LWCS: 79, 85 and 118. The final EA at pages 3-4, 5-67 and 5-70 still does not address the edits that the above response states. These pages inaccurately identifies parcels 79, 85 and 118 as not possessing LWCs, when in fact they do possess LWCs. The cross over list renumbers these parcels as 58, 64 and 96. These parcels should be deferred from the sale as a result of this inaccuracy."

WSO Response:
The BLM respectfully disagrees. The subject parcels have been correctly identified as containing more than 5000 acres of roadless land, that the imprint of man's work is substantially unnoticeable, that there is outstanding opportunity for solitude or primitive recreation, and they contain natural features of scientific, educational, scenic or historical value. Whether or not they are in a citizen proposed wilderness area is still shown as "No" for all three parcels. These changes are shown on unpaginated pages 11 and 28 of the track changes document posted at the BLM's ePlanning webpage at the start of the protest period. Due to the addition of track changes without accepting those changes, the corrections that were made to page 5-70 are listed in the track changes document as occurring on page 5-71 instead of 5-70. This protest point is denied.

C. The EA still does not properly analyze potential impacts to LWCs and WSAs.

The BLM's response to our comment letter and the EA does not mention the impacts that leasing would have on the Wilderness resource. Most of the LWCs are also located on the border of the Adobe Town Wilderness Study Area (WSA), and leasing will have a significant impact on the wilderness character of this landscape. The parcels that are most detrimental to the Wilderness character of Adobe Town include: 111-118, 88-93, 106-110, 118, 638, 640 (renumbered as 66-74, 85-91, 96, 512, and 514 in the parcel crossover list). Given the overlap of the proposed lease parcels with LWCs, and their proximity to Adobe Town, the BLM should provide a thorough analysis of the potential impacts that development would have on the wilderness character of this landscape.

We recommend that the leases located on Skull Rim and on the southern, eastern, and western boundaries of the WSA not be offered in future sales. Skull Rim is the access point for visitors to the heart of Adobe Town. Development of these leases will impact the suitability of Adobe Town for wilderness designation and harm the backcountry recreation experience, cultural resources, and sensitive desert species like mountain plovers, burrowing owls, raptors, sage grouse, pygmy rabbits, and amphibian/reptile species. We request that the BLM not offer the lease parcels in these areas.

Simply listing the LWC units that overlap with the proposed lease parcels, as the BLM has done in the EA, does not constitute environmental impact analysis under NEPA. NEPA requires Federal agencies to consider "any adverse environmental effects which cannot be avoided." 42 U.S.C. § 4332(C)(ii). Effects that must be
considered include "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8.

WSO Response:
The BLM disagrees with the statement that the BLM has only listed the LWC units that overlap, or rather include, these subject parcels. The BLM has adequately addressed impacts to wilderness characteristics and recreation in the subject EA (see pages 4-2, 4-19, 4-20). The BLM's authority, under the wilderness review requirements of section 603 of FLPMA, 43 U.S.C. § 1782 (2006), to designate wilderness study areas (WSA) is deemed to have expired as of October 21, 1993, upon expiration of the President's authority under that statute to recommend WSA's for wilderness designation. Colorado Environmental Coalition, 162 IBLA 293, 298 (2004). Nonetheless, the courts have recognized that the BLM may exercise its general inventory and land-use planning authority, pursuant to sections 201(a) and 202(a) of FLPMA, 43 U.S.C. §§ 1711(a) and 1712(a) (2006), to assess and protect wilderness characteristics. See 162 IBLA at 299-300, n.9. The BLM clearly exercised that authority here, "reviewing lands to determine if they possess wilderness characteristics." EA at 3-4.

The BLM addressed the question of whether any of the disputed parcels, or any of the other public lands in Wyoming, satisfy the criteria for designation as wilderness during the 15-year wilderness review period which began October 21, 1976. The public lands at issue were not included in any WSA. See EA at 3-4; 45 Fed. Reg. 75606 (Nov. 14, 1980); 44 Fed. Reg. 40429 (July 10, 1979). The BLM's wilderness review decisions have become administratively final for the Department, and thus are no longer subject to review by the Board. Colorado Environmental Coalition, 161 IBLA 386, 391-94 (2004).

In February 2002, The BLM initiated the process of deciding whether to amend the existing November 8, 1990, Great Divide RMP, which covered public lands under the jurisdiction of the Rawlins Field Office. The BLM specifically considered, in the Draft RMP, whether to adopt management actions that would preclude oil and gas leasing and other public-land uses for the protection of the 31,510-acre Adobe Town Fringe, which aggregated parts of the original Adobe Town citizens' wilderness proposal. BLM declined to do so, however. Although the Fringe satisfied the naturalness and outstanding opportunities for solitude and primitive, unconfined recreation, the tract did not qualify for wilderness designation, since it could not be properly managed for its wilderness character, given existing oil and gas leases and development in the immediate vicinity. See Draft RMP and EIS, dated December 2004, at 2-4 to 2-5, 2-33 to 2-34, Map 2-45 (Areas with Wilderness Characteristics); Proposed RMP and Final EIS, Volume 1-1, dated Dec. 26, 2007, at 2-3; ROD and Approved RMP at 1-3. The BLM also specifically evaluated an "Expanded Wilderness Study Area Alternative," which would have designated additional lands covered by the Adobe Town, Kinney Rim, and other citizens' wilderness proposals as WSAs, or otherwise provided for the protection of wilderness characteristics. The BLM declined to consider that alternative because the statutory authority for WSA designation had already expired, and the BLM had already determined that none of the lands qualified for wilderness designation, either lacking wilderness characteristics or being unsuitable for wilderness designation. See Proposed RMP and Final EIS, Volume 1-1, at 2-10 to 2-11; ROD and Approved RMP at 1-3.

Having determined in the RMP that the subject lands are appropriate for multiple-use management, the BLM has authority to issue oil and gas leases for those lands. See 43 U.S.C. § 1732(a) (2006); 43 C.F.R. § 1610.5-3(a); Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 69 (2004); Tom Van Sant, 174 IBLA 78, 91-92 (2008). The BLM is not required to reconsider whether lands sought to be leased should more appropriately be protected for their wilderness character, which would necessarily entail an
amendment of the RMP, each time that a leasing proposal is being considered. See *Colorado Environmental Coalition*, 161 IBLA 396. Rather, the BLM may act pursuant to the outstanding land-use planning directions of the RMP.

All of the subject parcels are subject to a Controlled Surface Use (CSU) stipulation for protection of the Dispersed Use Recreation area and all but two, also contain a CSU for the protection of Visual Resource Management Class II areas. Should the parcels be sold, a lease issued, and development proposed, more specific environmental review at this time; any review could result in the application of additional mitigation.

For the above reasons, this protest point is dismissed.

**D. Parcels are within areas that have ongoing plan amendments.**

"Parcel 118 conflicts with decisions pending the completion of a plan amendment. This parcel is located within the Monument Valley Management Area, overlaps the Rawlins and Rock Springs Field Office, and is an LWC. The RSFO does not have management direction for the LWCs."

**WSO Response:**

We generally refer the protestor to our previous response (#7C). We further note that 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." The Rock Springs field office has reviewed the parcels for potential conflicts with the RS RMP revision; no conflicts were identified. For the above reasons, this protest point is dismissed.

**ISSUES – Center for Biological Diversity et al. (CBD)**

*Pursuant to 43 C.F.R. § 3120.1-3, The Center for Biological Diversity, Living Rivers, Sierra Club, Western Watersheds Project, and WildEarth Guardians submit the following protest of the U.S. Bureau of Land Management's ("BLM") decision to an Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") in support of its February 25-March 1, 2019 Wyoming competitive oil and gas lease sale for multiple fields offices in Wyoming. The agency is proposing to lease 568 parcels totaling approximately 768,942 acres, all within greater sage-grouse habitat. The protesting parties previously submitted timely comments on the Bureau of Land Management's original Wyoming Fourth Quarter 2018 Environmental Assessment on September 12, 2018.*

Firstly, we note on page 1 of the protest, in describing the relationship between the protesting parties, that technically CBD has not asserted authority to protest on behalf of Living Rivers, but rather the Upper Green River Network. As such, Living Rivers is dismissed from protest and is not considered a party to that submitted by CBD.

Specific arguments are as follows:

1. NEPA requires that an agency conduct all environmental analyses at "the earliest possible time." 40 C.F.R. § 1501.2; *see also New Mexico*, 565 F.3d at 718. Here, this means that the
BLM must analyze all site-specific impacts now, before it has leased the land and is unable to prevent environmental impacts.

The BLM, in its lease sale EA, arbitrarily refuses to consider sufficiently site-specific impacts, the BLM indicates it does not have to consider some, or perhaps all site-specific impacts because the exact extent of those impacts is unknown at this stage and subject to regulation at a later date, EA at 1-5.

**WSO Response:**
While CBD claims that BLM has failed, or rather refuses, to consider sufficiently site-specific impacts in the EA, nowhere does CBD identify what specific site-specific impacts that the BLM has not analyzed, or excluded from analysis.

Further, the BLM has provided sufficient analysis and has not deferred all analysis until the APD stage. BLM did not "entirely defer" analysis of development impacts "to future NEPA documents," as asserted by CBD, but that BLM properly took the view that the analysis in the EA could not be "more specific". BLM considered the effects of reasonably foreseeable development in connection with the parcels, leaving more specific analysis to the consideration of APDs and plans for field development. Such an approach complies with NEPA. See *State of New Mexico v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009) ("[A]n agency's failure to conduct site-specific analysis at the leasing stage may be challenged, but . . . a 'particular challenge' lacked merit when environmental impacts were unidentifiable until exploration narrowed the range of likely drilling sites," citing *Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 973, 977-78 (9th Cir. 2006)); e.g., EA at 1-3, 3-18, 4-2 ("Often, where environmental impacts remain unidentifiable until exploration narrows the range of likely well locations, filing of an Application for Permit to Drill (APD) may be the first useful point at which a site-specific environmental appraisal can be undertaken."). The analysis in the EA, tiered to the RMP EIS', is properly commensurate with the level of detail concerning oil and gas development known and anticipated at the time of leasing.

2. **The BLM's Reliance on IM 2018-034 violates the National Environmental Policy Act, Federal Land Policy and Management Act, and Administrative Procedure Act by unlawfully limiting public participation.** On January 31, 2018--without any public notice, comment, or environmental review BLM issued IM No. 2018-034, directing the BLM offices to sharply limit public involvement in oil and gas leasing decisions. The IM lists public involvement as an "unnecessary impediment" to domestic energy production and imposes new barriers to public input in the leasing process. These include making comment periods optional at the discretion of the BLM field staff and restricting the former 30-day protest period to just 10 days. To the extent that the September lease sale implements IM No. 2018-034, including abbreviated comment and protest periods and the addition of substantial new acreage without time for adequate analysis, the lease sale is unlawful.

By, under IM 2018-034, providing the public with only a 10-day protest period, on a Determination of NEPA adequacy addressing proposed oil and gas leases involving substantial uncertainties and potential impacts, BLM is violating the APA, NEPA, and FLPMA.
WSO Response:
Firstly, the protester is referring to a September lease sale but the competitive lease sale notice that is at issue is the supplemental February 2019 lease sale that was originally part of the 4th Quarter 2018 competitive lease sale (December, 2018). Secondly, the BLM prepared an EA for this sale and provided an initial 14-day public comment period, which was then extended for an additional 16 days for a total of 30-days allowed for public comment (see Protest Decision at page 3). Finally, the BLM published the subject sale notice for a 30-day protest period starting December 21, 2018, which ended on January 28, 2019 following the passing of a budget for the Department of Interior.

As such, this protest point is out of scope and is dismissed.

3. The EAs Fail to Adequately Disclose or Analyze the Lessing Decision’s Impact on Climate Change.

... For the proposed December 2018 sale the BLM must fully and accurately analyze the impacts of increased oil and gas development on greenhouse gas (GHG) emissions and climate change prior to leasing.

... NEPA requires "reasonable forecasting," which includes the consideration of "reasonably foreseeable future actions, even if they are not specific proposals" N. Plains Rea. Council, Inc. v. Surface Transp. Bd, 668 F.3d 1067, 1079 (9th Cir. 2011) (citation omitted). That BLM cannot "accurately" calculate the total emissions expected from full development is not a rational basis for cutting off its analysis. The final CEQ Guidance on Consideration of Greenhouse Gas Emissions and the Effects mate Change' In NEPA Review is dis positive on the issue of federal agency review of greenhouse gas emissions as foreseeable direct and indirect effects of the proposed action. 81 Fed. Reg. 51,866 (August 5, 2016). The guidance provides clear direction for BLM to conduct a lifecycle greenhouse gas analysis because the modeling and tools to conduct this type of analysis are readily available to the agency. Although the 2016 CEQ guidance has been “withdrawn for further consideration,” (82 Fed. Reg. 16,576 (April 5, 2017), the underlying requirement to consider climate change impacts under NEPA, including direct and cumulative combustion impacts foreseeable resulting from fossil fuel leasing decisions, has not changed.

... For the proposed December 2018 lease sale, the BLM must calculate the amount of greenhouse gas emissions that will result on an annual basis from (1) each of the fossil fuels that can be developed within the planning area; (2) each of the well stimulation or other extraction methods that can be used, including, but not limited to, fracking, acidization, acid fracking, and gravel packing; and (3) cumulative greenhouse gas emissions expected over the long term (expressed in global warming potential of each greenhouse pollutant as well as CO2 equivalent), including emissions throughout the entire fossil fuel lifecycle discussed above.

WSO Response
While the protester has requested that the BLM provide annual estimates of GHGs, it has not provided the BLM with any reason why this information is necessary to allow for a reasoned analysis of the alternatives, and the resultant impacts. Potential future development of these parcels is reasonably expected to be within what was analyzed in the underlying RMPs. The commenter provides no information to the contrary, or explains why such duplicate analysis is necessary in the context of the proposed action.
As the BLM has previously pointed out, the air emissions inventories prepared for the underlying RMPs did indeed consider all emission generating activities, including those from completion operations.

As well, the BLM has provided cumulative direct emissions in the underlying RMPs, as amended or revised, and within the EA, has provided cumulative direct and indirect emissions resulting from development of the full Reasonably Foreseeable Development scenario that was prepared for the RMP EIS analysis.

The protester has raised no new information that the BLM has not previously considered, nor provided any information on impacts that the BLM has not considered. This protest point is dismissed.

4. The BLM Must Consider Rapidly Shrinking Global Carbon Budgets When Authorizing Additional Fossil Fuel Development On Public Lands

"Scientific research has established that there is no room in the global carbon budget for new fossil fuel extraction if we are to avoid the worst dangers from climate change. Instead, new fossil fuel production and infrastructure must be halted and most existing production must be phased out to meet the Paris Agreement climate targets and avoid catastrophic climate dangers. The United States has committed to the climate change target of holding the long-term global average temperature "to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels" under the Paris Agreement. The United States signed the Paris Agreement on April 22, 2016 as a legally binding instrument through executive agreement and the treaty entered into force on November 4, 2016."

WSO Response:
International and/or global agreements are beyond the scope of this lease sale EA’s purpose and need statement. BLM is responding to Expressions of Interest in accordance with the Mineral Leasing Act, as amended. As well, a similar argument was put forth in W. Org. of Res. Councils v. United States BLM, No. CV 16-21-GF-BMM, 2018 U.S. Dist. LEXIS 48500 (D. Mont. Mar. 23, 2018). The court in that decision found: “Plaintiffs identify no case, and the Court has discovered none, that supports the assertion that NEPA requires the agency to use a global carbon budget analysis.” As such, this protest issue is dismissed.

5. The BLM Must Analyze the Full "Lifecycle" Emissions from Fossil Fuels Extracted on the Parcels

"Under NEPA’s requirement to analyze indirect as well as direct impacts, the BLM’s environmental review must therefore include not only emissions from drilling operations, but the full "lifecycle" emissions from the transportation, refining, processing, leakage, and combustion of the oil and gas produced."

"BLM has failed to provide any analysis of the severity or significance past reported greenhouse gas emissions of leasing decisions. If the BLM declines to quantify the costs of the downstream emissions resulting from the proposed action, it must, at a minimum,
meaningfully evaluate them in the context of regional, national and international carbon budgets. This includes the disclosure of direct, indirect, and cumulative impacts of its actions, including climate change impacts and emissions.”

**WSO Response:**
While the protesters have cited a number of recent court decisions regarding the analysis of GHGs under NEPA, they are primarily associated with the leasing of solid minerals, namely coal where the coal leases being contemplated were specifically to provide coal to mines already in operation\(^7\). In this case, Expressions of Interest are filed by multiple individuals and/or companies, and can even be submitted anonymously. Offering lands for lease is not a guarantee that an APD will be submitted or that production will be the result, or that the ultimate use for that product will be energy related, or that combustion is the intended end use.

In the subject EA, the BLM has provided an assessment of emissions that could be generated if all of the expected production were to be combusted utilizing EPA emission factors and calculator (see EA at page 4-8). BLM further has incorporated by reference information from the Wyoming Basin Rapid Ecologic Assessment that has taken into consideration past and future oil and gas development (and coal) and affects to local and regional climates. The BLM as well has included state-level, regional, and national emission projections from the oil and gas industry (see EA at 3-16, 17). At the same time, the BLM has acknowledged that 100 percent combustion is not a reasonable assumption due to the varying uses of petroleum products (see EA at page 4-8, 9, Uncertainty) but has provided the resultant emission estimate. The protester has not submitted information to the contrary. The protestor has raised issues that show a level of disagreement rather than showing that BLM has failed to consider something of material significance, that the decision is premised on a clear error of law or demonstrable error of fact. While it is apparent that the protestor disagrees with BLM’s proposed leasing decisions, it has provided no statutory requirement, nor has it shown that an analysis of Global carbon emissions are within the scope of the lease sale EA. Resultantly, this protest issue is dismissed.

6. **The EA Fails to Disclose and Analyze Impacts of Oil and Gas Development and Hydraulic Fracturing on Humans, Aquatic Species, and the Environment.**

**WSO Response:**
While the protester raises concerns that many of the parcels are within the Great Divide Basin, their arguments fail to bring forth issues or impacts that the BLM has not considered in either the EA, or the underlying RMP, but is rather just a general statement regarding the Great Divide Basin.

The protester also raises concerns about depletion of surface and groundwater, introduction of pollutants into water (including sediment) and the potential impacts from chemicals potentially used in hydraulic fracturing to fish and wildlife.

Hydraulic fracturing is not a part of the proposed action currently being contemplated by the BLM. The BLM has, to the extent practicable at the leasing stage, disclosed and considered impacts associated with hydraulic fracturing in the RMP EIS\(^8\) and the EA. As we have explained, above, it is not reasonably foreseeable at this point in time to predict the nature of development on the proposed parcels. We have also explained that the BLM’s iterative analysis of reasonably foreseeable impacts associated with oil

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\(^7\) *WildEarth Guardians v. BLM*, 870 F. 3d 122 (10th Cir.2017) “Therefore, we hold that it was an abuse of discretion to rely on an economic assumption, which contradicted basic economic [*1238] principles, as the basis for distinguishing between the no action alternative and the preferred alternative.”
and gas development, commensurate with the action being considered by the BLM, will ensure that the agency has the ability to address reasonably foreseeable impacts before authorization, including from hydraulic fracturing operations. For these reasons, this protest issue is dismissed.

7. **The EA Fails to Disclose New Scientific Information, Engage in Site-Specific Analysis, or Conform to Governing RMPs Regarding Conservation of Greater Sage-Grouse.**

WSO Response:
We generally refer CBD to our response to CBD Issue #1 and TWS Issue #4, as it relates to site-specific analysis of sage grouse. For the reasons contained in those responses, this protest issue is dismissed.

8. **The EA Fails to Disclose Basic Information, Acknowledge Scientific Information or Conform to Governing RMPs Regarding Conservation of Greater Sage-Grouse.**

... The body of the EA, moreover, fails completely to quantify or otherwise disclose the affected acreage, map the affected populations, or assess existing levels of disturbance within those populations. Without this information, it is impossible for either the BLM or the public to understand whether new leasing- in light of land ownership and use, existing leases, and existing development- can meet the disturbance and density objectives of Wyoming sage-grouse amendments.

... Furthermore, the lease sale EA does not contain sufficient site-specific analysis to satisfy the requirements of NEPA and its implementing regulations. Instead, it tiers to the Bighorn Basin, Buffalo, Casper, Cody, Green River, Lander, Newcastle, Pinedale, Rawlins Rocky Mountain Region, Rock Springs, and Worland Resource Management Plans (RMPs) and/or Records of Decision (RODs). In addition, the lease sale EAs tier to the 2015 Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement (WY LUPA FEIS) and its RMP and ROD. However, the greater sage-grouse analysis in these tiered-to documents is also insufficient.

... the BLM is relying on outdated NEPA analysis for a BLM sensitive species that was a candidate for listing under the Endangered Species Act only three years ago and which could become a candidate for listing again, given continuing population declines and habitat loss. In contrast, the Wyoming Game and Fish Department's 2016-2017 Sage-Grouse Job Completion Report provides statewide and regional population information and is readily available online.

... The lease sale EA should also have analyzed the potential effects of additional oil and gas development on that declining sage-grouse population, such as the possibility of soft or hard trigger criteria of the BLM Wyoming sage-grouse plan being met and whether soft or hard trigger criteria have already been met since its 2015 publication.
WSO Response:
Firstly, CBD has provided arguments essentially challenging the decisions made in the BLM's 2014-2015 Greater Sage-grouse RMP amendments and RMP revisions. Neither CBD nor Living Rivers protested the approved RMPs. Western Watersheds Project did protest the approved RMPs, but their protests were denied by the BLM Director. CBD cannot challenge the RMP decisions which they failed to successfully protest, and this lease sale does not provide CBD with a new opportunity to challenge previous BLM land use planning decisions.

Secondly, the BLM has adequately disclosed that all of the proposed parcels to be offered are in Greater Sage-grouse habitat in addition to providing shapefiles and a map of the subject parcels. Despite CBD repeatedly saying that BLM can, and should utilize information from the WGFD 2016-2017 Sage Grouse Job Completion Report (JCR), they completely overlook the fact that BLM did indeed incorporate information from said JCR (see EA at 3-24, 3-25) and considered the information in its analysis. We incorporate our response to TWS Issue #4 in to our answer here.

In consideration, this protest issue is dismissed.

A. The EA Fails to Acknowledge New and Relevant Scientific Information

...Holloran (2005) found that sage grouse avoided habitats within 3.1 miles of active oil and gas drilling operations, and within 2 miles of roads or wellpads during the production phase.

... How many acres of habitat within 5.3 miles of a lek, the habitat where nesting occurs, occur on the leases in question? How many acres of identified sage-grouse winter range occur on the leaseholds in question?

... (Citing Green, 2016) This is a level of protection far greater than that provided by the BLM's 2015 Wyoming Sage-Grouse Plan Amendments. Importantly, Green et al. confirmed that declines in sage-grouse populations may continue even within Wyoming's "core areas," where density of wells is limited to approximately one pad per square mile.

...Based on this new information, prior to authorizing new leasing in particular in the Green River Basin and Powder and Tongue River Basins, BLM must examine the potential for ensuing development to affect connectivity between genetically distinct populations of greater sage-grouse.

WSO Response:
We incorporate our response to CBD Issue #7 above to the extent the protester is arguing that the provisions contained within the ARMPA are insufficient to conserve populations of GSG.

BLM has reviewed the information submitted by CBD and finds that it is consistent with information already considered by the BLM. Specifically, habitat connectivity, linkage, and persistence of the species, was thoroughly evaluated under the WY Core Area Strategy and in the associated BLM Final EIS for the ARMPA, Buffalo RMP, Lander RMP and the Bighorn Basin RMP. Further, it was a specific consideration of the listing assessment prepared by the US Fish and Wildlife Service (USFWS). The USFWS specifically found that:
Genetic analysis further indicated that sage-grouse in fragmented areas on the periphery of the range in Colorado, Utah, and Washington were not extensively moving between or breeding with other nearby populations (Oyler-McCance and Quinn 2011, p. 92). A recent analysis shows that core population centers and the habitat between those centers are important for maintaining connectivity (Crist et al. 2015, p. 18). This study examined the connectivity of populations across the range of sage-grouse and found that 20 of 188 priority areas contributed the most to range-wide connectivity (Crist et al. 2015, p. 11).

These results affirm the conclusion by Knick and Hanser (2011) that relatively large populations in southwestern Wyoming, and straddling the borders between Idaho, Nevada, Oregon, and Utah, were the most highly connected areas within the range of sage-grouse (Crist et al. 2015, p. 11) and, therefore, essential to species persistence. (59868)

In the Rocky Mountain portion, some habitat loss associated with energy development, infrastructure, agricultural conversion, and urbanization will continue into the future. Some sage-grouse populations may continue to decline in some parts of the Rocky Mountains. However, the existing and future effective regulatory mechanisms and conservation efforts in the Rocky Mountain portion of the range will protect the most important habitats and maintain relatively large, well distributed, and interconnected sage grouse populations across much of the eastern portion of its range. (59939)

In addition, all PHMA habitat was assumed to provide all necessary habitats (spring, summer, fall and winter), and it was acknowledged that some wintering habitat located in GHMA could support PHMA populations. Whether or not additional winter concentration areas occurring in GHMA support PHMA populations will be determined in coordination with the WGFD. To date, no additional winter concentration areas have been identified. Resultantly, we are not sure why the protester is requesting additional calculations of habitat; those parcels that did not contain any GSG habitat were offered at the regularly scheduled December 11, 2018 competitive lease sale. For the reasons above, we dismiss this protest issue.


... The BLM is subject to clear direction in the RMP amendments that its greater sage grouse RMP plans and conservation strategy rely not only on stipulations within designated habitats (stipulations acknowledged as insufficient, in Wyoming, to result in a net conservation gain for general habitat. see 2015 RMPA ROD at 1-30 to 1-31), but also on a larger strategy of prioritizing development outside of all sage-grouse habitats. The proposed leasing decision including at least 188,467 acres of PHMA and 101,802 acres of SFA, and 327,482 acres GHMA, fails completely to provide a reasonable explanation of how this meets BLM's prioritization objective.

... An apparent BLM policy of leasing parcels all within sage-grouse habitat is not only inconsistent with the RMPs and FLPMA's consistency requirement, it also undermines a fundamental assumption of the RMP Amendment EISs - as well as the U.S. Fish and Wildlife Service's determination that listing the greater sage-grouse under the Endangered Species Act was "not warranted." That assumption is that the measures adopted in the RMP Amendments will result in oil and gas development tending to
occur outside of greater sage-grouse habitat. Proposing a lease sale for over 750,000 acres of designated sage-grouse habitat strongly undermines that assumption. It further undermines the assumption in the Fish and Wildlife Service's "not warranted" finding for the greater sage-grouse that federal and state implementation of the "Wyoming Plan" for fluid minerals will continue the 2012-15 pattern of reduced drilling within core areas. If the BLM is not actually going to give meaningful content to its plan direction to prioritize leasing outside of sage-grouse habitats, it cannot rely on FEISs, such as the Wyoming Sage Grouse RMP FEIS and February 2018 revised Lander Field Office ROD and RMP, that assume the effectiveness of that plan direction.

**WSO Response**

Firstly, the subject lease sale is not proposing to offer any parcels in the Lander Field Office; as such, all arguments submitted on this subject are dismissed.

The language quoted by CBD in their protest regarding a prioritization objective, is a direct quote from the Rocky Mountain ROD⁸ (see page 1-25). WO IM No. 2016-143⁹ was initially issued as a result of the ROD; neither the Rocky Mountain ROD nor the subject IM direct the BLM to defer any parcels in PHMA or GHMA, nor do they obligate the BLM to even consider deferring parcels in PHMA or GHMA.

On December 27, 2017, WO IM No. 2018-026 **Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments — Oil & Gas Leasing and Development Prioritization Objective** was issued and replaced WO IM No. 2016-0143. CBD does not specifically articulate how the BLM's action is not in conformance with the subject RMPs other than repeating to disagree with the BLM's action of leasing parcels of land that have been nominated, and that are specifically available for oil and gas development within the subject Field Offices according to the subject RMPs.¹⁰

WO IM No. 2016-143 states: "when considering the GHMA/PHMA lands for leasing, the BLM State Offices will ensure that a decision to lease those lands would conform with the conservation objectives and provisions of the GRSG Plans (e.g., Stipulations). The IM then explains that the BLM will consider, as appropriate, a combination of what applies from the identified prioritization factors and noted that the specific factors were not presented in any particular order of importance. WO IM No. 2018-026 clarified and replaced policy direction in WO IM No. 2016-143. It directed "where BLM has a backlog of EOIIs, the BLM will prioritize its work first in non-habitat management areas, followed by lower priority habitat management areas, and then higher priority habitat management areas (PHMA).""

WO IM No. 2018-026 further specifies “the BLM will use the stipulations to encourage lessees to acquire leases outside of GRSG PHMA due to fewer restrictions in those areas than in higher PHMAs.

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⁸ Rocky Mountain ROD pg 1-40: Instructional Memoranda—Additional instruction and management direction will be necessary to implement certain land allocation decisions and management direction included in the ARMPAs and ARMPs. For example, additional guidance will be provided to clarify how the BLM will implement the objective of prioritizing future oil and gas leasing and development outside of GRSG habitat. IMs and related guidance will be completed by the BLM Washington Office. The BLM shall complete IMs for the following management direction and intends to complete these IMs within 90 days of the RODs: oil and gas leasing and development prioritization and livestock grazing.

⁹ WO IM No. 2016-143 **Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments — Oil & Gas Leasing and Development Sequential Prioritization** has not been in effect since December 27, 2017. No portion of this lease sale was reviewed under this IM. No mention of IM 2018-026 is mentioned in the CBD protest.

¹⁰ Additionally, nowhere in the ROD, or the attached EIS’ is prioritization defined nor are there any management actions which direct the BLM to defer offering parcels in GSG habitats.
Consistent with the GRSG Plans, however, parcels may be leased within GRSG habitat management areas without first leasing parcels in non-habitat areas.”

While IM’s do not rise to the level of statute or regulation, in this specific case the AO decided that issuing an IM to guide interpretation of the prioritization is appropriate and made it part of his ARMP/ARMPA ROD decision. The protestor has not shown how BLM has not complied with the provisions of the subject RODs, as interpreted by policy.

There is no pending action(s) or additional information that BLM is awaiting before offering the subject lands. CBD has provided no new information that BLM has not already considered regarding the resources involved in the parcels themselves, potential impacts of leasing and/or development of the subject lands.

This answer is consistent with the WSOs previous response to this protest issue for the December 2017, the 1st Quarter 2018, 2nd Quarter 2018 and the 3rd Quarter 2018 lease sales. This protest issue is dismissed.

A. The BLM Fails to Consider Reasonable Alternatives Prioritizing Leasing Outside of All Designated Sage-Grouse Habitat.

...The December 2018 leasing EA fails to meet this core NEPA obligation by arbitrarily excluding from consideration any alternative that could meaningfully preserve BLM Wyoming offices' authority to adopt effective and scientifically credible conservation measures for greater sage-grouse.

...The December leasing EA considers only the no-action, proposed alternative, and a lease all parcels alternatives. The BLM should consider an alternative, regularly considered and adopted by other field offices, would defer all remaining parcels located within sage grouse "Priority Habitat Management Areas" and "General Habitat Management Areas," at least until new information regarding sage-grouse populations and the effectiveness of mitigation measures can be analyzed and applied.

... We request that BLM give consideration to such a habitat prioritization alternative. Agencies may not reject an otherwise reasonable alternative out of hand simply because it shares some characteristics with the no-action alternative. See Colorado Environmental Coalition v. Salazar, 875 F. Supp.2d 1233, 1248-50 (D. Colo. 2012). Indeed, the EA improperly relies on an Instruction Memorandum to effectively rewrite, without FLPMA compliance, the 2015 Approved Resource Management Plan Amendments, and FLPMA itself, to prioritize oil and gas development over sage-grouse conservation and all other resource values

WSO Response
We incorporate our response to CBD Issue #8a.

As stated in the subject EA, the lease sales themselves have no direct impact to Greater Sage-grouse, or in connection with the CDC project until a lease is developed. Conducting a lease sale auction itself, has no indirect impact to any environmental resources. The RMP’s socioeconomic analysis did prepare analysis projecting bonus bids and rental payments from the offering of lands for sale, under the assumption that leases would be sold and issued.
Further, the range wide analysis of impacts prepared under the Rocky Mountain ROD was in fact, a regional analysis and the EIS prepared for the WY portion of that decision considered the CDC project (see WY ARMPA FEIS page 4-522 and 4-523). These documents, including the USFWS decision, did not assume that leasing and development activity would not occur; it assumed the exact opposite: that leases would be offered consistent with the specified stipulations which were found to be sufficient such that if development were to occur, it would not lead to a listing of the Greater sage-grouse under the Endangered Species Act. The RMPs contains sufficient monitoring mechanisms and will be subject to review by the US Fish and Wildlife Service in 2020. The RMPs also contains specific adaptive management protocols to be put in place should identified metrics be triggered. Should a specific trigger be exceeded, leasing and/or development activities could be curtailed.

Not offering any combination of parcels either in GHMA or PHMA is within the range of alternatives analyzed. A similar argument was subject to disposition by the Interior Board of Land Appeals (IBLA) in *Biodiversity Conservation Alliance*, 183 IBLA 97. In 183 IBLA 97, Audubon specifically argued that the BLM should have considered a “sage-grouse conservation alternative,” which would have deferred leasing all of the parcels that encompassed public lands in Core Areas. Citing, as an example, *Biodiversity Conservation Alliance*, 171 IBLA at 238, IBLA found that “the BLM clearly considered the alternative advanced by Audubon in the course of considering the no action alternative... Subsumed under the no action alternative was not leasing all of the parcels within Core Areas...or the multitude of combination so f these parcels. The BLM is not required to devise a multitude of alternatives that specifically involve not leasing different groupings of the various parcels proposed for leasing.” The BLM further considered but did not analyze in detail an alternative that would defer all parcels in GSG habitats.

As in 183 IBLA 97, the BLM has previously utilized State Director discretion to defer parcels located in areas designated by the State of WY as Core Areas, but at the time, were not managed as PHMA under the BLM ARMPA RODs. Since the subject parcels, or portions thereof, were in these areas, the BLM determined it could not offer them subject to the protective stipulations required by the BLM for PHMA. This is consistent with BLM’s response regarding the ARMPA objective of prioritizing leasing and development outside of PHMA- specifically, that the lease stipulations were found to be sufficient for providing the requisite levels of protection required to provide for the Greater Sage-Grouse. The BLM reiterates that by policy *See BLM NEPA Planning Handbook H-1790-1*, it is the management actions specified in the ARMP/ARMPA ROD which are designed to meet the objective and we incorporate into this response our response to protests submitted by WOC for the December, 2017 CLS. In this case, those management actions are the required stipulations for oil and gas leasing in PHMA and in GHMA.

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11 While some development will occur in the future, the Wyoming Plan directs projects to areas that will avoid impacts, includes stipulations to minimize indirect effects, and if necessary, requires mitigation to benefit the species. (FR Vol 80, No 191, 59890) Rangewide, the Federal Plans, Wyoming Plan, and Montana Plan reduce impacts from nonrenewable energy development on approximately 90 percent of the modeled breeding habitat (FR Vol 80, No 191, 59891)

12 The Federal Plans provide coordinated monitoring strategies of disturbance caps. In response to monitoring, development allowed under the Federal Plans may be adjusted based on adaptive management criteria to provide an immediate, corrective response to any identified triggers for population or habitat declines. While the development of some valid existing rights may continue, these provisions provide a backstop for other disturbance if adaptive management triggers are exceeded. (FR Vol 80, No 191, 59891)

13 EA at 2-3 “This alternative was not analyzed in detail because it would not be in conformance with the approved RMPs. Further, this alternative would effectively, if temporarily, close areas to oil and gas leasing and development where the field office RMPs have determined that these lands are open to leasing with applicable stipulations to conserve Greater Sage-grouse and their habitats.”
as the case may be. BLM is implementing prioritization through the application of the subject stipulations (See EA, Table 4-1 and Appendix B).

Further, as discussed in our response to comments, the ARMPA Draft and Final EIS’ considered several alternatives including closing PHMA to oil and gas development and only making lands available within PHMA with a No Surface Occupancy stipulation. These alternatives were analyzed in full, but were ultimately not selected. They do not need to be reconsidered for every subsequent lease sale.

There is no pending action(s) or additional information that BLM is awaiting before offering the subject lands. CBD has provided no new information that BLM has not already considered regarding the resources involved in the parcels themselves, potential impacts of leasing and/or development of the subject lands to Greater Sage-grouse, but rather, continues to disagree with how this objective has been interpreted by policy, and is being implemented. For the above reasons, this protest issue is dismissed.

**B. The EA Fails to Analyze Cumulative Impacts of Oil and Gas Leasing and Development on Greater Sage-grouse**

... First, the EA’s percentage of greater sage-grouse designated habitat under lease in Wyoming is incomplete and will be outdated by the time of this lease sale. BLM’s analysis of existing leasing in this EA does not include GHMA, which is also designated greater sage-grouse habitat. It also, stops at April 2018, as demonstrated by the EA’s maps.

... Furthermore, BLM must consider these cumulative impacts not at a vague statewide level, but at the regional and site-specific level. For example, what will be the cumulative impacts of additional oil and gas development to the small and vulnerable northeastern Wyoming population of sage-grouse, which researchers have strongly suggested is in danger of extirpation?

... Third, the EA does not analyze the cumulative impacts to sage-grouse of adding oil and gas development on the proposed lease sale parcels to the impacts of current oil and gas development; only leasing is discussed in the quoted passage above.

... Fourth, the EA does not analyze cumulative impacts to sage-grouse of adding oil and gas development on the proposed lease sale parcels to the impacts of reasonably foreseeable oil and gas development projects that have recently completed or are currently undergoing NEPA processes.

**WSO Response:**
The BLM has utilized the best available information in its analysis and updated the EA at page 4-22 to include information regarding parcels offered at the 3rd Quarter 2018 sale as noted by our response to comments. Cumulative impacts to GSG were addressed in the Buffalo RMP (2015). The EA has tiered to all of the revised or amended RMPs which have addressed cumulative impacts to GSG, which accounted for the projects identified by the protester (see Buffalo RMP FEIS at 1302, and ARMPA FEIS at 4-475). No parcels are being offered in the LFO. All of the development EIS’ are preparing their own...
cumulative impact analyses based on existing and reasonably foreseeable projects in addition to the proposed action, and will identify necessary mitigation, monitoring and adaptive management protocols as determined necessary for those projects. We further incorporate our response to TWS Issue #4 into our response here. Resultantly, this protest issue is dismissed.

10. The EA fails to Analyze Site-Specific Impacts to Mule Deer, Pronghorn, and other Big Game Habitat

... The BLM's EA fails to take a hard look at significant new research showing adverse effects to mule deer and pronghorn habitat use, migration corridors, and ultimately survival and abundance resulting from indirect effects of energy development, and the compounding effects of climate change. The EA further fails to justify the BLM's ... refusal to engage in actual site-specific assessment of effects on particular deer and pronghorn subpopulations, winter use areas, and/or migration corridors. Merely describing "the category of impacts anticipated from oil and gas development" fails to meet NEPA's hard look requirement when it is reasonable for the BLM to do more. See New Mexico ex rel Richardson v. BLM, 565 F.3d 683, 707 (10th Cir. 2009) (emphasis in original). "NEPA does not permit an agency to remain oblivious to differing environmental impacts, or hide these from the public, simply because it understands the general type of impact likely to occur. Such a state of affairs would be anathema to NEPA's 'twin aims' of informed agency decision-making and public access to information." Id.

A. Energy Development Significantly Reduces Pronghorn Habitat and Abundance.

B. Mule Deer Habitat Loss and Population Declines Are Well Documented.

WSO Response

CBD's reliance on New Mexico ex rel Richardson v. BLM, 565 F.3d 683, 707 (10th Cir. 2009) is unavailing in this particular case, because the BLM is not asserting that impacts would be different from what it has already disclosed in the EA or the underlying RMPs. New Mexico ex rel Richardson v. BLM, 565 F.3d 683, 707 (10th Cir. 2009) found that: "BLM's unanalyzed, conclusory assertion that its modified plan would have the same [**61] type of effects as previously analyzed alternatives does not allow us to endorse Alternative A-modified as "qualitatively within the spectrum of alternatives" discussed in the Draft EIS. Because location, not merely total surface disturbance, affects habitat fragmentation, Alternative A-modified was qualitatively different and well outside the spectrum of anything the BLM considered in the Draft EIS, and BLM was required to issue a supplement analyzing the impacts of that alternative under 40 C.F.R. § 1502.9(c)(1)(i)."

The protestor has not asserted how the BLM action will result in impacts not already considered. The BLM has acknowledged that actual impacts will be dependent upon the intensity of what are currently not reasonably foreseeable actions and would have to assume that all parcels sold are developed to the full RFD and that other existing actions are ongoing and have not been reclaimed. Such an assumption is unreasonable.

Notwithstanding, the BLM has provided additional clarifying information regarding the proposed project and Mule Deer CWR and MDCs within the DR Addendum, as an Errata.

In consideration of the above, this protest issue is dismissed.
11. Lease Stipulations and Notices Do Not Adequately Protect Winter and Migratory Habitat.

A. Timing limitations for crucial winter range are inadequate:

   ...BLM should require NSO stipulations on crucial winter range or it should modify the timing limitation to prohibit vehicle traffic, noise, and other activities that disturb wintering ungulates during winter months.

   ...BLM should defer these parcels containing crucial winter range until each of these suggested alternatives are properly considered in an EIS.

**WSO Response:**

While the timing limitation, and lease stipulations in general, do not outright apply to well operations and/or maintenance, with site-specific analysis, the BLM has the option when supported by impact analysis to apply the timing limitations to operations and maintenance, as necessary to prevent undesirable impacts. BLM has already prepared an EIS for each of the field office RMPs. These RMPs have adequately considered multiple management alternatives for big game in coordination with WGFD and other cooperating agencies.

The fact that big game migrate is not new information, nor is the importance of these lands new information as the BLM has generally been aware of these movements are occurring (see Footnote 13).

During review of the subject parcels, the BLM coordinated at both the local and statewide level with appropriate personnel from the WGFD; the subject lease notice discussed in CBD’s protest, was added to additional parcels at their request but did not make any further requests regarding the subject parcels in relation to any wildlife concerns. Per the BLM-WGFD Memorandum of Understanding, the WGFD has asked for specific coordination for projects involving crucial winter range and are granted cooperating agency status on all NEPA projects, where requested. As such, they will be offered the opportunity to participate and/or comment on all requested projects; the WGFD was a cooperating agency on all RMP EIS’ in Wyoming. To date, the BLM has not received a specific management proposal for migration corridors outside of the RS RMP revision, which is still under review. The BLM is not in receipt of any other proposals from the WGFD to change current management strategies for mule deer.

Appropriate mitigation will be identified at the time development is proposed if the level and type of impacts are of concern for big game, in conformance with the underlying RMPs, and in accordance with the underlying RMPs and any applicable programmatic agreement. If a subject project is determined to potentially result in significant impacts, an EIS will be prepared should the proponent choose to go forward, or, the project will be denied. Until a project proposal is received however, presuming that mitigation may or may not be applied is not appropriate until there is a discrete development proposal.

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14 Final Recommendations prepared by the Rocky Mountain Regional Coordinating Committee, Uniform Format for Oil and Gas Stipulations (1989), page 3: Timing Limitation (Seasonal Restriction): Prohibits surface use during specified time periods to protect identified resource values. This stipulation does not apply to the operation and maintenance of production facilities unless the findings of analysis demonstrate the continued need for such mitigation and that less stringent, project specific mitigation measures would be insufficient.

15 E.g. Green River RMP FEIS pg 24, 29, 32, 34, 194; Pinedale RMP FEIS pg 2-104, 2-114, 2-141, 2-142, 2-149, 2-156; Rawlins RMP FEIS pg 2-106, 2-107, 3-91, 3-147, 3-148, 4-226; Kemmerer RMP FEIS: 2-29, 2-52/53, 2-60, 3-59, 3-136, 4-111, 4-126
Notwithstanding, the BLM has provided additional clarifying information regarding the proposed project and Mule Deer CWR and MDCs within the DR Addendum, as an Errata.

This issue has provided no new information that the BLM has not considered.

As such, this protest issue is dismissed.

B. **Sage Grouse stipulations are inadequate to protecting wintering habitat and migratory corridors.**

... Site specific analysis is required to show sage grouse stipulations will protect big game. Density restrictions for the protection of sage grouse do not fully protect winter range habitat.

... Density restrictions for the protection of sage-grouse do not fully protect winter range habitat.

... The Special Lease Notice Fails to Mitigate Significant Impacts to Big Game.

**WSO Response:**

CBD claims that the BLM inappropriately relies on various stipulations formulated specifically for the protection of sage grouse and sage grouse habitat, as mitigation for impacts on crucial winter range and migratory routes for pronghorn, mule deer, and other ungulate species stating specifically: "The BLM's reliance on these stipulations lacks factual support showing these stipulations will adequately protect big game habitat." They further ask:

> Again, while withdrawal of these areas from leasing or requiring an NSO would be more protective of winter range habitat, the BLM should at least consider imposing a stipulation limiting density to 1 well pad location per square mile on the four parcels identified above. BLM should remove the above identified parcels within pronghorn or mule deer crucial winter range, until it has considered an alternative requiring development density restrictions on these parcels in an EIS.

Nowhere in the subject EA does the BLM claim that the stipulations required for operations in Greater Sage-grouse habitat alone will protect big game species -although we do recognize that application of the management actions developed for PHMA will provide additional protection above the crucial winter range TLS where a proposal is located in PHMA and Crucial Winter Range, by limiting habitat disturbance and fragmentation as noted by CBD. The EA acknowledges that there is a full suite of measures that BLM can apply to minimize and avoid impacts to big game should a parcel be sold, and development proposed, but these cannot be fully assessed until a specific proposal has been received and the range of drilling sites has been refined. Further, crucial winter range boundaries can change when they are reviewed by the WGFD which generally happens every 5 years; this means that even though they are managed as crucial winter range today, in 5 years, they may not be. The BLM has not received any requests from the WGFD to change its current big game management decisions.

Inclusion of the Special Lease Notice is not intended to avoid significant negative impacts to big game is not a substitute for NEPA contrary to the arguments raised by the protestor. By claiming that "it does not apply to migration corridors outside the Red Desert to Hoback Corridor" is incorrect, the EA was
updated following the public comment period to acknowledge the designation of the Baggs Mule Deer Corridor, and was subsequently applied as required. Further, additional deferrals of parcels intersecting both Corridors were undertaken at the request of the WGFD. Those parcels that remain available for sale under the modified proposed action have lands both within and outside of these Corridors; the BLM retains significant regulatory authority to move operations outside of the corridor if through site-specific analysis, significant impacts would result from the proposed activity, either individually, or cumulatively.

If and when a development proposal is received, additional measures that could be considered include but are not limited: to site-specific conditions of approval developed through a site-specific environmental review of the proposal, potential application of Best Management Practices, monitoring by the BLM and/or the Operator, and statutory requirements for reclamation of disturbances no longer necessary to support lease operations. The BLM can also contemplate the need for offsite mitigation in accordance with WO IM No. 2019-018 (December 6, 2018).

Finally, while CBD argues that none of the RMPs in the HDD include crucial winter range or big game migration corridors, we refer them to footnote 13 of this decision. As well, the BLM has provided additional clarification regarding the proposed project and Mule Deer CWR and Mule Deer migration corridors within the DR Addendum, as an Errata.

This issue has provided no new information that the BLM has not considered.

For the above reasons, this protest issue is dismissed.

12. The BLM should defer leasing parcels containing crucial winter range habitat and migratory habitat until it complies with Secretarial Order 3362. Until the BLM has prepared Action Plans and revised management plans addressing specific habitat management objectives with measurable outcomes for big game habitat within these field offices, it should not allow any oil and gas leasing in areas containing winter range and migratory corridors.

**WSO Response:**
The BLM is aware and is complying with the requirements of Secretarial Order 3362. While the provisions of the IM are being responded to, the BLM also complies with other policy including WO IM No. 2018-026 regarding leasing decisions and the BLM Handbook (see H-1601-1.E)16, and with FLPMA through imposition of the Purpose and Need statement. There is no requirement in the Secretarial Order to not offer lands currently available within the existing RMPs and there is no new information or actions that BLM must take prior to offering the subject lands.

The arguments submitted in the protest are an exact carbon copy of comments submitted on the EA. Because CBD has provided no new information, or shown how their arguments were not adequately addressed in BLM’s response to their comments, this portion of CBDs protest is denied.

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16 Existing decisions remain in effect during the amendment process "unless it is determined that this would violate Federal law or regulation," and directs the BLM to "review all proposed implementation actions through the NEPA process to determine whether approval of a proposed action would harm resource values so as to limit the choice of reasonable alternative actions relative to the land use plan decisions being reexamined."
13. The Final EA Fails to Disclose or Analyze Foreseeable Impacts to Recreational Values, Scenic Landscapes, and Wild Places

... Many parcels offered for the BLM's fourth Quarter 2018 lease sale are located within the BLM identified lands with wilderness characteristics (LWCs), in close proximity or adjacent to designated wilderness study areas (WSAs), and in areas that are highly valued by many Wyoming residents for recreational purposes including hunting, hiking, backcountry horseback riding, camping, wildlife watching, and exploring.

A. Parcels WY-184Q-535 through -540, -542, -543, -544, and -545
The cumulative effects of leasing this block of parcels on sage grouse, mule deer, desert elk, and non-game species of wildlife must be analyzed and considered in the context of impacts to recreational values, hunting, and local community economies. Without disclosure and analysis of these impacts, we request deletion of the these parcels.

B. Parcels WY-184Q-191, 192, 194, 195, 197-100, 201, 202, 206-211, 551
These parcels, originally identified as 309, 310, 312, 313, .315-18, 320, 321, 326-31, 686 are each located in the BLM identified LWCs, These parcels are situated between the Big Sandy and Green rivers, which lead to Big Sandy and Fontenelle reservoirs, which are all popular spots for boating, fishing, swimming, and camping. The identified parcels are located in vital bird habitat, provide nesting areas for raptors as well as burrowing owls, and many occur in sage grouse core area and pronghorn crucial range. Parcel 322, which is not in a BLM identified LWC, is located less than a quarter mile from the banks of the North Fork River which flows into the Green River. Given the substantial impacts to recreation and wildlife habitat, and lacking full disclosure and analysis of those impacts, these parcels should be withdrawn from the sale.

C. Parcels WY-184Q-117, and 524-526
These parcels each have boundaries in close proximity to several WSAs including Alkali Basin/East Sand Dunes, South Pinnacles, and Alkali Draw with some parcels sharing borderlines with the WSAs. This area is designated crucial range for both antelope and elk and provides excellent habitat for deer and other wildlife. Leasing parcels in such close proximity to these (Alkali Basin/East Sand Dunes) WSAs has the potential to disturb unique recreational experiences, mar viewsheds, demolish any sense of solitude and disrupt critical habitat for two iconic Wyoming species. Given the substantial potential impacts from leasing these parcels to designated WSAs, wildlife habitat, and recreational opportunities, we request their deletion from the sale.

D. Parcels WY-184Q-162, -163, -177, -186, -529, -530, -531, -534
The WGFD designated mule deer migration corridor that stretches from Interstate 80 to the upper Hoback drainage includes vital habitat for long term mule deer herd viability. The parcels listed above lie in part or in whole within the designated corridor. Without adequate analysis and disclosure of information regarding the impacts to these herds and consequences to recreational use, we request that these lease parcels be deleted.

E. Parcels WY-184Q-65 through 74, -84 through -91, 512, and-514
[Parcels in the Southern Red Desert raise serious concerns due to conflicts with recreational and scenic values, proximity to LWCs and WSAs, impacts to wildlife]
habitat, and loss of undeveloped wild areas. Lease parcels WY-184Q-87 through 95, 105 through 113, -118, -638 and -640 are all located within close proximity to the Adobe Town WSA, and everyone of these parcels except 638 and 640 lie within designated LWCs. These lease parcels surrounding the southern and wester perimeter of Adobe Town threaten the area’s wild character, opportunity for solitude, scenic viewpoints, outstanding wildlife habitat, and abundant cultural resources. The BLM must evaluate and fully disclose these impacts, including their effect on the recreation and tourism economies of surrounding counties and communities. Lacking such analysis, we request that these parcels be deleted from the sale.

**WSO Response**
Firstly, in regards to protest issue 12e, the protester has identified the final parcel numbers in the heading, but in their arguments, they reference the original parcel numbers in their arguments. Because these final and preliminary parcel numbers match, we will accept this protest issue. However, we caution CBD against these types of errors in the future as it could lead to dismissal of the protest for failure to comply with the directives of the competitive sale book.

In response then, the EA has adequately disclosed potential impacts to recreation, LWCs, water resources, and visual resources (see EA at 4-20, 4-19, 4-13 thru 4-15, and 4-2). As well, the subject issues including WSAs, LWCs, recreation, water resources, and economics have been thoroughly addressed in the underlying EIS’ prepared for the RMPs in deciding to make the lands available for oil and gas development. Each of the subject parcels has been stipulated in accordance with the RMPs, including the recent VRM amendment to the Rawlins RMP to protect the relevant resources as determined necessary based on reasonably foreseeable development and associated impacts. We further refer the protester to our response to TWS Protest Issue 7C as it relates to management of WSAs.

The protestor has raised issues that show a level of disagreement rather than showing that BLM has failed to consider something of material significance, that the decision is premised on a clear error of law or demonstrable error of fact. The EA has recognized the claims of resultant groundwater impacts and recognized our regulatory provisions that are meant to protect usable groundwater. The protestor’s arguments fails to recognize that the BLM retains significant authority to modify and move operations at the APD stage, and also to require additional mitigation identified as a result of the NEPA process. Until a proposal is received, the BLM cannot determine what future, site-specific impacts could result, or whether they would be significant; nor whether a proposal will meet technical drilling requirements. Because leases are valid for 10 years, potential impacts today could also be very different and by necessity need to take into account the conditions that exist at the time lease development is proposed, should it ever occur. The intensity and context of lease development will be evaluated at the time an APD is submitted.

The arguments submitted in the protest are an exact carbon copy of comments submitted on the EA. Because CBD has provided no new information, or shown how their arguments were not adequately addressed in BLM’s response to their comments, this portion of CBDs protest is dismissed.

14. **Parcels With Potential Impacts to Native Fish**

... *Muddy Creek Drainage, Henry’s Fork, Little Snake River*

We are concerned about potential impacts to native fish in the Muddy Creek Drainage,
Henry's Fork River Drainage, and Little Snake River Basin. The Colorado River cutthroat trout, Flannelmouth sucker, Roundtail chub, and Bluehead sucker are distributed throughout the Upper Green River Basin and deserve special analysis. Based on the presence of the three-native fish, the following parcels should be deferred or deleted: 219, 221, 225, 228, 230, 243, 244, 256, 259, 260, 268

Based on (cutthroat trout and Bluehead sucker) the following parcel should at a minimum have a special lease notice language applied or better yet be deferred or deleted: 204

Suckers and chubs have been found in the Upper Muddy Creek River within the Little Snake River Basin...One parcel should at a minimum have Special Lease Notice language applied, or better yet be deferred or deleted: 44

WSO Response
The arguments submitted in the protest are an exact carbon copy of comments submitted on the EA. Because CBD has provided no new information, or shown how their arguments were not adequately addressed in BLM’s response to their comments, this portion of CBDs protest is dismissed.

15. The BLM Must Undertake Formal Consultation With US Fish And Wildlife Service Under The Endangered Species Act To Ensure Against Jeopardy Of Listed Species

...The BLM’s refusal to consult at the lease stage, and proposal to defer consultation to the APD stage, is precisely the sort of incremental step consultation decisively rejected as inconsistent with the ESA in Conner v. Burford. The refusal to consult at the lease stage further precludes reliance on the earlier Phoenix RMP and any related plan-level consultation, because that plan-level consultation does not include site-specific evaluations for individual activities.

WSO Response:
The BLM has complied with the ESA through the RMP consultation process. There are no new listed species, or designated critical habitat affected by any of the proposed parcel nor has the protester provided new information that BLM has not already considered. Furthermore, reference to the Phoenix RMP is out of scope. This protest issue is dismissed.

16. The BLM Leasing Activities During the Government Shutdown May Violate the Antideficiency Act

WSO Response
The BLM has complied with all Laws regarding the processing of this lease sale. While the protester questions whether the BLM had funds obligated for this sale, no dispositive proof of such has been submitted. For the foregoing reasons, the BLM dismisses this protest issue.
ISSUES – WILDEARTH GUARDIANS
Firstly, WEG states: “Because the BLM’s February 2019 lease sale includes many of the parcels originally noticed for sale in the December 2018, 4th Quarter sale, the Conservation Groups incorporate by reference the comments, protest, and exhibits submitted for the December sale, including comments on the draft EA for the initial set of parcels (submitted Sept. 12, 2018).” It is noted for the record that no protest was submitted by WEG, or any other party, on the December sale which offered three parcels located in non-GSG habitats but for which the NEPA was conducted under the same EA as being protested here.

1. The Conservation Groups Object to the BLM’s Public Comment Process

“The BLM’s continuation of the public comment period for the lease sale during the Federal Government shutdown violates the public participation provisions of NEPA and FLPMA.”

WSO Response:
The public comment period for the subject EA occurred prior to the government shutdown as detailed on page 3 of this protest decision. WEG submitted comments during the original and the extended comment periods. As such, this protest issue is dismissed.

2. The BLM Fails to Comply with the Clean Air Act and FLPMA.
   A. The BLM Fails to Conduct a Conformity Analysis or Revise the Pinedale and Rock Springs RMPs to Ensure Compliance with the Clean Air Act and FLPMA.

   Yet the BLM summarily concludes that the emissions from the lease sale are not reasonably foreseeable. BLM’s failure to conduct an applicability analysis to determine conformity with the CAA also violates the plain language of FLPMA: BLM must “provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards.

WSO Response
In WildEarth Guardians vs US Bureau of Land Management, 2018 WL 1905145 (April 23, 2018), a Colorado District Court ruled that “WildEarth has not carried its burden to show that the BLM acted arbitrarily or capriciously in determining that the information in its possession was insufficient to permit it to make a reasonable forecast of indirect emissions.” WildEarth has made an almost identical claim for this lease sale. Just as WildEarth’s arguments were rejected by the Colorado District Court, here WildEarth has provided no objective information to show that the BLM had a duty to undertake a conformity determination or analysis for this lease sale. The BLM complies with Federal regulations for demonstrating conformity at the appropriate stage should a lease be issued and if or when lessee development proposal is submitted for review and approval to the appropriate office. Once BLM makes a decision on development, a request for formal review of that decision may be submitted consistent with regulations at 43 CFR 3162.5. But until that time, there is no obligation for BLM to undertake conformity analysis for this lease sale.
Furthermore, based on our review of the record, it does not appear that the WEG's arguments vary significantly from previous protest points raised in their December 2017 where we addressed this issue in full, or the June 2018 lease sale protests, or our response to their public comments. While WEG argues that the BLM did not respond to their applicability comments, we counter again that there are no direct emissions to which an applicability analysis could be performed against and it falls within our previous response. A finding that a proposed action would exceed a de minimum level requires that the BLM impose additional emission controls on the specific action. Without a specific proposal, this is an unreasonable request and would be a spurious exercise.

Because the WEG raises arguments previously addressed without showing how those arguments remain viable in light of previous decisions, we incorporate by reference our previous responses in full. The WEG's arguments are subject to summary disposition See, Powder River Basin Resources Council, 183 IBLA 83, 89-93 (December 21, 2012).

3. The BLM Fails to Comply with NEPA and FLPMA.
   a. The BLM's Proposal to Lease Parcels in the Buffalo Field Office Violates FLPMA and NEPA.

   "[T]he BLM fails to calculate downstream (indirect) greenhouse gas emissions for the proposed action. Instead, the agency uses statewide calculations from the respective RMPs/EISs to estimate indirect GHG emissions for Field Office wide emissions. See EA at 4-7 to 4-8. But this gives the BLM no information with which to weigh the impacts of leasing 117 Buffalo Field Office parcels or otherwise assess the significance of the proposed action."

   "It also directly violates the ruling in another federal court decision, San Juan Citizens All. v. United States Bureau of Land Mgmt., 326 F. Supp. 3d 1227, 1244 (D.N.M. 2018). There, the court held that "The BLM's failure to estimate the amount of greenhouse gas emissions which will result from consumption of the oil and gas produced as a result of development of wells on the leased areas was arbitrary.""

   "Next, although the Conservation Groups appreciate the fact that the BLM includes additional information on the GWP of methane and the difference between the 20-year and 100-year GWP, the agency's assessment is still incomplete. For example, the BLM includes three different 20-year GWP for methane: 28 as recommended by the EPA, EA at 3-16, 28 to 36, id., and 21, id. at 4-6. Furthermore, in the chart provided on 4-6, BLM seems to use a GWP of 25. Id. Although in response to comments, BLM admits that this was an error, BLM still fails to explain why it ignores a 2015 analysis of the greenhouse gas emissions associated with coal mine expansions in Colorado's North Fork Valley, where the U.S. Forest Service, with the BLM as a Cooperating Agency, estimated that the carbon dioxide equivalency (CO2e) of projected methane emissions should be based on a GWP of 36 based on a 100-year period."
"Perhaps more importantly, this assessment also omits any actual calculations of the GWP of emissions from the proposed action. Instead, all emissions are based on Field Office wide emissions."

WSO Response
The BLM has appropriately complied with NEPA, and with the decision in Western Org. of Resource Councils v. U.S. Bureau of Land Mgmt., CV 16-21-GF-BMM (D. Mont. July 31, 2018) (WORC)\(^\text{17}\). Specifically, in the WORC litigation, the parties argued the BLM had to provide GHG emissions that would result from combustion of the expected mineral development activities within the Buffalo (and Miles City) planning area. By calculating downstream emissions from the predicted RFD, the BLM has complied with the decision of the court. The BLM again states that any development from these parcels would be within that larger analysis; any additional analysis of parcel specific emissions, or proposed action specific emission levels, is within that analysis. The protester has not shown this to be an inaccurate conclusion, or shown why such duplicative analysis is necessary for the decision making process, when those emissions cannot be translated into on-the-ground impacts or even specific climatic impacts.

The BLM has further reviewed the information submitted regarding the GWP, including the original WORC complaint. As a result, BLM has updated the information in the EA on page 4-6 to use a 20-year GWP of 87 and a 100-year GWP of 36. This is shown in the DR Addendum, at page 5.

The WORC decision in particular was based upon the complaint that the BLM failed to analyze an alternative that reduces GHG emissions from coal; the proposed action here involves fluid minerals.

For the above reasons, this protest point is dismissed.

4. The BLM Must Prepare an EIS

   a. Although the BLM provide a “Hydraulic Fracturing White Paper” in section 5.6 of the EA, this document is generalized and does not assess the impacts of fracking the specific lease parcels, especially the parcels within the Pinedale and Rock Springs area where increased emissions from fracking will likely worsen the ozone nonattainment area.

   Because of this gap (ozone), the BLM’s conclusion in the FONSI that “public health or safety would be addressed by following lease stipulations and health and safety regulations, and through conditions of approval imposed as required following site-specific analysis,” is suspect. FONSI at #2. If the BLM does not know what impacts may occur, it is questionable whether the agency will be able to remedy these at the APD stage.

\(^{17}\) WORC pg 19, Motion for Summary Judgement: BLM has previously determined that it can estimate the amount of greenhouse gases indirectly emitted by use of Powder River Basin coal on the basis of the amount of coal delivered to market and a "conversion factor" expressing the known amount of CO2 emitted from burning a ton of coal. SOF \#48. The BLM could similarly estimate greenhouse gas emissions from downstream use of oil and gas based, principally, on expected levels of production, as explained in a report submitted by Conservation Groups.
WSO Response:
The BLM has adequately considered the potential for site-specific impacts resulting from the use of Hydraulic Fracturing; as noted by the protester these are disclosed in the White Paper which was incorporated by reference. The protester has not identified any impacts that the BLM has not considered.

Projected emissions from all emission generating activities, were included in each of the air quality inventories used in the air quality analysis in the EAs. This is sufficient under NEPA. When, and if a proposal is received, an air quality permit will be required from the State of Wyoming in accordance with the state’s SIP. Once that occurs, BLM will review those remaining emissions not covered by a state permit and perform a conformity analysis to determine whether those emission levels are de minimus or require additional emissions reducing actions before it can be approved. This is also consistent with the finding of the court in Amigos Bravos v. United States BLM, No. 6:09-cv-00037-RBLFG, 2011 U.S. Dist. LEXIS 95717 (D.N.M. Aug. 3, 2011). In that case, the court found:

The EAs/FONSIs for the quarterly lease sales address the reasonably foreseeable environmental impacts of the agency's actions. The primary environmental threat of which Plaintiffs complain—increased ozone air pollution—cannot be fully addressed at the leasing stage because there is no way for BLM to accurately predict the emissions that will ultimately result from the lease sales. As Plaintiffs reiterate numerous times in their memoranda, it is oil and gas production, and particularly the wellhead compressors, that emit high levels of ozone precursors and lead to increased ozone concentrations in the San Juan Basin. (Doc. 79 at 11, 15.) The sale of a lease, however, does not authorize the lessee to drill a well or extract any oil and gas. Most of the time, production is simply not feasible or economically profitable, and an APD is never pursued. Accordingly, to require BLM to perform a detailed EIS analyzing air quality at the leasing [*71] stage would constitute a waste of resources. Consequently, the BLM’s decision to defer additional analysis until the APD stage was not arbitrary and capricious because the leasing did not constitute an irretrievable commitment of resources."

For the above reasons, this protest issue is dismissed.

b. Based on the proximity of the February 2019 lease sale parcels to Dinosaur National Monument, Fossil Butte National Monument, Fitzpatrick Wilderness, Bridger Wilderness, and numerous wilderness study areas, there is no doubt that significant environmental impacts and threats to natural resources, recreational opportunities, and public health and safety could occur [from fracturing]. Yet, the BLM’s EA fails to address these issues. Thus, BLM again cannot conclude that the impacts from the proposed action will be insignificant.

WSO Response:
The protester has submitted a general statement of disagreement but has not identified any new information, or impacts that BLM has not considered. The BLM has prepared an analysis based on what is currently reasonably foreseeable, and not speculative. The EA and the underlying RMPs have considered the potential impacts to recreation, natural resources and public health and this comment provides no new information the BLM hasn’t considered. For these reasons, this protest point is dismissed.
c. The BLM then includes specific cumulative impacts information on sage grouse and big game, but fails to include any analysis of other resource impacts, including impacts to air quality and cumulative climate impacts... Because the February 2019 lease parcels are directly adjacent to many of the Wyoming March 2019 lease parcels as well as the Colorado, Montana, an Utah March 2019 lease sale parcels, the fourth intensity factor, cumulative impacts, is also implicated by the lease sale... the BLM is failing to account for region-wide leasing impacts, which are not bounded by arbitrary lease sale boundaries or state lines. Where the BLM's March 2019 lease sales have parcels directly adjacent to each other but across state lines, no cumulative impacts analysis of cross-state leases occurs in direct violation of NEPA.

**WSO Response**

Similar to our response to WEG Issue 2b, WEG has not provided any information that the BLM has not considered as it relates to expected impacts. WEG’s comments are general and vague, with the exception of specific mention of air quality and cumulative climate impacts, and the March 2019 lease sale. For those issues, we incorporate our response to WEG Issue 2b. As explained in the FONSI (at unpaginated 6): “Site specific development of the parcels could occur in the future if the parcels are sold and leases issued. Some aspects of the assumed development process, have been addressed in this EA; however, other aspects of the development process are speculative at this time, and therefore, are not ripe for review under this EA, including, for example, whether a proposed development project would be protective of usable water zones or result in specific climate change impacts.”

Further, the BLM has included information regarding emissions and potential climate change impacts at the state and regional levels. This would include those from neighboring states (EA at 4-4 thru 4-10). Comparatively, asking BLM WY to guess about development in neighboring states would be speculative and consistent with the finding in *Amigos Bravos* 816 F. Supp. 2d at 39: “NEPA does not unduly burden agencies with analyzing environmental impacts that are not concrete enough to warrant an inquiry. *Richardson*, 565 F.3d at 717. To require such analysis at the leasing stage would present a "gross misallocation of resources." *Park City*, 817 F.2d at 623. It would be highly unusual for every lease parcel to be developed, and until an APD is submitted, the BLM cannot determine the extent or type of development planned and the emissions that will result; accordingly, at this stage, the impacts of the agency's actions on the region's air quality are not reasonably foreseeable. See *Richardson*, 565 F.3d at 718.”

The BLM has prepared an appropriate level of analysis based upon the information available and on what we consider to be reasonably foreseeable. No additional analysis is available and it is not prudent to speculate about what future project proposals may entail. As noted in *Biodiversity Conservation Alliance et al.* (183 IBLA 97), such an approach complies with NEPA. As the Ninth Circuit has also explained “Future hypothetical projects will not be considered connected actions, and a NEPA analysis need only focus on the impact of the particular proposal at issue and other pending or recently approved

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18 See *State of New Mexico v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009) ("[A]n agency's failure to conduct site-specific analysis at the leasing stage may be challenged, but an agency is not required to conduct a particular project analysis until the project is reasonably foreseeable."")
proposals that might be connected to or act cumulatively with the proposal at issue.”19 Just because the BLM is offering lands for lease, this does not automatically trigger nor guarantee future APD submittals, regardless of state; approval of those APDs subject to Conditions of Approval, or specific drilling, completion, and/or production operations and subject to compliance with all Federal and/or state regulations.

Finally, the protester has not identified concrete, specific impacts that would result that the BLM has not considered. Assuming that the protester participated in the decision-making process for each of the underlying RMPs, the time to challenge those cumulative impacts analyses has passed.

As quoted in SUWA v Salazar, “connected actions – those that are “closely related” to the proposed action – and cumulative actions – those that “have cumulatively significant impacts” – “should” be discussed in the same EIS. 40 C.F.R. § 1508.25(a)(1)-(2). Similar actions – those with commonalities “that provide a basis for evaluating their environmental consequences together” – “may” be considered in the same EIS. Id. § 1508.25(a)(3). Importantly, the Kleppe Court20 prescribed a highly deferential standard of review of an agency’s decision as to the scope of an EIS:

The determination of the region, if any, with respect to which a comprehensive statement is necessary requires the weighing of a number of relevant factors, including the extent of the interrelationship among proposed actions and practical considerations of feasibility. Resolving these issues requires a high level of technical expertise and is properly left to the informed discretion of the responsible federal agencies. Absent a showing of arbitrary action, we must assume that the agencies have exercised this discretion appropriately.

To the extent that the protester continues to argue that the BLM’s cumulative impact analysis fails to address climate change and/or emissions and/or air quality, we incorporate our citation of Amigos Bravos into our decision here.

For the foregoing reasons, this protest point is dismissed.

5. The BLM Improperly Defers Its Site-Specific NEPA Analyses to the Application Permit to Drill Stage.

On a similar note, throughout the EAs for the lease sale, the BLM attempts to segment its analyses by claiming that it will conduct site-specific NEPA analyses at the Application Permit to Drill (“APD”) stage. See, e.g., EA at 1-3 (detailing the agency’s intent to defer site-specific impacts analysis), EA at 3-18 (deferring a site specific analysis of GHG emissions), EA at 4-2 (deferring a site specific analysis of impacts to wilderness), EA at 4-19 (deferring a site specific analysis of impacts to visual resource management). However, the BLM’s deferral of comprehensive NEPA analysis at the lease sale stage ignores a crucial distinction—the scope of the action approved at the leasing stage (opening up almost 800,000 acres for oil and gas development) is much broader than the scope of the action approved at the APD stage (a single well). This approach also ignores relevant case law.

When a lease constitutes an irretrievable commitment of resources and impacts at the lease sale stage are reasonably foreseeable, an agency is required to analyze the site-specific impacts of a lease before its issuance.

In sum, unless the BLM actually commits, through the imposition of a lease stipulation or stipulations, to conduct additional NEPA analysis at the drilling stage, it more often than not does not happen. This means that any commitment to address the impacts development of the proposed leases through subsequent NEPA is, at best, hollow, and at worst, a deliberate attempt to avoid accountability to addressing potentially significant, connected environmental impacts under NEPA.

WSO Response:
The BLM incorporates our response to WEG Issue #2b and #2c, TWS Issue #4b and CBD Issue #1 above into our answer here. As the protester is well aware, NEPA is law; the only way that BLM does not prepare a NEPA document is when it is authorized by some other law (such as a CX authorized by the Energy Policy Act of 2005). Preparation of a CX is case-specific and BLM still has to conduct enough review to ensure that the project is compliant with all relevant statutes, and the lease contract, and prepare an environmental record of review where additional Conditions of Approval can still be required, and/or the project can still be denied. Regardless, selling and issuing a lease is not a guarantee that an APD will be submitted, and that the APD will be approved.

Based upon the information before us, the BLM has provided site-specific impacts to the extent they are reasonably foreseeable. More specific environmental review will occur if and when a lease proposal is submitted for agency review. While the protester argues that BLM is avoiding addressing potentially significant connected environmental impacts under NEPA, their arguments fail to disclose specific issues that BLM has not considered.

For the foregoing reasons, this protest issue is dismissed.

6. The BLM fails to Analyze a Range of Reasonable Alternatives

Here, similar to the Western Organization of Resource Councils case, the BLM has failed to consider any alternatives that significantly reduce the permitted development in order to address other resource concerns such as air quality or climate change.

In response to this, the BLM notes that it has analyzed a no action alternative and that this is sufficient. The Conservation Groups are requesting that the BLM consider alternatives that reduce the level of development based on the impacts from fossil fuels.

Perhaps more importantly, the BLM also fails to consider an alternative that will reduce greenhouse gas emissions. As noted above, consideration of such an alternative is well within the BLM’s statutory mandate. Western Org. of Resource Councils, 2018 WL 1475470, at *7.
**WSO Response**

While the protesters claim that the BLM has failed to consider any alternatives that significantly reduce the permitted development, we posit that the BLM is not analyzing any alternative that permits development under the proposed action. On page 4-1 of the EA, the BLM explains the uncertainty of development (EA data has been updated through April, 2018).

While the protester appears to disagree that that No action does not sufficiently act as a proxy for a reduced level of development or as a reduced greenhouse gas emissions analysis, it provides no reason why.

In the subject *WORC* decision, the arguments made there regarding the obligation to analyze an alternative that would minimize emissions, were specific to coal, not oil and gas. The protester has not provided any reason why such an analysis is appropriate at the lease sale stage contemplated here.

Furthermore, the plaintiffs in that case argued: “In the EISs for the Miles City and Buffalo RMPs, Federal Defendants violated NEPA by failing to consider an alternative requiring reasonable and cost effective mitigation measures to reduce methane and other air emissions from oil and gas development, as detailed by Citizen Groups in comments. Such measures could include, but are not limited to: centralized liquid gathering systems and liquid transport pipelines; reduced emission completions/recompletions (green completions); low-bleed/no-bleed pneumatic devices on all new wells; dehydrator emissions controls; replace high-bleed pneumatics with low-bleed/no-bleed or air driven pneumatic devices on all existing wells; and electric compression—all of which have been adopted as mitigation requirements by other BLM Field Offices, including, for example, the Tres Rios Field Office in Colorado.” BLM refers the protester to pages 4-10 and 4-11 of the EA, which lists multiple mitigation measures that could be employed by the BLM at the development stage, should that ever occur.

For the foregoing reasons, this protest issue is dismissed.

7. **The BLM fails to take a “hard look” at the impacts of multi-stage hydraulic fracturing and horizontal drilling in violation of NEPA and FLPMA.**

   **At a minimum, the use of multi-stage fracking coupled with horizontal drilling constitutes a new, intensified or changed use on public land. The BLM cannot move forward with leasing until it either completes an amendment to the RMP or includes a full analysis of the impacts of fracking and horizontal drilling in an EIS for the lease sale.**

**WSO Response**

While the protesters arguments are slightly different from those submitted on previous sales, primarily by taking issue with the Newcastle RMP, versus the Rock Springs or Kemmerer RMPs, the main argument has not changed. The BLM has determined that there will be no significant impact from the potential use of hydraulic fracturing based on information available at the lease sale stage. The BLM has prepared an appropriate level of analysis based upon the information available and on what we consider to be reasonably foreseeable. As incorporated by reference into the EA and FONSI, the BLM has considered potential future impact pathways and associated process needs; until project specific

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21 *WORC* Complaint, page 34 (106): “In the EISs for the Miles City and Buffalo RMPs, Federal Defendants considered alternatives that were identical with respect to the amount of coal made available for leasing, and failed to consider any reasonable alternatives that would allow for a lesser amount of coal leasing. The existence of reasonable but unexamined alternatives renders a NEPA analysis inadequate.”
information is available, no additional analysis is available and it is not prudent to speculate about what future project proposals may entail. As noted in Biodiversity Conservation Alliance et al. (183 IBLA 97), such an approach complies with NEPA. As the Ninth Circuit has also explained “Future hypothetical projects will not be considered connected actions, and a NEPA analysis need only focus on the impact of the particular proposal at issue and other pending or recently approved proposals that might be connected to or act cumulatively with the proposal at issue.” Just because the BLM is offering lands for lease, this does not automatically trigger nor guarantee future APD submittals, approval of those APDs subject to Conditions of Approval, or specific drilling, completion, and/or production operations.

The WEG has not provided any new information that the BLM has not considered, or shown that there will be significant impacts from the proposed action. As such, this protest issue is dismissed.

8. The BLM fails to properly analyze the direct and indirect impacts of greenhouse gas emissions that would result from issuing the proposed lease parcels in violation of NEPA.

The BLM has the tools to estimate emissions from the specific lease parcels. Either way, the BLM has the capability to analyze direct emissions and cannot forgo a site-specific analysis at the lease sale stage.

The indirect emissions analysis suffers from a similar problem: “The agency again uses Field Office wide calculations from the respective RMPs which gives the BLM no information with which to weight (sic) the impacts of the proposed action.”

WSO Response
Similarly, these arguments are a near carbon-copy of previous protests submitted by WEG on this issue, and are also similar to other arguments made in their protest. As such, we incorporate all responses from above, which deal with direct or indirect GHG emissions, into our answer here including our response to issues 2b and 2c.

We add the following to our aforementioned responses.

Specifically, WEG makes the claim that: “For example, in order to calculate direct emissions for the Buffalo Field Office parcels, the BLM relies entirely on the GHG calculations from the Greater Sage Grouse RMP Amendment. EA at 4-6.” This is incorrect. The Buffalo ARMP is not the Greater Sage RMP Amendment (which is identified in the EA as the GSG ARMPA), but the Buffalo Approved RMP.

Further, WEG claims that the BLM’s statement on page 4-5 of the EA, “The average number of oil and gas wells drilled annually in the HPD and probable GHG emission levels, when compared to the total GHG emission estimates from the total number of Federal oil and gas wells in the state, represent an

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22 See State of New Mexico v. BLM, 565 F.3d 683, 718 (10th Cir. 2009) (“[A]n agency’s failure to conduct site-specific analysis at the leasing stage may be challenged, but ... a particular challenge lacked merit when environmental impacts were unidentifiable until exploration narrowed the range of likely drilling sites,” citing Northern Alaska Environmental Center v. Kempthorne, 457 F.3d 969, 973, 977-78 (9th Cir. 2006)); e.g. J EA at 2, 6, 92 (“BLM cannot determine exactly where a well or wells may be drilled or what technology ... may be used to drill and produce wells, so the impacts listed [in the EA] ... are more generic, rather than site-specific”)
incremental contribution to the total regional and global GHG emission levels” is unsupported by the record is suspect considering that the emission levels from the full RFD are disclosed in the EA as are the full emission levels expected from statewide and nationwide estimates of emissions (EA at 3-16) 24.

While we've provided additional response to some of the new or modified arguments that WEG has made, arguments made in regards to direct and indirect emissions of GHGs do not vary significantly from protest points made by WEG for the CLS’ in August and December of 2017, and 1st Quarter 2018, 2nd Quarter 2018 and 3rd Quarter 2018.

Because WEG raises arguments previously addressed without showing how those arguments remain viable in light of previous decisions, we incorporate by reference our previous responses in full. The WEG's arguments are subject to summary disposition See, Powder River Basin Resources Council, 183 IBLA 83, 89-93 (December 21, 2012).

9. The BLM Fails to Analyze the Cumulative Impacts That will Occur as a Result of Greenhouse Gas Emission from the Lease Sale

**WSO Response:**
Short of making note that the EA lacks a map showing the project parcels in relation to ongoing EIS’ analysis areas, and updating the listed sales in other states, arguments submitted by WEG are the same as those previously submitted by WEG since August, 2017. Lack of a map does not translate into a violation of NEPA.

Because WEG raises arguments previously addressed without showing how those arguments remain viable in light of previous decisions, we incorporate by reference our previous responses in full. The WEG's arguments are subject to summary disposition See, Powder River Basin Resources Council, 183 IBLA 83, 89-93 (December 21, 2012).

10. BLM Fails to Analyze the Costs of Reasonably Foreseeable Carbon Emissions Using Well-Accepted, Credible, GAO-Endorsed, Interagency Methods for Assessing Carbon Costs.

**WSO Response:**
A review of the protesters arguments reveal that they do not vary significantly from those submitted since August, 2017 with the exception of a claim, without evidence, that “BLM’s NEPA documents include misleading statistics about the benefits of leasing while ignore (sic) the costs See EA at 4-20.”

While WEG is correct, that this is a new lease sale they are protesting, several court decisions have ruled that NEPA does not require a cost-benefit analysis25, such as being requested by WEG.

Because WEG raises arguments previously addressed without showing how those arguments remain viable in light of previous decisions, we incorporate by reference our previous responses in full. The WEG's arguments are subject to summary disposition See, Powder River Basin Resources Council, 183 IBLA 83, 89-93 (December 21, 2012).

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24 The CCS inventory report discloses that activities in Wyoming accounted for approximately 56 million metric tons (MMt) of gross carbon dioxide equivalent (CO2e) emissions in 2005, an amount equal to 0.8% of total U.S. gross GHG emissions.

11. BLM Should Use Its Discretion Not to Lease the Proposed Parcels

**WSO Response**
There are no additional actions that the BLM is awaiting, and there is no new information that BLM has not considered. Offering the subject lands is in conformance with the underlying RMPs which provide for compliance with FLPMA’s multiple-use mandate. BLM has retained significant regulatory authority and has placed all necessary stipulations on the parcels proposed to be offered, to minimize anticipated impacts. All future lease operations will require separate authorization at which time the public, including WEG, can participate in the decision-making process. This protest issue is dismissed.

**ISSUES – National Outdoor Leadership School (NOLS)**

1. NOLS protests the BLM’s leasing of parcels (140, 649, 650, 652, 653, 661, 665, 667) offered in this lease sale.

   After reviewing BLM’s responses to our comments and concerns raised for the 4th Quarter Lease Sale EA, we find that the agency has not taken into consideration reasonably foreseeable cumulative impacts to commercial recreation in the Northern Red Desert from previous and future lease sales.

**WSO Response**
When filing a protest, a protestor must reference the final parcel numbers listed in the CLS notice since it lists those parcels proposed to be offered; the BLM has dismissed protests in the past which did not refer to the final parcels in the CLS notice.

By referencing parcel numbers in the final EA, the protestor has failed to comply with the directive of the competitive sale book and this protest point is dismissed.

The BLM requires that parcels numbers from the sale notice be used by protesters. As the February 2019 Competitive Lease Sale Notice explains (at page ix, emphasis in the original):

> 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.

As a result, the BLM dismisses the protest from NOLS in full.

**DECISION:**
On February 12, 2019, the BLM issued an Information Notice deferring two whole parcels and portions of 10 more lying within the Red Desert to Hoback or Baggs Mule Deer Migration Corridors. We further withdrew from sale final parcel 533 because the lands proposed to be offered are not available under the Green River RMP ROD. Any protest to the lands deferred or deleted as described in this Information Notice is dismissed as moot.
The remainder of the protests received from TWS et al., CBD et al., WEG et al., and NOLS, are dismissed for the reasons discussed within. We affirm that the parcels to be offered are in conformance with the underlying RMPs, and that the level of analysis prepared is compliant with NEPA. The 565 parcels that are proposed to be offered, will be offered for sale at the 4th Quarter 2018/February 2019 Supplemental competitive lease sale.

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.

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.

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

Deputy State Director
Minerals and Lands