



# Wyoming Outdoor Council

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## FAX COVER SHEET

<b>DATE:</b> 2/23/16	<b>FROM:</b> WYOMING OUTDOOR COUNCIL
<b>TO:</b> BLM WYOMING. CHRIS WITZ. FLUID MINERALS ADMINISTRATION	
<b>COMPANY:</b>	
<b>FAX NUMBER:</b> 307 775 6203	
<b>Number of pages including cover:</b> 8 <del>4</del> (Attachments)	

### MESSAGE:

PLEASE ACCEPT THIS PROTEST FOR THE MAY 2016 SALE.  
Thank you,  
Julia Stuebe

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Chris Hite  
Chief, Branch of Fluid Minerals Adjudication  
Bureau of Land Management  
Wyoming State Office  
5353 Yellowstone Road  
Cheyenne, WY 82009

February 23, 2016

**Re: Protest of the sale of certain parcels that will be offered at the BLM's May 2016  
oil and gas lease sale.**

Dear Mr. Hite,

In accordance with 43 C.F.R § 3120.1-3, the Wyoming Outdoor Council protests the sale of oil and gas lease sale parcels WY 1605-011, -012, -013, -014, -015, -016 included in the May 3, 2016 Competitive Oil and Gas Lease Sale Notice. The Wyoming Outdoor Council submitted comments on the Environmental Assessment (EA) for this lease sale on November 19, 2016 and these are incorporated by reference.

**PROTESTING PARTY**

Founded in 1967, the Wyoming Outdoor Council is the state's oldest independent conservation organization. We work to protect Wyoming's environment and quality of life for future generations. Our goal is to develop productive and lasting solutions for managing natural resources through collaborative engagement with stakeholders and decision makers. We believe responsible environmental stewardship is fundamental to safeguarding public health and Wyoming's quality of life.

**STATEMENT OF INTEREST**

The Bureau of Land Management's (BLM) Sale Notice for Competitive Oil and Gas Lease Sales describes the manner in which protests will be considered. At page ix, the Sale Notice requires that "a protest must state the interest of the protesting party in the matter." We have an interest in preventing the adverse effects leasing parcels WY 1605-011, -012, -013, -014, -015, -016 would have on the wild lands around Adobe Town Wilderness Study Area and Kinney Rim, which we consider heritage landscapes that are prized and prioritized for protection by our thousands of Wyoming members and supporters.

*Working to protect Wyoming's public lands and wildlife since 1967*

The Outdoor Council has a long and comprehensive history of involvement in BLM oil and gas leasing and development projects in this region. For the last decade, we have been involved in the land-use planning process for the Rock Springs and Rawlins field offices, and in multiple environmental impact statement and environmental assessment processes related to oil and gas leasing and development. Our interest in BLM oil and gas matters is manifest, including an interest in this lease sale and the protested parcels.

During the public comment process for the environmental assessment prepared for this lease sale, we asked for the deferral of two other parcels, WY-1605-021 and -022, which are inside the proposed Normally Pressured Lance gas field and contain Greater sage-grouse winter concentration area habitat. These parcels were deferred by the BLM and we appreciate and support that decision.

### **ADVERSE EFFECTS OF PROPOSED LEASING OF WY 1605-011**

This parcel is directly north of the Adobe Town Wilderness Study Area (WSA) and within the proposed oil and gas development known as the Desolation Road Unit. This parcel should not be leased for two reasons: 1) leasing and subsequent development of this parcel will adversely impact the wilderness qualities of this WSA, which will violate the non-impairment standard BLM must use to manage the WSA and its values; and 2) the BLM has yet to complete site-specific analysis for the Desolation Road Unit, including an assessment of impacts to the wilderness qualities of the adjacent WSA if this development were to occur.

#### The wilderness qualities of Adobe Town Wilderness Study Area must not be impaired

As the BLM, diverse stakeholders, and local community members know, Adobe Town is one of the Red Desert's most iconic "Wild West" landscapes and it is permeated with rich human history. It is a sacred site for Native American religious ceremonies. European American history is notable here as well, as evidenced by long-abandoned homesteads and a robust history from local and long-term stockgrowers. It was even a place used by the notorious Butch Cassidy and his Hole-in-the-Wall gang. Cassidy famously stashed fresh horses in Adobe Town for an escape after the Tipton train robbery of 1900.

Known for its intricate badlands, towering cliffs, spires, and hoodoos, this wild and arid jewel also has extensive scenic values. It is a treasure-trove of fossils and provides for significant and important wildlife habitats, from big game to greater sage-grouse and raptors. Adobe Town is one of the most remote and wild areas in the Red Desert and it embodies an untrammeled landscape of primeval character that has been affected almost solely by the forces of nature with very little human imprint. This landscape has outstanding opportunities for solitude and for primitive and unconfined recreation. There is no doubt the Adobe Town WSA has wilderness values deserving of permanent protection.

Under BLM Manual 6330, which applies to Wilderness Study Area management, BLM is to "protect the wilderness characteristics of all WSAs in the same or better condition than they were on October 21, 1976 [when the Federal Land Policy and Management Act (FLPMA) was enacted] until Congress determines whether or not they should be designated as wilderness." BLM Manual 6330 at 1-6. This high standard requires BLM to ensure WSAs are managed "in a

manner so as not to impair the suitability of such areas for preservation as wilderness" subject to prior existing rights. 43 U.S.C. § 1782(c). Congress entrusted the BLM to ensure the wilderness values defined in the Wilderness Act are met and maintained for Adobe Town and other public land WSAs now and into the future.

These wilderness values include: being an area untrammelled by humans that retains its primeval character and influence (without permanent improvements or human habitation), which is protected and managed "to preserve its natural condition, and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land . . .; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value." 16 U.S.C. § 1131(c). All uses or facilities affecting a WSA "must meet the non-impairment standard (i.e. must be both temporary and not create surface disturbance)," unless the use is one of several enumerated exceptions to the non-impairment standard. BLM Manual 6330 at 1-10.

We ask the BLM to take a close look at this non-impairment standard and to determine whether and how future management of the Desolation Road Unit—particularly as implicated by leasing this parcel and potential development on it—will be consistent with the standards that apply to WSA management. Oil and gas development, which will occur after leasing this parcel, this close to the WSA boundary could violate the non-impairment standard. The noise, visual intrusions, and smells of this industrial scale activity will negatively impact the untrammelled nature of the area, its primeval character, will make the imprint of humans substantially noticeable, thereby making the area to appear not primarily affected by the forces of nature. These facilities will reduce or eliminate opportunities for primitive and unconfined types of recreation. Trucks kicking up dust and creating loud noises, the sounds of drill rigs in operation, the even louder noises from hydraulic fracturing operations, the overwhelming and nauseating smells of petroleum products and other hydrocarbons, and huge and unsightly industrial infrastructure such as drill rigs and natural gas wells that can be seen for miles around will destroy these wilderness values. Under these circumstances the BLM can and should decline to lease this parcel to avoid the adverse impacts that would impair the wild values of the Adobe Town WSA.

Although BLM's WSA manual provides for activities on public lands outside the boundary of a WSA, its analysis of the specific project must consider impacts to the WSA. BLM Manual 6330 at 1-43. And while actions to mitigate impacts to a WSA "may vary depending on the type of development proposed" the BLM is also charged with the responsibility to mitigate impacts "consistent with best management practices and applicable law." *Id.* We are concerned that the analysis thus far invested in leasing this parcel has not taken into account the severe impacts that could impact the wilderness qualities of the Adobe Town WSA. We ask the BLM to determine whether leasing this parcel with the existing controlled surface use stipulations will adequately protect these qualities. If not, leasing should be deferred until impacts to the WSA will be averted—a level of analysis that has yet to be completed in this leasing environmental assessment and which has not been completed for other development proposals in the Desolation Road Unit.

Site-specific analysis must be completed prior to leasing

The BLM has attached controlled surface use stipulations to this parcel, noting that surface use or occupancy is restricted or prohibited unless the operator can develop in accordance with the management provisions that apply to the Monument Valley Management Area—requirements that will protect steep slopes, visual resources, recreational, cultural, watershed, and wildlife values. Controlled surface use stipulations are also applied in order to protect Class I and Class II visual resource management (VRM) areas. The Monument Valley Management Area is a remarkable 69,940-acre natural area, partially located in the Adobe Town WSA, but also extending north of the WSA. Green River Resource Management Plan (RMP) Record of Decision (ROD) at 37 and Green River RMP, final EIS, Map A. Under consideration for designation as an Area of Critical Environmental Concern (ACEC), the BLM has identified this area as one that should be afforded a great deal of protection from development activities.

The management objective for Monument Valley is to “provide *protection* of wildlife, geologic, cultural, watershed, scenic, and scientific values (paleontological and cultural).” Green River RMP ROD at 37 (emphasis added). This area is managed as VRM Class II, which means that all management must be designed and located to blend into the natural landscape and it cannot be visually apparent to the casual viewer. While Monument Valley is open to “consideration” for mineral leasing, exploration, and development, this can only be allowed when mitigation “can be applied to *retain* the resource values.” *Id.* (emphasis added).

It will be extremely difficult to adequately mitigate the development that can occur after the leasing stage, especially with inadequate controlled surface use stipulations. Leasing this parcel and asking for a mitigation plan is unlikely to afford the necessary “protection” of the Monument Valley area nor will it “retain” the remarkable resource values of the area. Under this high standard, BLM cannot just “reduce” the environmental impacts or “limit” them, rather it must keep these resources from being damaged (the definition of “protect”) and it must keep or hold them in a particular condition (the definition of “retain”). Under the RMP’s management direction, the BLM only needs to allow for “consideration” of fluid minerals development. BLM is under no direction to approve leasing or development. It is unlikely the BLM can allow this leasing and subsequent development—especially without greater mitigation—if it is to meet its own RMP standards.

Additionally, the BLM has yet to release its environmental analysis evaluating the mitigation plans operators have submitted for visual resources for the Desolation Road Unit. We believe it is inappropriate for the agency to continue to lease parcels here in the midst of this environmental analysis and, especially, pending the assessment of mitigation plans, which may be inadequate.

The BLM has the responsibility to take into account the impacts of potential development at the leasing stage. It is not appropriate to avoid consideration of post-leasing impacts given the very likely event that these leases will be developed. The BLM must take the legally required “hard look” at the impacts associated with oil and gas development prior to offering parcels for competitive lease sale. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). In the oil and gas leasing context the BLM must adequately assess the impacts of reasonably foreseeable post-

leasing oil and gas development before any leases are issued. See *Pennaco Energy, Inc. v. U.S. Dept. of Interior*, 377 F.3d 1147 (10th Cir. 2004). See also *Southern Utah Wilderness Alliance*, 166 IBLA 270, 276-77 (2005) (finding that, "SUWA is correct that the appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes, because leasing without NSO stipulations constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent.").

In an even more recent case the Tenth Circuit Court of Appeals emphasized the need for the BLM to consider the environmental impacts of oil and gas leasing at the pre-leasing stage. It held:

Taken together, these cases establish that there is no bright line rule that site-specific analysis may wait until the APD stage. Instead, the inquiry is necessarily contextual. Looking to the standards set out by regulation and by statute, assessment of all 'reasonably foreseeable' impacts must occur at the earliest practical point, and must take place before an 'irretrievable commitment of resources' is made.

*New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 717-18 (10th Cir. 2009) (finding that a BLM leasing effort constituted an irretrievable commitment of resources; that because impacts of development could not be prevented once a lease was issued BLM was required to analyze foreseeable impacts before committing resources; and that development was reasonably foreseeable because of existing development in the area) (citations omitted). We refer the BLM to our protest of the February, 2016 oil and gas lease sale which contains a detailed discussion of leasing requirements as established by the *New Mexico* court.

The Desolation Road Unit will be an extremely difficult place for the agency and operators, if leased, to plan for development. The ongoing analysis to mitigate for visual impacts from other Desolation Road development illustrates this fact. It has been long-term, often delayed, and will likely not result in adequate mitigation to meet the non-impairment standard for the Adobe Town WSA. A comprehensive analysis of a basic development scenario (it certainly need not be exact to be useful, the existing Desolation Road Unit would suffice) would caution against leasing in this area.

#### **ADVERSE EFFECTS OF PROPOSED LEASING OF WY 1605-012, -013, -014, -015, -016**

The Kinney Rim is a wild, beautiful landscape that is important for a variety of wildlife species, including pronghorn antelope, mule deer, Greater sage-grouse, raptors, and other avian and mammalian sagebrush obligates. While areas along the Rim are leased for oil and gas development, and the west side is heavily developed, the top of the Rim itself is leased but many of these leases have yet to be developed. We believe the stipulations attached to these parcels are inadequate for the protection of the wildlife, recreational, wilderness character, and visual resources they are designed to protect. Moreover, we expect, and will advocate that, the Rock Springs Resource Management Plan will update stipulations applied to this important landscape when it is revised. Until that time, further leasing (with leases that, with inadequate stipulations,

will be valid for a decade) is innappropriate and ill-advised. We ask that parcels WY-1605-012, -013, -014, -015, and -016 be deferred from this lease sale.

Respectfully submitted,



Julia Stuble  
Public Lands Advocate  
Wyoming Outdoor Council

# TRANSACTION REPORT

FEB/23/2016/TUE 11:32 AM

FAX (RX)

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