



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Wyoming State Office  
P.O. Box 1828  
Cheyenne, Wyoming 82003-1828

In Reply Refer to:  
3100 (921Bargsten)  
Feb 2016 Protests

MAR 14 2016

### **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Receipt No. 91 7199 9991 7034 0613 9199**

Bruce Pendery  
Wyoming Outdoor Council  
444 East 800 North  
Logan, Utah 84321

**Receipt No. 91 7199 991 7034 0613 9182**

Daniel Sandoval  
City of Casper  
200 North David Street, Room 203  
Casper, Wyoming 82601

**Receipt No. 91 7199 991 7034 0613 9175**

Jeremy Nichols  
WildEarth Guardians  
1536 Wynkoop, Suite 310  
Denver, Colorado 80202

**Receipt No. 91 7199 991 7034 0613 9168**

Benjamin F. Brooks III  
Wyoming Land Acquisition Partners I, LLC  
7373 E. Doubletree Ranch Road, Suite 230  
Scottsdale, Arizona 85258

**Receipt No. 91 7199 991 7034 0613 9151**

Linda Ransom  
P.O. Box 482  
Evansville, Wyoming 82636

### **DECISION**

#### **PROTESTS DISMISSED OR DENIED**

Between January 14 – 19, 2016, the Bureau of Land Management (BLM), Wyoming State Office (WSO), received five timely protests to oil and gas lease sale parcels planned to be offered at the February 2, 2016 competitive oil and gas lease sale (Feb 2016 Sale).<sup>1</sup> The five protesting parties are: (1) WildEarth Guardians' Climate and Energy Program (WEG); (2) Wyoming Outdoor Council (WOC); (3) Ms. Linda Ransom, resident of Evansville, Wyoming; (4) the City of Casper; and (5) Wyoming Land Acquisition Partners I, LLC (WLAP). The WEG protests all 117 parcels listed in the Feb 2016 Sale Notice.<sup>2</sup> The remaining protestors challenge the BLM's

<sup>1</sup> While the sale was intended to be held on February 2, 2016, a winter storm in Cheyenne, Wyoming caused the sale to be postponed. It is anticipated that the sale will now be held concurrently with the regularly-scheduled May 3, 2016 lease sale (see [http://www.blm.gov/wy/st/en/info/news\\_room/2016/february/wyoming\\_february\\_2016.html](http://www.blm.gov/wy/st/en/info/news_room/2016/february/wyoming_february_2016.html)).

<sup>2</sup> This Sale Notice, ("Notice of Competitive Oil and Gas Lease Sale – February 2, 2016") was posted on December 17, 2015.

decision to offer twelve lease parcels located in the Casper Field Office, final parcel numbers WY-1602-039 through -050. These twelve parcels are located northeast of the City of Casper in an area known as “Cole Creek.”

## BACKGROUND

The BLM received nominations for the Feb 2016 Sale from December 22, 2014 until March 20, 2015. The Feb 2016 Sale includes Federal fluid mineral estate located in the BLM Wyoming’s High Plains District (HPD) and Wind River/Bighorn Basin District (WRBBD). After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the Field Offices and District Offices, including interdisciplinary review, field visits to nominated parcels (where appropriate), review of conformance with the Resource Management Plan (RMP) decisions for each planning area, and preparation of an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.<sup>3</sup>

During the BLM’s review of the Feb 2016 parcels, the WSO screened each of the parcels, confirmed plan conformance,<sup>4</sup> coordinated with the State of Wyoming Governor’s Office and Game and Fish Department, confirmed agreement with applicable national and state BLM policies, and considered on-going efforts by the BLM in Wyoming to revise or amend RMPs for planning areas subject to this sale, including the BLM’s on-going planning efforts related to the management of greater sage-grouse habitat on public lands.<sup>5</sup>

The Feb 2016 Sale EAs (High Plains District EA No. WY-070-EA15-225, Wind River/Bighorn Basin District EA No. DOI-BLM-WY-R000-2015-0002-EA), along with draft, unsigned Findings of No Significant Impact (FONSI)s<sup>6</sup> were released on July 20, 2015 for a 30-day public review period, ending August 19, 2015. The EAs tiered to the existing Field Office/Resource Area RMPs and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR 1502.20:

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

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Available at: <http://www.blm.gov/style/medialib/blm/wy/programs/energy/og/leasing/2016.Par.21203.File.dat/02list.pdf>

<sup>3</sup> <http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/2016/febr.html>

<sup>4</sup> See BLM’s Land Use Planning Handbook at page 42: “After the RMP is approved, any authorizations and management actions approved... must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP.” See also 43 CFR 1610.5-3.

<sup>5</sup> See 80 FR 30703-30705, May 29, 2015. At the time the EAs were being prepared, a single office in the HPD was engaged in a RMP revision, the Buffalo Field Office. See 80 FR 30709-30710, May 29, 2015. In the WRBBD, the Worland and Cody Field Offices were engaged in a joint RMP revision for the “Bighorn Basin” planning area. See 80 FR 30716-30718, May 29, 2015. The Lander Field Office had completed its RMP revision in 2014. See 78 FR 12347-12348, February 22, 2013. See also BLM press release at [http://www.blm.gov/wy/st/en/info/news\\_room/2014/june/26-LanderRMP.html](http://www.blm.gov/wy/st/en/info/news_room/2014/june/26-LanderRMP.html), June 26, 2014.

<sup>6</sup> See the BLM’s NEPA Handbook H-1790-1 at page 76. Though the BLM has elected to release a draft, unsigned FONSI for public review in this instance, the BLM is not asserting that any of the criteria in 40 CFR 1501.4(e)(2) are met. Since the RMP EISs have already evaluated potentially significant impacts arising from the BLM’s land use planning decisions, the BLM anticipates a “finding of no new significant impacts.” See 43 CFR 46.140(c).

*incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.*

The WEG submitted comments to the BLM for both EAs (see Appendix F for the HPD's EA at unnumbered pages 26-40, and Appendix F for the WRBBD's EA at pages 52-77).<sup>7</sup> The WOC submitted comments to the BLM for the HPD's EA (see Appendix F at pages 3-8) as did Ms. Ransom (see Appendix F at pages 9-12); the City of Casper and the WLAP did not submit written comments to the BLM on the EA.

The BLM described its purpose and need for the HPD's Feb 2016 Sale EA, (at pages 7-8):

*The purpose of the competitive oil and gas lease sale is to meet the growing energy demands of the United States public through the sale and issuance of oil and gas leases. Continued sale and issuance of lease parcels is necessary to maintain economical production of oil and gas reserves owned by the United States.*

*The need for the competitive oil and gas lease sale is established by the FOOGLRA to respond to Expressions of Interest (EOI), the FLPMA, and the MLA. The BLM's responsibility under the MLA, is to promote the development of oil and gas on the public domain, and to ensure that deposits of oil and gas owned by the United States are subject to disposition in the form and manner provided by the MLA under the rules and regulations prescribed by the Secretary of the Interior, where applicable, through the land use planning process.*

*Decision to be Made: The BLM will decide whether or not to offer and lease the nominated parcels of the HPD portion at the February 2015 Competitive Oil and Gas Lease Sale and if so, under what terms and conditions.*<sup>[8]</sup>

The BLM described its purpose and need for the WRBBD's Feb 2015 Sale EA, (at page 1-3):

*The purpose of this document is to not only verify conformance with existing Land Use Plans but also to defer actions that may limit the selection from a range of reasonable alternatives being evaluated in the Bighorn Basin land use planning efforts.*

*The need is established by the Federal Oil & Gas Leasing Reform Act of 1987 to respond to Expressions of Interest, the Federal Land Policy Management Act, and Mineral Leasing Act of 1920, as amended. The sale and issuance of oil and gas leases is needed to meet the growing energy needs of the United States public. Wyoming is a major source of oil and natural gas for heating and electrical energy production in the lower 48 states. Continued sale and issuance of lease parcels is necessary to allow for continued production of oil and gas from public lands and reserves.*

<sup>7</sup> The HPD and WRBBD each prepared a single EA for the parcels in their respective jurisdictions. In this, and the remainder of our response, our citations from the EAs refer to Version 3 of the EAs posted on the BLM's website, unless otherwise noted.

<sup>8</sup> While a decision to be made includes what stipulations will be placed on the parcels offered for lease, this is intended as a means to ensure conformance with the decisions in the approved RMPs (see the BLM's Land Use Planning Handbook H-1601-1 at Appendix C, page 23). To the extent that the BLM may consider adding to, deleting, or modifying the constraints or stipulations identified in the approved RMP, the BLM may need to first amend the RMP in order to ensure conformance with the approved land use plan.

The Feb 2016 Sale EAs each considered three alternatives in detail, including a no action alternative.

### BLM RMP Decisions Related to Sage-Grouse

Publication of the Feb 2016 Sale Notice was postponed from the date it was originally anticipated to be posted. This was due to further review of the sale parcels caused by the September 21, 2015 BLM decisions resulting from the statewide RMP revisions and amendments.<sup>9</sup> Though the Feb 2016 sale was scheduled to occur after the date on which these RMP amendments and revisions were completed, the BLM's review of the parcels and preparation of the EA occurred prior to this date (for example, the EA was posted for public review on July 21, 2015). As a result, the BLM was not able to review and disclose the final decisions (including land management allocation decisions and applicable stipulations) from the amended and revised RMPs during its consideration of the Feb 2016 Sale parcels (other than for the Lander RMP, since that plan revision was completed in 2014). Accordingly, parcels were deferred from this sale where the BLM could not ensure the final parcels would conform to the current approved RMPs (see HPD EA v.2 at page 18, see WRBBD EA v.2 at page 2-14).

After the further review was completed, on December 17, 2015 the WSO issued Information Notice (#1) which deferred 35 additional parcels located in the Lander Field Office, "consistent with the BLM's sage grouse conservation plans and strategy, which direct the BLM to prioritize oil and gas leasing and development in a manner that minimizes resource conflicts in order to protect important habitat and reduce development time and costs." As a result of this further review, the posting date of the Sale Notice was also delayed; correspondingly, the required 30-day protest period that is initiated by posting of the Sale Notice was delayed. Due to these changes, the 30-day protest period ended on January 19, 2016, just two weeks prior to the scheduled sale. The WSO did not originally anticipate resolving the protests prior to the date of the sale, but as described above (see n.1), the February 2, 2016 sale ended up being postponed as a result of a snowstorm. The WSO now anticipates offering the parcels addressed in this protest concurrent with the regularly-scheduled May 3, 2016 sale.

In the WEG's protest (received January 19, 2016), it challenges all 117 parcels listed in the Feb 2016 Sale Notice (see the WEG Protest at pages 1-4). Since the December 17, 2015 Information Notice #4 issued concurrently with the Sale Notice deferred 35 of these parcels from the Feb 2016 Sale, the WEG's protest to these 35 parcels is dismissed.

### Cole Creek Parcels

The 12 parcels in the Cole Creek area included 22,020.37 acres of primarily split estate lands with non-Federal surface and Federal mineral estates (see Map 1). The parcels are located in an area with a high density of existing homesites (approximately 500 within the boundaries of the parcels), just to the northeast of the City of Casper and to the northeast of the Town of Evansville, Wyoming. The BLM had delayed inclusion of the 12 parcels located in the Cole

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<sup>9</sup> See [http://www.blm.gov/wo/st/en/prog/more/sagegrouse/final\\_eiss/wyoming.html](http://www.blm.gov/wo/st/en/prog/more/sagegrouse/final_eiss/wyoming.html)

Creek area since the August 2015 Sale, in order to conduct additional community outreach and coordination.<sup>10</sup>

The BLM is responsible for managing the Federal mineral interests associated with split estate lands for the benefit of the public.<sup>11</sup> As such, the BLM uses its land use planning (and involvement of the public and cooperating agencies when developing its RMPs) to direct it how to accomplish its multiple-use objectives mandated under the law. In this case, the approved RMP (the BLM's approved Casper RMP and Record of Decision, as amended)<sup>12</sup> identifies these lands as open to oil and gas leasing, subject to applicable stipulations.

The BLM's outreach for the proposed parcels included briefings of the Evansville Town Council (January 26, 2015), the Natrona County Commissioners (February 3, 2015), the Converse County Commissioners (February 4, 2015), and the Casper City Council (February 10, 2015). Letters were also sent by the BLM on January 23, 2015 to the landowners in the Cole Creek area, which notified them of a community meeting hosted by the BLM at the Evansville Community Hall on February 19, 2015. At the community meeting, the BLM provided presentations and supplied maps and other information to address questions and concerns of the landowners (see EA at pages 14-16). Additional letters to the landowners were sent on April 29, 2015, identifying the parcels planned for the Feb 2016 Sale. Once the HPD's EA (v.1) was completed and posted for public review, postcards were mailed on July 20, 2015 to the landowners inviting them to review and comment on the EA. Additional meetings were held by the BLM with State of Wyoming agencies and staff, including with the State's Congressional Representative's staff. During the meetings with elected representatives of the community and their staff, the BLM informed the representatives that the BLM would consider deferring parcels if any of the lands were being considered for annexation.

On January 19, 2016, the City of Casper notified the WSO that it was anticipating the receipt of an application for annexation of lands to the north of the City. The area being considered for annexation intersects two parcels in the February 2016 Sale (WY-1602-043, & -046). On January 21, 2016, the WSO issued Information Notice (#4), explaining: "Since the BLM is prohibited by law and regulation from leasing lands within incorporated areas (see 43 CFR 3100.0-3(a)(2)(iii)), the BLM will defer lands within the annexation area from leasing until the City of Casper makes its final decision on the application for annexation, or it is determined that an application for annexation is no longer anticipated. If the area is annexed by the City of Casper, the BLM will abide by our regulations prohibiting the leasing of lands within incorporated areas."

As a result of the BLM's decision to defer parcels WY-1602-043 and -046, the City of Casper's and WLAP's protests are moot, and their protests are hereby dismissed in their entirety (leaving 16,575.42 acres in the remaining 10 Cole Creek area parcels). To the extent that the WOC's,

<sup>10</sup> See the Aug 2015 Sale HPD EA at pages 6-7. Available at:

[http://www.blm.gov/style/medialib/blm/wy/information/NEPA/og/2015/08aug/ver3.Par.96194.File.dat/V3\\_HPDP%20EA.pdf](http://www.blm.gov/style/medialib/blm/wy/information/NEPA/og/2015/08aug/ver3.Par.96194.File.dat/V3_HPDP%20EA.pdf)

<sup>11</sup> Under the Federal Land Policy Management Act of 1976 (FLPMA), the BLM is mandated to manage public lands. As defined under FLPMA, the term "public lands" means "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management..." (Federal Land Policy and Management Act of 1976, § 103(e)).

<sup>12</sup> Available at: <http://www.blm.gov/wy/st/en/programs/Planning/rmps/casper.html>

Ms. Ransom's, and the WEG's protests also address these two parcels, the portions of their protests that relate to these two parcels area are dismissed; their arguments as they relate to any remaining parcels described in their protests will be fully addressed by the BLM, below.

The remainder of our response will address the remaining protestors' arguments. The BLM has reviewed the protestors' arguments in their entirety; the substantive arguments are numbered and provided in bold with the BLM responses following.

## **ISSUES – WEG**

The WEG argues that the BLM failed to (1) quantify greenhouse gas (GHG) emissions that could result from leasing the parcels in the Feb 2016 Sale and (2) analyze the “social cost of carbon” for the GHG emissions.

We note that the WEG has submitted substantially identical arguments to those submitted by the WEG for previous lease sales, including the BLM Wyoming's August 2015 Competitive Oil and Gas Lease Sale where these arguments were addressed fully by the WSO.<sup>13</sup> After reviewing the WEG's Feb 2016 protest and the Feb 2016 Sale parcels, EAs, and administrative record, the WSO cannot find meaningful differences in the arguments, BLM analysis, or parcel-specific circumstances. Therefore, we incorporate our responses to the WEG's arguments from our Aug 2015 Sale protest decision; however, in the future the WEG is encouraged to present issues not previously resolved by the BLM, rather than just re-submitting previous arguments verbatim (BLM decisions may be summarily affirmed if a challenge “merely reiterate[s] the arguments considered by the [decisionmaker below], as if there were no decision... addressing those points.” *Shell Offshore, Inc.*, 116 IBLA 246, 250 (1990). See also *Powder River Basin Resource Council*, 183 IBLA 83, 88-90 (2012)). Since WEG continues to repeat claims previously-addressed by the WSO (even citing documents submitted with its Aug 2015 Sale protest), our discussion below will largely be a reprise of our responses to the WEG's Aug 2015 Sale protest arguments.

**“WildEarth Guardians protests the BLM's February 2, 2016 oil and gas lease sale over the agency's failure to adequately analyze and assess the climate impacts of the reasonably foreseeable oil and gas development that will result in accordance with the [NEPA].” (The WEG Protest at page 5).**

- 1. “...the BLM made no effort in the EAs to analyze and assess the reasonably foreseeable greenhouse gas emissions that would result from oil and gas development and the likely climate consequences.” (The WEG Protest at page 6).**

### BLM Response

The EAs both acknowledged that the Federal action under consideration – leasing of the oil and gas for possible exploration and development – could eventually result in a variety of impacts to

<sup>13</sup> See the WSO's Aug 2015 Protest Decision, available at: <http://www.blm.gov/style/medialib/blm/wy/programs/energy/og/leasing/protests/2015/aug.Par.26655.File.dat/ProtestDecision.pdf>

air quality (including the GHG emissions) if the parcels were offered, if the parcels were successfully issued under lease, if the lessee or its operator proposed drilling projects on the leases, if the BLM approved them, and if the projects were initiated and hydrocarbons were produced and eventually used.

For example, the WRBBD's EA discussed air quality, specifically the GHG and climate change, in its disclosure of the affected environment (at pages 3-2 to 3-5), and noted (at page 3-4):

*Currently, the [Wyoming Department of Environmental Quality, or WDEQ – the state agency with authority to regulate emissions from oil and gas facilities in Wyoming<sup>14</sup>] does not have regulations regarding greenhouse gas emissions, although these emissions are regulated indirectly by various other regulations.*

The EA acknowledges that oil and gas development generate the GHG emissions (at pages 3-4 to 3-5):

*Several activities contribute to the phenomena of climate change, including emissions of the GHGs (especially carbon dioxide and methane) from fossil fuel development... The lack of scientific tools designed to predict climate change at regional or local scales limits the ability to quantify potential future impacts. However, potential impacts to air quality due to climate change are likely to be varied. Several activities occur within the planning area that may generate greenhouse gas emissions: oil, gas, and coal development, large fires, livestock grazing, and recreation using combustion engines which can potentially generate CO<sub>2</sub> and CH<sub>4</sub>... Oil and gas development activities can generate CO<sub>2</sub> and CH<sub>4</sub>. CO<sub>2</sub> emissions result from the use of combustion engines, while methane can be released during processing.*

The EA's analysis of impacts for Alternative 2 explained, however, that quantifying the potential the GHG emissions from possible oil and gas activities on the Federal leases is precluded given the uncertainties with whether, and how, the Federal leases would be explored or developed (at pages 4-4 through 4-5, see materially identical explanation in the HPD's EA at page 50):

*The amount of increased emissions cannot be quantified at this time since it is unknown how many wells might be drilled, the types of equipment needed if a well were to be completed successfully (e.g. compressor, separator, dehydrator), or what technologies may be employed by a given company for drilling any new wells. The degree of impact*

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<sup>14</sup> As the IBLA determined in *Powder River Basin Resource Council*, 183 IBLA 83, 95 (December 21, 2012, footnote omitted): "This Board has previously held that BLM properly may rely on the State, which is subject to oversight by the EPA, to ensure permitted activities do not exceed or violate any State or Federal air quality standard under the CAA, 42 U.S.C. §§ 7401-7671q (2006). See, e.g., *Wyoming Outdoor Council*, 176 IBLA 15, 27 (2008) ("[I]n approving the Project, BLM properly assumed that emissions would be regulated, and, if necessary, controlled so as to satisfy both Federal and State air quality standards"); *id.* at 30 ("In assessing the potential significant environmental impacts in the EIS, BLM properly relied upon the adequacy of State enforcement to ensure that no CAA violation occurs"); see also *WildEarth Guardians v. Salazar*, 42 ELR 20166 (D.D.C. 2012) (*aff'd* *WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013) (BLM satisfied its FLPMA obligation "by preparing a lease for the WAI tracts requiring compliance with air and water quality standards"). We have held, moreover, that "BLM need not evaluate the potential environmental consequences resulting from noncompliance with Federal and State permitting requirements or assume that violations of Federal and State standards will inevitably occur." *Powder River Basin Resource Council*, 180 IBLA at 57."

*will also vary according to the characteristics of the geologic formations from which production occurs. Emissions of all regulated pollutants (including the GHGs) and their impacts will be quantified and evaluated at the time that a specific development project is proposed...*

*Subsequent development of any leases issued, would contribute a small incremental increase in overall hydrocarbon emissions, including the GHGs. When compared to total national or global emissions, the amount released as a result of potential production from the proposed lease tracts would not have a measurable effect...*

*It is unknown what the drilling density may be for these parcels, if they were developed; therefore, it is not possible to predict at this stage what level of emissions would occur.*

As for Alternative 3, the EA stated (at page 4-14):

*Under this alternative, fewer acres would be offered for lease and thereby few acres available for oil and gas development, than Alternative 2. Therefore, fewer impacts to air quality would result. However, since the level of development is unknown, the reduction in effects cannot be quantified.*

*As fewer acreage is available for oil and gas development, fewer wells are anticipated, therefore, less greenhouse gas emissions are expected than under Alternative 2. However, since the level of development is unknown, the reduction in greenhouse gas emissions cannot be quantified.*

The EA also addressed the GHG emissions and potential impacts in its treatment of cumulative effects (at pages 4-21 through 4-22), including:

*The average number of oil and gas wells drilled annually in the District and probable the GHG emission levels, when compared to the total the GHG emission estimates from the total number of Federal oil and gas wells in the State, represent an incremental contribution to the total regional and global the GHG emission levels. This incremental contribution to global the GHG gases cannot be translated into incremental effects on climate change globally or in the area of these site-specific actions.*

Both EAs explained that there remains substantial uncertainty at the leasing stage whether, or how, the Federal oil and gas leases will be developed. For example, the WRBBD EA at page 4-4 states: “it is unknown how many wells might be drilled, the types of equipment needed if a well were to be completed successfully (e.g. compressor, separator, dehydrator), or what technologies may be employed by a given company for drilling any new wells.” See identical discussion in the HPD EA at page 50.

The BLM issued an IM in 2008<sup>15</sup> that included draft guidance for BLM offices to use in

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<sup>15</sup> Washington Office IM No. 2008-171 (“Guidance on Incorporating Climate Change into Planning and NEPA Documents”), issued August 19, 2008.

addressing potential impacts related to climate change. The IM expired in 2009, and its effectiveness has not been extended by the BLM.

In 2011, the BLM circulated internal draft guidance to its offices entitled “Integrating Climate Change into the NEPA Process” (BLM’s 2011 Draft Guidance). On April 3, 2015, the BLM Washington Office sent an e-mail notifying the BLM’s leadership and management teams that the BLM’s 2011 Draft Guidance document “remains in effect.”

Acknowledging the “unique challenges” posed by addressing the GHG and climate change in NEPA documents, the BLM’s 2011 Draft Guidance provided draft, interim direction to the BLM that the agency has used until further guidance can be finalized. As the BLM’s 2011 Draft Guidance notes (at page 2):

*...it is beyond the scope of existing science to relate a specific source of greenhouse gas emission or sequestration with the creation or mitigation of any specific climate-related environmental effects.*

*...it is currently impossible to determine what specific effect greenhouse gas emissions resulting from a particular activity might have on the environment. Further, since the specific effects of a particular action... cannot be determined, it is equally impossible to determine whether any of these particular actions will lead to significant climate-related environmental effects.*

The BLM’s 2011 Draft Guidance goes on to state, however (at page 3):

*The fact that the cause and effect of specific greenhouse gas emissions on specific climate changes cannot be clearly delineated does not mean that analysis of greenhouse gas emissions and climate change is not relevant and appropriate under NEPA.*

To this end, the BLM’s 2011 Draft Guidance indicates (at page 3):

*As with the assessment of other issues, the decision of whether and to what extent climate change warrants analysis in the NEPA process is left to the expertise and discretion of the agency.*

On December 18, 2014, CEQ issued revised draft guidance for assessing greenhouse gas emissions and climate change impacts (CEQ’s 2014 Draft Guidance).<sup>16</sup> This guidance acknowledges that evaluating the GHG emissions and climate change is a “particularly complex challenge” (at page 2), and states (at page 3):

*Agencies continue to have substantial discretion in how they tailor their NEPA processes to accommodate the concerns raised in this guidance, consistent with the CEQ Regulations and their respective implementing regulations and policies, so long as they*

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<sup>16</sup> Available at: <https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance>

*provide the public and decisionmakers with explanations of the bases for their determinations.*

The CEQ's 2014 Draft Guidance emphasizes use of the "rule of reason" which (at page 5, footnote omitted):

*...ensures that agencies are afforded the discretion, based on their expertise and experience, to determine whether and to what extent to prepare an analysis based on the availability of information, the usefulness of that information to the decision-making process and the public, and the extent of the anticipated environmental consequences.*

When addressing the extent of the anticipated environmental consequences, the CEQ's 2014 Draft Guidance also indicates the agency should (at page 10) "...consider both the context and intensity."<sup>17</sup>

In our review of the Feb 2016 Sale EAs, we find that the WRBBD and HPD appropriately disclosed that the GHG emissions could result from Federal lease exploration and development activities (and that such emissions would result in "an incremental contribution" to local and global the GHG emissions (WRBBD EA at page 4-21, HPD EA at page 62), but acknowledge that there remains substantial uncertainty whether and how exploration and development of the Federal oil and gas resources would occur. As a result, it is extremely difficult to estimate with accuracy or precision the quantity of the GHGs that could be emitted, if a lease is issued, if a proposal to explore or develop the lease is approved by the BLM, if actual operations take place and the ultimate end use of produced Federal minerals.

Both EAs describe the substantial uncertainty that exists at the time the BLM offers a lease for sale regarding crucial factors that will affect potential the GHG emissions, including: well density; geological conditions; development type (vertical, directional, horizontal); hydrocarbon characteristics; equipment to be used during construction, drilling, production, and abandonment operations; and potential regulatory changes pertaining to the GHGs over the life of the 10-year primary lease term. Implicit in this acknowledgement is that the BLM will have a point in time when such information is much less speculative and certain – when actual operations are proposed on an issued lease through an Application for Permit to Drill (APD) or Sundry Notice (SN). In this case, that is the appropriate point in time to estimate the GHG emissions, if necessary and appropriate.

In its protest (at pages 7-9), the WEG argues that it is actually possible to ascertain and analyze the potential the GHG emissions for the leases in the Feb 2016 Sale. Using the Casper Field Office's RMP and its estimation of Reasonably Foreseeable Development (RFD),<sup>18</sup> the WEG asserts (at page 9 of its protest) that it "appears reasonably straightforward for the agency to

<sup>17</sup> As the Guidance notes (at n. 25, citing 40 CFR §§ 1508.27(a) and 1508.28(b)), context is the situation in which something happens, and which gives it meaning; intensity is the severity of the impact.

<sup>18</sup> In an internal summary of the use of RFDs for RMP implementation decisions (dated November 12, 2013), the WSO cites BLM policies, such as Washington Office IM 2004-089 ("Policy for Reasonably Foreseeable Development (RFD) Scenario for Oil and Gas") which notes: "The RFD projection can range from speculative estimates in unexplored frontier areas to estimates with higher levels of confidence in maturely developed producing areas."

estimate total greenhouse gas emissions.” The WEG’s calculations use figures from a report prepared for the BLM Colorado State Office, the Colorado Air Resource Management Modeling Study (CARMMS).<sup>19</sup>

Perhaps recognizing that some of its previous assertions from the Aug 2015 Sale protest – with regard to the potential spacing and type of development within some planning areas – were demonstrably speculative (see BLM’s Aug 2015 Protest Decision, pages 17-18), the WEG appears to have abandoned some of these assertions. In its Aug 2015 Sale protest, the WEG had attempted to illustrate how “straightforward” it would be to estimate the GHG emissions (The WEG Aug 2015 Sale Protest at page 9). The BLM’s protest decision pointed out that the WEG’s assumptions were incorrect, and yielded a large range in possible outcomes (see BLM’s Aug 2015 Sale Protest Decision, pages 17-18). Tellingly, in its Feb 2016 protest, the WEG has discarded any further attempt to illustrate to the BLM how “straightforward” the GHG estimates would be to make for a particular lease sale and, instead, the WEG relies (see the WEG Protest at page 9) upon estimates derived from information in one field office’s RMP RFD (a scope including the *entire Casper Field Office planning area and entire life of the 2005 RMP*).

The WEG continues, nonetheless, to assert that this information can be used to make reasonable the GHG estimates that are meaningful to a decision-maker at the leasing stage, including use of the CARMMS report. However, as the EAs acknowledged, it would be speculative to predict the manner in which the leases will be developed. Even the CARMMS report, given its purpose and limitations, discloses differences in the potential CO<sub>2</sub> emissions that may be generated, depending upon factors such as the type of well, density of development, etc. Overlooking these important limitations and uncertainty at the leasing stage, the WEG continues to contend that there is “no basis” (The WEG’s Protest at page 9) for claiming that such calculations are speculative.

The parcels considered in the Feb 2016 Sale are located in six field offices in Wyoming, which encompass over 58,000 square miles, or 59% of the State of Wyoming and which include oil and gas fields with remarkably different conditions, characteristics, operators, well densities, and operational natures. While the WEG may believe that estimates of the GHG emissions at the leasing stage for this sale would be helpful to inform the public and the decision-maker, we agree with the conclusions in the EAs that there is substantial uncertainty about whether and how the Feb 2016 Sale lease parcels will be developed. This limits the usefulness of estimating the GHG emissions at the leasing stage.

As an illustration of the uncertainty as to whether a lease parcel, if issued, will be developed,

<sup>19</sup> Available at: [http://www.blm.gov/co/st/en/BLM\\_Information/nepa/air\\_quality/carmms.html](http://www.blm.gov/co/st/en/BLM_Information/nepa/air_quality/carmms.html)

The CARMMS report was prepared to assist the CSO and BLM – New Mexico State Office (NMSO) in preparing information for pending RMP revisions (at page 1):

*As part of these RMPs, BLM is estimating the air quality (AQ) and air quality related value (AQRV) impacts due to the projected BLM-authorized mineral development activities.*

This estimation occurred through use of models for a 4 km<sup>2</sup> domain (see CARMMS report at page 11) that did not include the major oil and gas development areas in Wyoming. The CARMMS report identified some of its limitations, including (at page 3):

*CARMMS is using a photochemical grid model (PGM) to assess the AQ and AQRV impacts associated with BLM-authorized mineral development on Federal lands within BLM Colorado and the New Mexico Farmington Field Office Planning Areas. CARMMS will not assess the nearsource AQ impacts of the O&G and other development activities; that will be addressed at the Project level in the future.*

recent GIS data (as of April 2014) indicate that almost two-thirds (64 percent) of Federal oil and gas leases in Wyoming do not have any active wells located within their boundaries. This raises serious questions about the WEG's earlier assumptions that all leases are eventually fully developed for purposes of estimating the GHG emissions at the leasing stage.

Using the April 2014 GIS data, the spacing of active wells on Federal oil and gas leases ranges in Wyoming from 0 (zero) to 0.51 wells per acre. Where active wells are present, the well spacing on individual leases ranges from 5,495.4 acres per well to 2.0 acres per well ( $\mu = 105.0$ ,  $\sigma_x = 292.6$ ). This, also, casts great doubt on the WEG's earlier assumption that the leases will either be uniformly developed at an 80- or 40-acre spacing. The RFDs provided for estimating impacts in RMPs across a planning area are generally much too coarse for predicting impacts that may occur on a handful of leases offered in an individual sale. The salient point from this illustration is that there exists substantial uncertainty as to whether and to what degree leases will be explored or developed at the leasing stage; if a quantified estimate of the GHG emissions is warranted,<sup>20</sup> this is more appropriate (if a lease is issued and actual operations proposed) at the time the BLM considers an APD or SN.

While the WEG's protest appears to primarily focus on the GHG emissions from construction and production operations (see the WEG Protest at page 9), to the extent that the WEG may believe the BLM should consider potential "downstream" effects from oil and gas leasing, the BLM's 2011 Draft Guidance noted that evaluation of the potential indirect effects arising from GHG emissions generated by commodity production occurring on public lands is not warranted, stating (at page 6):

*The consumption of commodities produced on BLM lands (e.g. coal, oil and gas), would typically not constitute an indirect effect of the proposed action because it is not reasonably foreseeable how those commodities will be used. It is also difficult to discern if the consumption of those or any commodities is actually caused by the BLM's action. For example, how crude oil will be used, whether any or all of the oil will be refined for plastics or other products that will not be burned; the possible mix of ultimate uses with disparate carbon emissions (e.g., auto fuel, bunker oil, diesel, kerosene); and the market forces that may replace lost BLM production with production from other sources are all uncertain. Therefore, the greenhouse gas emissions that may ultimately result from the consumption of products derived from the crude oil generated on BLM lands would not be reasonably foreseeable, and thus would not constitute an indirect effect of a BLM decision to approve the leasing, development, or production of oil in that area.*

The WEG also points out that other BLM offices and other Federal agencies have attempted to estimate the GHG emissions (The WEG Protest at pages 8-10), including at the leasing stage; however, the circumstances and information in those offices differ from the Feb 2016 Sale. While those offices or agencies may have reasonably determined that quantifying the GHG estimates is appropriate for the actions they were considering, we find that the GHG estimates for a lease sale located over such a large area with the heterogeneous conditions and factors

<sup>20</sup> Given the inherent uncertainty of whether or how the lease will be explored or developed, the BLM cannot reasonably ascertain, for example, that the administrative act of offering the leases in the Feb 2016 Sale would result in the GHG emissions exceeding the 25,000 TPY threshold that the CEQ's 2011 Draft Guidance tentatively provides (at page 18).

present in these six BLM field offices make such estimates prone to substantial uncertainty and are speculative in nature.<sup>21</sup> Furthermore, when applicable and necessary, the BLM will make site- and circumstance-specific estimates of the GHG emissions for actual operations proposed on the Feb 2016 Sale parcels, if they are leased and if development is proposed for consideration by the BLM. This approach is consistent with current BLM policy, CEQ's draft guidance, and NEPA's implementing regulations.

Lastly, with regard to estimating the GHG emissions, the WEG contends that “[t]he BLM finally attempts to argue that an analysis of greenhouse gas emissions is more appropriate at the drilling stage. We have yet to see the BLM actually prepare such a site-specific analysis in conjunction with an oil and gas lease development proposal” (The WEG Protest at page 11). However, as the BLM in Wyoming continues to demonstrate,<sup>22</sup> when site-specific oil and gas lease exploration or development projects are received the BLM will determine the appropriate level of analysis for the circumstances, and will ensure our NEPA obligations are fulfilled. This allows for the compliance with NEPA and avoids speculative guesses as to impacts at the leasing stage. WEG's apparent unfamiliarity with the BLM's analysis of site-specific oil and gas lease exploration and development activities notwithstanding, we continue to believe this approach satisfies NEPA's procedural requirements.

For these reasons, this portion of the WEG's protest is denied.

2. **“Compounding the failure of the BLM to make any effort to estimate the greenhouse gas emissions that would result from reasonably foreseeable oil and gas development is that the agency also rejected analyzing and assessing these emissions in the context of their costs to society. It is particularly disconcerting that the agency refused to analyze and assess costs using the social cost of carbon protocol, a valid, well-accepted, credible, and interagency endorsed method of calculating the costs of greenhouse gas emissions and understanding the potential significance of such emissions.”** (The WEG Protest at page 11).

### BLM Response

In reviewing the WEG's arguments related to the Social Cost of Carbon (SCC) for the Feb 2016 Sale, the BLM notes that the WEG submitted entirely identical arguments as to what the WSO addressed in response to the WEG's Aug 2015 Sale protest, with the most-noticeable exceptions being: updates to the table on page 12, adding a citation to an op-ed published in the New York

<sup>21</sup> BLM policy does not require the agency to engage in speculative analysis under NEPA. The BLM's NEPA Handbook (H-1790-1, January 2008) at page 59 states: “...you are not required to speculate about future actions. Reasonably foreseeable future actions are those for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends.” We agree with the leasing EAs that development of the subject parcels is not “highly probable.” See *Powder River Basin Resource Council*, 180 IBLA 119, 135 (decided November 2, 2010: “NEPA does not require BLM to hypothesize as to potential environmental impacts that are too speculative for a meaningful determination of material significance or reasonable foreseeability. Such an “analysis” would not serve NEPA's goal of providing high quality information for informed decisionmaking [footnotes and internal citations omitted].”); see also *Southern Utah Wilderness Alliance*, 159 IBLA 220, 221 (decided June 16, 2003: “The Board may affirm BLM's conclusion that the possible cumulative impact of a future action need not be considered significant when the reasonably foreseeable future action is speculative.”).

<sup>22</sup> See, for example, the extensive air quality modeling and analysis triggered by the BLM's receipt of lease development plans in the Continental Divide – Creston EIS, available at: [http://www.blm.gov/wy/st/en/info/NEPA/documents/rfo/cd\\_creston.html](http://www.blm.gov/wy/st/en/info/NEPA/documents/rfo/cd_creston.html)

Times, and reiterating positions taken by the WEG in its comments on the draft EAs.

None of these changes refute the responses the BLM provided to the WEG in our Aug 2015 Sale protest decision, and we do not find any meaningful differences in the specific circumstances with the Feb 2016 Sale that would warrant reconsideration of our Aug 2015 Sale responses, so we refer the WEG to our Aug 2015 Sale protest decision.

For the reasons previously provided to the WEG, this portion of the WEG's protest is denied.

## **ISSUES – WOC**

In its protest, the WOC challenges the 12 parcels in the Cole Creek area (of which 10 now remain; see Background – Cole Creek Parcels, above) since “[t]he level of housing development in this area is significant, with about 485 landowners having homes in the area. This level of human habitation makes oil and gas leasing as currently contemplated unadvised.” (The WOC Protest at page 1).

While the WOC's protest states that it has “a significant number of members who live in the Casper Field Office area where the protested lease parcels are located,” (at page 1), the WOC does not appear to be claiming that any of its members actually live on the split estate protested lands encompassed by the parcels or use/access the BLM-managed surface elsewhere on the parcels.

- 1. “...the basis for this protest is the failure of the BLM to have considered site-specific environmental impacts of the sale of the protested parcels at the pre-leasing stage in its [NEPA] analysis.” (The WOC Protest at page 2).**

### BLM Response

As background for its arguments, the WOC attempts to characterize the BLM's position: “[a]s it has since about 1987, the BLM continues to take the position that there is no need for consideration of the environmental impacts of development on a lease pursuant to NEPA until an application for permit to drill (APD) is filed.” (The WOC Protest at page 4). However, this misstates the BLM's position and ignores the approach the BLM took for this lease sale. Through the detailed analysis provided in the several RMP EISs and the two lease sale EAs, the BLM has considered the environmental impacts of potential development on the proposed leases, to the extent reasonably foreseeable. The WOC may believe that the BLM should anticipate and analyze the “site-specific environmental impacts of the sale of the protested parcels at the pre-leasing stage...” (The WOC Protest at page 2). However, in the RMP EISs and lease sale EAs the BLM has disclosed and analyzed potential effects that could occur from oil and gas operations to the extent the agency reasonably is able to, without speculating on the nature in which site-specific exploration and development activities might occur.

After summarizing its understanding of the applicable legal standards of review for this matter (The WOC Protest at pages 4-6), the WOC argues that a two-part test is required “to determine whether the environmental impacts of lease development could be deferred to the APD stage.”

(The WOC Protest at page 5). This test, would require evaluation of whether issuance of a lease was an “irretrievable commitment of resources” and whether “any environmental impacts were reasonably foreseeable at the leasing stage” (citing *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 716, 718 (10<sup>th</sup> Cir. 2009)).

However, the BLM acknowledges that leasing the proposed parcels would include, to some degree, an irretrievable commitment of resources in that the lease rights granted to a lessee would entitle them to explore for and develop the leased oil and gas subject to applicable laws, regulations, and the lease terms and conditions.

In support of its belief that site-specific impacts from development operations can reasonably be foreseen by the BLM at the time the leases in the Cole Creek area are issued, the WOC provides three “lines of evidence” that, it believes, demonstrate development of the parcels is likely in a manner that requires parcel-specific additional NEPA analysis.

First, the WOC cites the BLM’s response to comments in the EA (Appendix F at page 6) that noted there are existing Federal oil and gas leases “within and adjacent to” the Cole Creek area. The WOC apparently believes that the mere presence of existing Federal oil and gas leases near the proposed leases dictates the BLM must analyze additional site-specific effects arising from exploration and development operations. However, a review of the Federal oil and gas leases and wells in the vicinity of the parcels demonstrates that the potential nature of exploration and development operations on the proposed leases is not reasonably foreseeable; absent speculation, knowledge about the nature of operations would be necessary for the BLM to conduct a more-detailed analysis than what has already been prepared. The nature of operations would include aspects such as the density or spacing of proposed wells; the depths of formations targeted; the types of equipment necessary to drill, complete, equip for production, and operate the wells; and the period of time over which a field might be drilled.

As Map 2 shows, the number of Federal oil and gas leases in the vicinity of the 10 remaining parcels in the Cole Creek area is actually fairly low, and many of those in the area have recently expired or will soon be expiring at the end of their 10-year primary term. The two leases currently held by production (HBP, whereby the primary lease term is extended) within the cluster of proposed Cole Creek area parcels were issued in 1966 and 1971 (see Map 2):

Lease Number	Acres	Date Issued
WYW000139A	80.00	8/1/1966
WYW060333	320.00	6/1/1971

These two leases are each in HBP status due to a single well on each lease, drilled in 1967 and 1981, respectively. Both of these wells are completed to different formations, the first (the Federal 139-A) was completed to the Morrison formation (with a total depth drilled to 6,680 feet), and reported oil, gas, and water production. The other well (the 1-13) was completed to the Dakota formation (total depth of 7,387 feet) with only oil and water production reported.

Most of the existing Federal oil and gas leases in the area do not have exploratory wells, and many previous Federal leases in the area have expired due to lack of exploration or development

activity. In fact, some of the lands within these proposed parcels have previously been leased for oil and gas development by the BLM (see Map 3), but all of those leases terminated for lack of production (approximately 8,137 acres within the parcels were leased at some point in time within the last 10 years, or 49 percent of the area encompassed by the proposed parcels). In addition, several of the proposed lease sale parcels that were previously leased by the BLM had previously-drilled exploratory wells, but these wells are all now plugged and abandoned (see Map 4) because they could not support continued production. This is why the BLM believes it would be speculative to anticipate that these proposed parcels will be developed, if leased. For these reasons, we believe that the WOC's first line of evidence does not support its argument.

The WOC's next line of evidence contends that, since the BLM considered drilling in a project named the "Cole Creek Exploratory Drilling Project," the BLM should realize that "[c]learly, development in this area is reasonably foreseeable." (The WOC Protest at page 8). The WOC believes that previously-proposed and existing wells in the Cole Creek Unit, within which the Cole Creek Exploratory Drilling Project was proposed in 2012, supports its assertion drilling is reasonably foreseeable on the proposed parcels. However, as Map 5 shows, the Cole Creek Unit is almost three miles distant (to the northeast) from the nearest proposed parcel, and there are numerous existing leases between the proposed parcels and this unit that do not have active operations, or that have expired due to lack of development activity. As those entities seeking to develop oil and gas resources on Federal and non-Federal lands in this area can attest, the WOC is incorrect in its belief that successful oil and gas development operations can be anticipated on the proposed parcels just because other projects have been proposed in the general vicinity. We find that development of the proposed parcels is not reasonably foreseeable merely because they share a geographic place-name with other, more distant leases on which development operations have been proposed or approved. For these reasons, we reject the WOC's second line of evidence to support its claims.

The WOC's third line of evidence provides that "the Converse County development project implicates the Cole Creek area parcels [showing] that development in this area is reasonably foreseeable." (The WOC Protest at page 8). The Converse County Oil and Gas Project is a proposal to drill up to 5,000 wells on up to 1,500 well locations in the Casper Field Office (see 79 FR 28538, May 16, 2014).<sup>23</sup> The project draft EIS is currently in preparation by the BLM and U.S. Forest Service. The proposed parcels are not located within the Converse County Oil and Gas Project EIS area (see Map 6), and are (at closest) about 4 miles distant.

The WOC argues that the proximity of the EIS area to the proposed parcels shows that the parcels' development is reasonably foreseeable, and that the lease sale EA is not "sufficient to meet the requirement to 'analyze foreseeable impacts of such use before committing the resources'..." (The WOC Protest at page 8). However, the BLM's preparation of the Converse County Oil and Gas Project EIS shows that the WOC's principal argument is without merit; the BLM has followed (and continues to follow) an approach that allows for evaluation of specific impacts at the point in time they become reasonably foreseeable, in compliance with NEPA.

The BLM first prepared an RMP EIS through public participation that evaluated potential

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<sup>23</sup> See also [http://www.blm.gov/wy/st/en/info/NEPA/documents/cfo/Converse\\_County\\_Oil\\_and\\_Gas.html](http://www.blm.gov/wy/st/en/info/NEPA/documents/cfo/Converse_County_Oil_and_Gas.html)

impacts from different land use allocation decisions, including impacts arising from oil and gas leasing and development. Then, the BLM prepared an EA to evaluate the specific parcels proposed for this lease sale, including the proposed parcels in the Cole Creek area. At each of these stages of NEPA analysis, to the extent practicable and necessary, the BLM considered the reasonably foreseeable impacts associated with its decisions. Next, *if a lease is issued and if the lessee or their operator proposes to conduct site-specific lease development operations such as through an Application for Permit to Drill (APD)*, the BLM will perform the appropriate level of NEPA analysis to evaluate the proposal and disclose the potential impacts to the public. As preparation of the Converse County Oil and Gas Project EIS shows, the BLM may determine (based upon the proposal and the circumstances) that it is necessary to prepare another EIS in order to evaluate impacts from lease development operations. The BLM has not received 5,000 APDs for the project but, rather, has determined that the circumstances warrant additional analysis before all of the APDs are received by the BLM. Eventually, within the EIS area, the BLM may require yet another NEPA document to consider the site-specific impacts of each well, road, and/or facility.

In this manner, the BLM continues to ensure compliance with NEPA for leasing and development, while avoiding speculation that inevitably would occur if the BLM were to anticipate the hypothetical nature and extent of site-specific operations on these proposed parcels.

The WOC asserts with certainty, “[i]t is apparent that development of the Cole Creek area lease parcels is reasonably foreseeable and it is not a speculative possibility.” (The WOC Protest at page 8). However, the WOC’s certainty is undercut by the fact that previous leases *within the proposed parcels* have terminated for lack of oil and gas development. The WOC’s certainty that these proposed parcels will be developed appears also to be based upon the presence of nearby leases and operations; however, this belief is contradicted by the demonstrable fact that leases may be issued, but the oil and gas companies who have expended money to acquire the leases may not ever actually propose to develop the leases. For example, the BLM offered four parcels in the February 2014 sale very near to the proposed parcels (the closest being located less than one-half mile from the western-most proposed parcel (see Map 7). These parcels (numbers WY-1402-077 through -080) all received successful high bids at the sale and the BLM issued four leases on March 18, 2014 (serial numbers WYW182818 through WYW182821). On December 18, 2015, the lessees relinquished these leases without ever drilling a well on them. As this example illustrates, there is a high degree of uncertainty about whether development will occur on these parcels, if leased.

The BLM has explained why we believe it is not reasonably foreseeable to anticipate that development will or will not occur on the proposed parcels. The nature and potential effects of any potential development operations are even less apparent. Without knowledge of the nature of development operations (such as well spacing, drilling depth, equipment types, activity levels, production type(s), etc.), the BLM can only speculate on the potential impacts, which can vary significantly from one wellsite to another. This is why the BLM does not attempt to speculate on those effects that cannot be reasonably foreseen at this time, but defers the evaluation of those effects to the point when they become reasonably foreseeable, such as in the Converse County Oil and Gas Project EIS and APD-level analysis.

For the reasons described above, we reject the WOC's third line of evidence.<sup>24</sup>

The WOC also argues that the EA did not adequately evaluate potential impacts to historic trails and water resources (The WOC Protest at page 8), and analysis of noise impacts, light impacts, traffic and highway safety issues, and the loss of property values were "absent" (*Id.*). Similarly, the WOC takes issues with the analysis of health in the context of potential water quality and air quality impacts (The WOC Protest at page 9).

The WOC continues to overlook the detailed disclosure and analysis associated with oil and gas leasing and development on public lands contained in the applicable RMP EISs to which the EA tiers, such as in the Casper Field Office's Final EIS for their RMP revision (CFO FEIS). In addition to the EIS disclosure and analysis, the HPD's lease sale EA considered, in detail, potential impacts to all of these resources (with the exception of the WOC's alleged losses to property values, as further addressed below), including:

- Historic trails (CFO FEIS at pages 3-120 through 3-122, 4-266 through 4-275, I-2; EA at pages 31-32, 34, and 45)
- Water resources (CFO FEIS at pages 3-12 through 3-16, 4-18 through 4-25; EA at pages 36-37, 43, 45, 46, and 57-58)
- Noise/disruption (EA at pages 32-33, 44-45, and 59)
- Light (EA at pages 15, 44-45)
- Traffic/vehicle activity (CFO FEIS at pages D-8 through D-12; EA at pages 44-45)
- Air quality (CFO FEIS at pages 3-4 through 3-9, 4-5 through 4-11, Appendix J, Appendix L; EA at pages 24-27, 49-51, and 53-55)
- Water quality (CFO FEIS at pages 3-12 through 3-16, 4-18 through 4-25, D-10; EA at pages 37, 43, 45, and 57-58)
- Health and safety (CFO FEIS at pages 3-136 through 3-138, 4-9, 4-292 through 4-294)

Potential impacts to several of these resources are also regulated by other Federal or State of Wyoming agencies. The BLM has disclosed and/or analyzed these potential impacts and must provide for compliance with any other agency's applicable requirements; however, the other agencies will ensure compliance with their requirements through license, permit, and/or enforcement of their rules.

With regard to the WOC's belief that potential impacts to the split estate private surface owners' property values should have somehow been analyzed in the EA, the WOC disregards the BLM's responsibility to manage and protect the nation's property rights on public lands, including split estate minerals owned by the United States. The BLM does not have the authority to relinquish that responsibility, and is governed by the applicable laws and regulations. Since the split estate surface owners do not own the mineral estate, and development of the mineral estate is provided

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<sup>24</sup> While the WOC offers a possible fourth line of evidence at its n. 6, the BLM's reconfiguration of the parcels was independent of any foreseeable oil and gas development. The goal of the parcel reconfiguration was simply to make the ratio of undeveloped (where no homesites are present on the split estate lands) to developed lands more similar from parcel-to-parcel, thereby reducing the potential that a parcel might be offered without any undeveloped areas from which to consider placement of a drilling location. This was done precisely because the BLM cannot anticipate the nature and extent of lease development at this time. See EA at page 20.

for under the applicable laws of this nation, potential leasing and exploration or development of the Federal mineral estate does not affect the surface owners' property rights or interests.

Finally, the WOC argues that the BLM did not take into account the "changing conditions for the surface values of these parcels due to the wildfire that burned this subdivision in October, 2015." (The WOC Protest at page 10). We understand the concern that oil and gas leasing may elicit for the people who experienced losses as a result of a wildland fire. While we note that the fire (the "Station Fire") occurred after the BLM released its EA for public review, the BLM has reviewed the EA to determine if changes are warranted. The landscape in this area (and, indeed, throughout public lands in Wyoming open to oil and gas leasing) has a history of fires, given the vegetation types and potential ignition sources present (see Map 8).<sup>25</sup> Though the Station Fire was devastating to the landowners and persons affected, the BLM remains confident that any future residual effects (if any) from the fire to the soils, vegetation, and other resources in the area can be addressed and resolved, should operations be proposed. Just as re-construction of the roads and homesites<sup>26</sup> by the surface owners affected by the fire can occur in a manner protective of the physical and biological resources present, so can the possible construction of roads and wellsites be conducted in a manner protective of these resources (if leases are issued, and if exploration and development activities are ever proposed on the leases). After reviewing the RMP EIS and EA, the BLM believes that ecological conditions have not changed sufficiently to warrant reconsideration of leasing in the area.

Oil and gas leasing is an important implementation decision<sup>27</sup> arising from the approved RMPs, granting certain rights to the lessee. The BLM regulates the lessee's or operator's actions on the lease (43 CFR 3101.1-2 and 43 CFR 3162.5-1(a)). As required by law and regulation, the lessee or their operator must first submit a plan and obtain approval from the BLM in order to initiate surface-disturbing activities on their lease.<sup>28</sup> At that time, the BLM will prepare an environmental record of review to determine, among other things, the appropriate terms and conditions of approval for the plan of operations submitted by the operator.

Often, where the potential environmental impacts from site-specific operations remain unidentifiable until exploration activities are proposed, the Application for Permit to Drill (APD) may be the first useful point at which a site-specific environmental appraisal can be undertaken (*Park County Resource Council, Inc. v. U.S. Department of Agriculture*, 10<sup>th</sup> Cir., April 17, 1987). In addition, the Interior Board of Land Appeals (IBLA) has decided that, "the BLM is not required to undertake a site-specific environmental review prior to issuing an oil and gas lease

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<sup>25</sup> The BLM Casper Field Office prepared a Wildland-Urban Interface Assessment in 2002 that considered the potential for wildland fires in the Cole Creek area. This Assessment found that 98 percent of the area had a "Moderate" hazard level, and the remaining 2% was "High"; available at: <http://www.blm.gov/style/medialib/blm/wy/programs/fire/cfo.Par.5169.File.dat/009chap07.pdf>

<sup>26</sup> WOC also raises the concern about setbacks from homes (WOC Protest at page 10). As the EA explains (at page 33), the BLM has issued policy addressing the issue of setback distances from occupied structures. See BLM-Wyoming Instruction Memorandum WY-2015-054 ("Fluid Minerals Operations – Mitigation and Setbacks from Occupied Structures" dated September 16, 2015). The State of Wyoming's setback distance of 500' is the BLM's minimum acceptable distance.

<sup>27</sup> See the BLM's Land Use Planning Handbook (H-1601-1, dated March 11, 2005) at Appendix C, page 24: "Implementation Decisions: Offer leases with appropriate stipulations."

<sup>28</sup> See the Mineral Leasing Act of 1920, as amended. 30 U.S.C. § 226(g): "No permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area." See also Onshore Oil and Gas Order No. 1 parts IV and VII. See also 43 CFR 3162.3-1(c) and 3162.3-3.

when it previously analyzed the environmental consequences of leasing the land...” (*Colorado Environmental Coalition, et al., IBLA 96-243*, decided June 10, 1999). However, when site-specific impacts are reasonably foreseeable at the leasing stage, NEPA requires the analysis and disclosure of such reasonably foreseeable site-specific impacts (*N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 719-19 (10<sup>th</sup> Cir. 2009)).

While the BLM has concluded that some site-specific impacts remain unforeseeable at this time, the analysis in the lease sale EAs provides additional disclosure and analysis of the anticipated environmental impacts associated with our decision to offer and possibly issue leases for these parcels.

For the reasons described above, we deny the WOC’s protest.

## ISSUES – MS. LINDA RANSOM

Ms. Ransom argues that the potential adverse impacts associated with oil and gas operations on the Cole Creek leases are “incompatible with that quality of life, not to mention devaluation of the properties.” (Ms. Ransom’s Protest at page 1). She argues that “[t]he environment and the people who live in those areas must be protected from any exploration or development” to avoid “severe impacts on humanity.” (*Id.*). Further, Ms. Ransom asserts that “[t]he lease sale could result in impacts that the BLM will not be able to avoid once the lease sale is finalized because the agency’s ability to prevent lessees from engaging in lawful activities on issued leases will be limited.” (Ms. Ransom’s Protest at page 2). Specifically, Ms. Ransom highlights impacts or environmental consequences to “specific geological formations, greenhouse gas emissions, surface and ground water resources, seismic potential, human, animal and plant health and safety concerns.” (*Id.*).

1. **“This lease sale will no doubt affect the quality of the human environment. It is highly controversial, and has possible effects that are definitely uncertain or involve unique or unknown risks and this would affect these resident’s health and safety. The BLM’s dismissal of harms and findings that no significant impacts will result is contrary to the abundant evidence...”** (Ms. Ransom Protest at page 2).

### BLM Response

Ms. Ransom is entitled to her opinion that if leasing of the split estate lands led to exploration or development operations, it would be “a constant and unbearable nuisance” (Ms. Ransom Protest at page 1).<sup>29</sup> First, however, before oil and gas operations could occur on the split estate lands within the parcels, the lessee or their operator would be required to make a good faith effort to reach an agreement regarding access and surface use with the split estate surface owner(s) over whose land they seek to travel.<sup>30</sup>

<sup>29</sup> We note that some Cole Creek area residents have taken a stance in opposition to Ms. Ransom’s position that oil and gas operations would be a nuisance or unwelcome presence. For example, as described in Appendix F at page 1, the BLM has received indications from other landowners in the area that they support the sale of the parcels.

<sup>30</sup> See Onshore Oil and Gas Order No. 1, part VI (“Operating on Lands With Non-Federal Surface and Federal Oil and Gas”). 72 FR 10336 – 10337, March 7, 2007.

In addition, the operations would be required to comply with all applicable Federal, State, and local requirements. The Cole Creek area is the subject of several different land uses, including homesites, wind energy development, and open rangeland. The area includes zoning designations for Suburban Residential (“SR-1” and “SR-2”), Rural Residential (“RR-1”), Urban Agricultural (“UA”), and Use Control Area (“UCA” to “encourage the reuse of formerly heavily contaminated industrial sites which have been or are in the process of remediation”).<sup>31</sup>

If the leases are issued and drilling operations were proposed, the BLM would notify the public, prepare additional NEPA documentation, and apply necessary mitigation in accordance with the BLM regulations and policies.

In arguing that offering these parcels is “highly controversial,” Ms. Ransom may believe that the BLM would be precluded from taking action on them until an EIS is prepared to address the controversy.

Recently, in *Duna Vista Resorts, et al* 187 IBLA 43 , 56 (decided January 13, 2016), the Interior Board of Land Appeals (IBLA) rejected a similar claim that, because of “controversy,” the BLM should have prepared an EIS for an Eastern States BLM oil and gas lease sale in Michigan. In several decisions, the Board has clarified that “[w]hether a proposed action is likely to be “highly controversial” under 40 C.F.R. § 1508.27(b)(4) is not a question about the extent of public opposition, but, rather, about whether a substantial dispute exists as to its size, nature, or effect. *Oregon Natural Resources Council*, 116 IBLA 355, 362 (1990), citing *Sierra Club v. U.S. Forest Service*, 843 F.2d 1190, 1193 (9th Cir. 1988); *Glacier-Two Medicine Alliance*, 88 IBLA 133, 143-44 (1985), quoting *Rucker v. Willis*, 484 F.2d 158, 162 (4th Cir. 1973).” *Annunziata Gould*, 176 IBLA 48, 62 (2008) (citing to *Missouri Coalition for the Environment*, 172 IBLA 226, 249 n.23 (2007). See also, e.g., *Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F.3d 1105, 1122 (9th Cir. 2000) (“The existence of opposition to a use, however, does not render an action controversial”). In *Arizona Zoological Society et al.* (167 IBLA 347, decided January 25, 2006), the IBLA determined:

*In determining whether preparation of an environmental impact statement is required with respect to a project, one consideration is whether the effects of the project on the quality of the human environment are highly controversial in that there is a substantial dispute as to the size, nature, or effect of an action. Disagreement regarding the efficacy of a project is properly distinguished from controversy over the impacts of the project and does not require an environmental impact statement.*

Citing other cases (see 167 IBLA 347, 356-357), the Board noted that:

*“[C]ontroversial” refers to cases “where a substantial dispute exists as to the size, nature, or effect of a major Federal action rather than to the existence of opposition to a use.”*

<sup>31</sup> Natrona Regional Geospatial Cooperative, available at: <https://geosmart.casperwy.gov/> and Natrona County Zoning Regulations, available at: <https://www.natrona.net/DocumentCenter/Home/View/521>

In this instance, Ms. Ransom may believe that the existence of her opposition to leasing in the Cole Creek area constitutes “controversy” under the regulations at 40 CFR 1508.27(b)(4). We believe that the disclosure of effects in the CFO FEIS and EA is comprehensive and accurate, to the extent impacts are foreseen and can be predicted. We therefore deny this portion of Ms. Ransom’s protest.

Finally, Ms. Ransom states that the BLM’s “dismissal of harms and findings that no significant impacts will result” is “contrary to the evidence,” (Ms. Ransom Protest at page 2), implying that there are significant impacts requiring preparation of an EIS. However, Ms. Ransom overlooks that the BLM has already acknowledged significant impacts and prepared the Casper Field Office RMP EIS and ROD to support oil and gas leasing decisions in the field office area (see n. 6, above). The BLM tiered the leasing EA to this EIS.

For these reasons, the BLM finds it has complied with the procedural requirements of NEPA, and has ensured the decision-maker is adequately informed of the reasonably foreseeable impacts from the decision to offer the parcels. This portion of Ms. Ransom’s protest is denied.

## **DECISION**

After a careful review, it was determined that the protests to the parcels in this sale will be denied or dismissed for the reasons described above. All of the protested parcels described in the February 2, 2016 Notice of Competitive Oil and Gas Lease Sale will be offered, with the exception of the two deferred by the BLM through Information Notice #4. As mentioned above, the sale date has been changed due to the postponement of the sale due to weather.

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

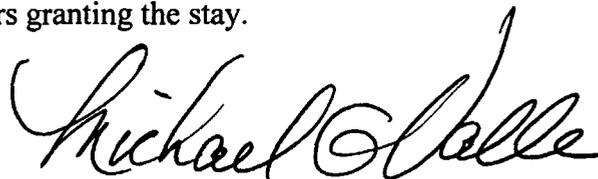
If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed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

### Standards for Obtaining a Stay

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

1. The relative harm to the parties if the stay is granted or denied;

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

A handwritten signature in black ink that reads "Michael Valle". The signature is written in a cursive, flowing style.

Mike Valle  
Acting Deputy State Director,  
Minerals and Lands

## 2 - Attachments

- 1 – Map 1 (Cole Creek Area Parcels)
- 2 – Map 2 (Existing Wells and Federal Leases)
- 3 – Map 3 (Portions Previously Leased)
- 4 – Map 4 (Plugged & Abandoned Wells)
- 5 – Map 5 (Federal Oil and Gas Units)
- 6 – Map 6 (Converse County Oil and Gas Project)
- 7 – Map 7 (February 2014 Parcels/Relinquished Leases)
- 8 – Map 8 (Gap Analysis Program Vegetation and Historic Fires)
- 9 – Form 1842-1