United States Department of the Interior

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Aug 2016 Protests

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DECISION

PROTESTS DISMISSED OR DENIED

On June 2-3, 2016, the Bureau of Land Management (BLM), Wyoming State Office (WSO), received timely protests from three parties to oil and gas lease sale parcels planned to be offered at the August 2, 2016 competitive oil and gas lease sale (Aug 2016 Sale). The three protesting parties are: (1) Center for Biological Diversity (CBD), (2) Rocky Mountain Wild (RMW), and (3) Wild Earth Guardians (WEG).

Background

The BLM received nominations for the Aug 2016 Sale from June 29, 2015 until September 18, 2015. The Aug 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.[1]

During the BLM's review of the Aug 2016 parcels, the WSO screened each of the parcels, confirmed plan conformance,[2] 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 recent revisions and amendments to RMPs for the planning areas subject to this sale.

The Aug 2016 Sale EAs (High Plains District EA No. WY-070-EA16-66, Wind River/Bighorn Basin District EA No. DOI-BLM-WY-R000-2016-0001-EA), along with draft, unsigned Findings of No Significant Impact (FONSIs)[3] were released on January 19, 2016 for a 30-day public review period, ending February 18, 2016. 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 incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.*

The CBD submitted comments to the BLM for both EAs prepared by the BLM (see Attachment 2 to the WRBBD's EA at pages 21-41; see Appendix F of the HPD's EA at pages 2-54). The RMW and the WEG jointly submitted comments to the BLM for the WRBBD's EA, but did not comment on the HPD's EA; WEG also submitted separate, additional comments on the WRBBD's EA that were not timely received (see Attachment 2 to the WRBBD's EA at pages 9-21 and 113-114; see Appendix F of the HPD's EA at page 1).[4]

The BLM described its purpose and need for the HPD's Aug 2016 Sale EA, (at page 5):

> *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.*

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[1] Links to the NEPA documents are available at: http://www.blm.gov/wy/st/en/programs/energy/Oil_and_Gas/Leasing.html

[2] 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.

[3] See the BLM's NEPA Handbook H-1790-1 at page 76. Though the BLM has elected to release a draft, unsigned FONSI for public review in this instance, the BLM is not asserting that any of the criteria in 40 CFR 1501.4(e)(2) are met. 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).

[4] 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 2" of the EAs posted on the BLM's website, unless otherwise noted.

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 August 2016 Competitive Oil and Gas Lease Sale and if so, under what terms and conditions. [5]

The BLM described its purpose and need for the WRBBD's Aug 2016 Sale EA, (at page 1-4):

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

The need is established by the Federal Onshore Oil & Gas Leasing Reform Act of 1987 (FOOGLRA) to respond to Expressions of Interest, the Federal Land Policy Management Act, and Mineral Leasing Act of 1920, as amended.

The Aug 2016 Sale EAs each considered two alternatives in detail: a proposed action and a no action alternative.

The protesting parties each protest various parcels listed in the Feb 2016 Sale Notice.[6]

The remainder of our response will address each protest and arguments, as appropriate. The BLM has reviewed the protestors' arguments in their entirety; the substantive arguments to which we respond are numbered and provided in bold with BLM responses following.

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[5] 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.

[6] This Sale Notice, ("Notice of Competitive Oil and Gas Lease Sale – August 2, 2016") was posted on May 5, 2016. Available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/61292/73465/80674/08list.pdf

Center for Biological Diversity (CBD)

The CBD's 32-page protest letter was timely received by fax on June 2, 2016; the protest period ended on June 3, 2016 at 4:00 pm.[7] The CBD contacted the BLM by phone and subsequently by e-mail on May 24, 2016, and again on June 3, 2016, to inform the agency that approximately 2,300 pages of cited references they intended to mail to the BLM with their protest would not be received at the WSO until June 6, 2016 (after the close of the protest period). The CBD inquired whether the BLM would consider the reference materials timely received, if they were delivered to the BLM on June 6, 2016.

The BLM responded by e-mail, explaining that the BLM would only consider materials to be timely received if they were delivered to the BLM no later than 4:00 pm on June 3, 2016. Subsequently, the CBD submitted four fax transmissions to the BLM on June 3, 2016 (all times local, Mountain Daylight Time):

1. 90 pages received beginning at 12:14 pm
2. 116 pages received beginning at 12:42 pm
3. 61 pages received beginning at 2:17 pm
4. 55 pages received beginning at 2:29 pm

The CBD's protest was also filed on behalf of three other parties: (1) Great Old Broads for Wilderness, (2) Friends of the Earth, and (3) Sierra Club. None of these parties signed the protest, though the protest did characterize each party's interests (CBD Protest at pages 3-4).

The CBD's protest identifies the parcels it challenges by explaining (at page 1, emphasis added):

> *The EA for the Wind River/Bighorn Basin District ("WR/BBD") portion of the lease sale states that 50 parcels containing 66,642.82 acres located within the WR/BBD would be offered for lease. However, Attachment 1 to the EA identifies only 49 of these parcels. We formally protest the inclusion of all 50 parcels in the WR/BBD offered in the lease sale, including the one parcels the sale of which the BLM has failed to give any notice, as well as <u>each of the following 49 parcels that have been identified in the EA</u>...*

The CBD's protest then lists forty-nine parcel numbers (WY-1608-44 through -72, -78 through -80, -86 through -90, -92 through -102, and parcel -104) that were described in the WRBBD's EA.

The protest then goes on to say:

> *The Center also formally protests the inclusion of each of the following 39 parcels,*

[7] See Aug 2016 Sale Notice at page vii. through page x.

> *covering 22,495 Federal mineral acres and 2,271 Federal surface acres in the High Plains District ("HPD")...*

The CBD's protest then lists thirty-nine preliminary parcel numbers (WY-1608-001 through –16, -18 through -26, -28 through -38, and -40 through -42) that were described in the HPD's EA.

First, the WRBBD has explained why a total of 50 parcels were initially considered, but only 49 parcels were included in the sale notice. The draft, unsigned FONSI posted on the BLM's public internet site for the WRBBD EA explains (at page 1):

> *Within those parcels being offered, three contiguous parcels WY-1608-098, -099 and a portion of -100, are located within the Absorka Front MLP in the WFO. To conform with the provisions of the MLP designation in that area, the three parcels which are within the Absorka Front MLP area will be combined to be offered as one parcel, and the portion of parcel 100 which is outside of the MLP will be offered as a separate parcel. Therefore, the number of parcels brought forward to the lease sale book will be changed from 50 to 49 for this lease sale.*

Regardless, as CBD makes clear, they protest the parcel numbers in the EA, not the sale notice.

The BLM requires that parcels numbers from the sale notice be used by protesters. As the Aug 2016 Sale Notice explains (at page ix., emphasis in the original):

> *A protest must reference the parcel number identified in this sale notice. Use of any other parcel number will result in the protest being dismissed.*

Given the necessary changes to the sequential parcel numbers between the preliminary list reviewed by the BLM (and considered under various action alternatives in lease sale EAs) and the sequential final parcel numbers published in a sale notice,[8] the BLM cannot be left to speculate about which parcels a protester is referring to. For example, the CBD's protest includes parcel numbers that no longer exist (e.g., parcels WY-1608-088 through -090, -092 through -102, and -104), parcel numbers for lands that have been reconfigured (parcels -098, -099, and -100), or that have been deleted from the sale (preliminary parcels -037 and -038, final parcel numbers -035 and -036). The WSO posts, for each lease sale, a "Parcel Number Crossover List" to assist the public in identifying parcel numbers that are changed between the preliminary list/EA and the final Sale Notice.[9]

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[8] Lease sale parcel numbers are sequentially numbered by the WSO for several reasons, including the fact that the WSO database used to keep track of the thousands of parcels reviewed by the WSO each year, and which is used to publish the Sale Notice, does not allow for non-sequential numbering of lease sale parcels. While the BLM might prefer a database that would allow for non-sequential numbering of parcels, the BLM does not currently have plans or budgeted funds to change or update the existing database, particularly in light of the BLM's on-going efforts to create a national internet-based lease sale system.

[9] Available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/54939/73655/80907/0816CrossoverList.pdf

The CBD did not follow the BLM's published procedures for submitting protests to oil and gas lease sale parcels provided in the Aug 2016 Sale Notice; resultantly, the WSO dismisses the CBD's protest in its entirety.

Rocky Mountain Wild (RMW)

The RMW's protest identified a total of nine parcels listed in the Aug 2016 Sale Notice. The RMW raises three issues in its protest:

1. Sage-grouse (parcels -040, 072, -073, -074, and -085; protest at unnumbered pages 2-5)
2. Areas of Critical Environmental Concern (parcels -043, -044, -059, and -061; protest at unnumbered pages 5-7)
3. Hydraulic fracturing (no parcel numbers identified; protest at unnumbered pages 7-8).

All of the parcels protested by the RMW are located within the WRBBD.

1. **"We remain concerned that sage grouse stipulations prescribed in BLM land-use plan amendments and revisions to protect greater sage grouse are scientifically unsound, and fail to grant an adequate level of protection to allow for the survival of greater sage grouse in the context of development on oil and gas leases, and therefore protest these parcels." (RMW Protest at page 2).**

BLM Response

In its arguments in support of its protest to the five parcels located partially or entirely in BLM-designated sage-grouse Priority Habitat Management Areas (PHMAs), the RMW largely takes issue with the results of the BLM's recent land use plan revisions to the Lander and Bighorn Basin RMPs, arguing that the BLM should screen the parcels "against" the sage-grouse ACECs that were considered (but not adopted) in the recent RMP decisions (see RMW Protest at page 4). Furthermore, the RMW argues that the land use allocation decisions adopted by the BLM in the 2015 RMP revisions and amendments are "ineffective" (RMW Protest at page 4). The RMW also takes issue with the RMP EISs that were prepared in support of the BLM's land use plan revisions and amendments, stating (RMW Protest at page 5):

> *...the BLM's programmatic NEPA underlying this lease sale does not adequately address these significant impacts in light of new information.*

The RMW overlooks the fact that the BLM has completed its land use plan revisions and amendments, and the allocation decisions have been finalized. The opportunity to protest individual lease sale parcels in the August 2016 Sale does not allow the RMW to challenge the BLM's recent land use planning decisions; that opportunity was provided to the public and has passed.

We find that the WRBBD EA properly analyzed and disclosed the foreseeable potential effects that could arise from leasing the protested parcels, and properly tiered to the RMP EISs. The WRBBD also correctly applied the necessary sage-grouse stipulations (including No Surface Occupancy stipulations around sage-grouse leks, Timing Limitation stipulations, and Controlled

Surface Use stipulations) required under the revised RMPs. For these reasons, we deny the RMW's protests to these five parcels.

2. **"BLM should not lease parcels that are within Areas of Critical Environmental Concern [(ACECs)]." (RMW Protest at page 5).**

BLM Response

The RMW protests four parcels it identifies as being located within either the Green Mountain ACEC and the Sheep Mountain ACEC, arguing that the stipulations applied by the BLM "will not ensure the ACEC's values are protected" (RMW Protest at page 6).

These parcels are located in areas designated as open to oil and gas leasing in the approved RMPs. Again, the RMW is seeking to challenge the BLM's underlying RMP decisions that were made in 2014 (for the Lander planning area) and 2015 (for the Bighorn Basin planning area).

The opportunity to protest individual lease sale parcels in the August 2016 Sale does not allow the RMW to challenge the BLM's recent land use planning decisions; that opportunity was provided to the public and has passed. We find that the WRBBD EA properly analyzed and disclosed the foreseeable potential effects that could arise from leasing the protested parcels, and properly tiered to the RMP EISs. The WRBBD also correctly applied the necessary ACEC stipulations required under the revised RMPs. For these reasons, we deny the RMW's protests to these four parcels.

3. **"The EA fails to consider the impacts of hydraulically fracturing these oil and gas wells." (RMW Protest at page 7).**

BLM Response

First, the RMW's challenge appears to be under the impression that the action the BLM is considering includes the hydraulic fracturing of oil and gas wells. This is incorrect. The BLM is considering the leasing of certain parcels of land for oil and gas development. Development of the parcels is not currently proposed, and is not reasonably foreseeable to an extent that would

allow consideration of impacts from specific well completion techniques or operations such as hydraulic fracturing.[10]

In addition, the RMW does not indicate which (if any) of the Aug 2016 Sale lease parcels they would associate this alleged failure to. This leaves the WSO unable to respond to any specific concerns raised by the RMW, and not previously addressed by the WRBBD in their EA's response to public comments (see WRBBD EA at Attachment 2, including at pages 18-20).

For these reasons we deny this portion of the RMW's protest.

Wild Earth Guardians (WEG)

In WEG's protest, it principally argues that the BLM failed to (1) quantify greenhouse gas (GHG) emissions that could result from leasing the parcels in the Aug 2016 Sale and (2) analyze the "social cost of carbon" for GHG emissions. In WEG's supplemental protest, it argues that the BLM did not "adequately analyze and assess impacts of leasing and reasonably foreseeable oil and gas development to sage grouse and sage grouse habitat." (WEG Supplemental Protest at page 1).

We note that the WEG has *again* submitted substantially identical arguments to those submitted by WEG for previous lease sales, including the BLM-Wyoming's August 2015 Competitive Oil and Gas Lease Sale (Aug 2015 Sale) where these arguments were addressed fully by the WSO.[11] After reviewing the WEG's Aug 2016 protest and the Aug 2016 Sale parcels, EAs, and administrative record, the WSO cannot find meaningful differences in the arguments, BLM analysis and disclosure (particularly given the BLM's repeated treatment of this issue in past WRBBD and HPD lease sale EAs), or parcel-specific circumstances. Therefore, we incorporate our responses to the WEG's arguments from our Aug 2015 Sale protest decision (see also our response to the WEG's Feb 2016 Sale protest); however, in the future the WEG is *again* encouraged by the BLM 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).

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[10] 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 WRBBD EA's conclusion that development of the subject parcels is "unknown" (WRBBD EA at page 3-1). 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.").

[11] 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

See also *Powder River Basin Resource Council*, 183 IBLA 83, 88-90 (2012)). Since the WEG continues to repeat claims previously-addressed by the WSO, 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 August 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]." (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." (WEG Protest at page 5).**

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 air quality (including 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.

The BLM issued an IM in 2008[12] that included draft guidance for BLM offices to use in 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 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.*

[12] Washington Office IM 2008-171 ("Guidance on Incorporating Climate Change into Planning and NEPA Documents"), issued August 19, 2008.

> *...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).[13] This guidance acknowledges that evaluating GHG emissions and climate change is a "particularly complex challenge" (at page 2), and states (at page 3):

> *Agencies continue to have substantial discretion in how they tailor their NEPA processes to accommodate the concerns raised in this guidance, consistent with the CEQ Regulations and their respective implementing regulations and policies, so long as they provide the public and 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."[14]

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[13] Available at: https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance

[14] 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.

In our review of the Aug 2016 Sale EAs, we find that both the WRBBD and HPD appropriately disclosed that GHG emissions could result from Federal lease exploration and development activities, but acknowledge that there remains substantial uncertainty whether and how exploration and development of the Federal oil and gas resources would occur. As a result, it is extremely difficult to estimate with accuracy or precision the quantity of GHGs that could be emitted, if a lease is issued, if a proposal to explore or develop the lease is approved by the BLM, if actual operations take place and the ultimate end use of produced Federal minerals.

There is substantial uncertainty that exists at the time the BLM offers a lease for sale regarding

crucial factors that will affect potential 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 GHGs over the life of the 10-year primary lease term. However, 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 GHG emissions, if necessary and appropriate.

The parcels considered in the Aug 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 GHG emissions at the leasing stage for this sale would be helpful to inform the public and the decision-maker, we believe there is substantial uncertainty about whether and how the Aug 2016 Sale lease parcels will be developed. This limits the usefulness of estimating GHG emissions at the leasing stage.

As an illustration of the uncertainty as to whether a lease parcel, if issued, will be developed, recent GIS data (as of April 2014) indicate that almost two-thirds (64%) 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 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 GHG emissions is

warranted,[15] 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 GHG emissions from construction and production operations (see WEG Protest at page 9), to the extent that WEG may believe the BLM should consider potential "downstream" effects from oil and gas leasing, the BLM's 2011 Draft Guidance noted that evaluation of the potential indirect effects arising from GHG

emissions generated by commodity production occurring on public lands is not warranted, stating (at page 6):

> *The consumption of commodities produced on BLM lands (e.g. coal, oil and gas), would typically not constitute an indirect effect of the proposed action because it is not reasonably foreseeable how those commodities will be used. It is also difficult to discern if the consumption of those or any commodities is actually caused by the BLM's action. For example, how crude oil will be used, whether any or all of the oil will be refined for plastics or other products that will not be burned; the possible mix of ultimate uses with disparate carbon emissions (e.g., auto fuel, bunker oil, diesel, kerosene); and the market forces that 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 GHG emissions (WEG Protest at pages 7-9), including at the leasing stage; however, the circumstances and information in those offices differ from the Aug 2016 Sale. While those offices or agencies may have reasonably determined that quantifying GHG estimates is appropriate for the actions they were considering, we find that GHG estimates for a lease sale located over such a large area with the heterogeneous conditions and factors present in these six BLM field offices make such estimates prone to substantial uncertainty and are speculative in nature. Furthermore, when applicable and necessary, the BLM will make site- and circumstance-specific estimates of GHG emissions for actual operations proposed on the Aug 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 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

[15] 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 GHG emissions exceeding the 25,000 TPY threshold that the CEQ's 2011 Draft Guidance tentatively provides (at page 18).

with an oil and gas lease development proposal" (WEG Protest at page 10). However, as the BLM in Wyoming continues to demonstrate (and WEG continues to overlook),[16] 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 compliance with NEPA and avoids speculative guesses as to impacts at the leasing stage. The 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." (WEG Protest at page 11).**

BLM Response

In reviewing the WEG's arguments related to the Social Cost of Carbon (SCC) for the Aug 2016 Sale, the BLM notes that the WEG submitted substantially identical arguments as to what the WSO has previously addressed in response to WEG's Aug 2015 Sale and Feb 2016 Sale protests, 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 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 or Feb 2016 Sale protest decisions, 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.

3. **"We remain concerned that sage grouse stipulations prescribed in BLM land-use plan amendments and revisions to protect greater sage grouse are scientifically unsound, legally invalid, and fail to grant an adequate level of protection to allow for the survival of greater sage grouse in the context of development on oil and gas**

4.

[16] 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

leases, and therefore protest these parcels." (WEG Supplemental Protest at page 3).

BLM Response

We note that the protest references (at page 2) three EAs prepared by the BLM for the lease sale. Of note, all three of the referenced EAs are not associated with the Aug 2016 sale – this may explain the WEG's inchoate supplemental arguments related to the sale. The WEG also references an EA from the BLM's High Desert District (HDD) in its arguments, but there are not any parcels contemplated in the Aug 2016 sale located in the HDD.

As we have explained to RMW, above, a lease sale protest is not another opportunity to challenge the recent RMP decisions made by the BLM; that opportunity has passed, and we find that offering the protested parcels conforms to the recent RMP revisions and amendments, and the lease sale EAs correctly tier to the EISs that analyzed and disclosed potential effects to greater sage-grouse and their habitats.

We deny the remainder of the WEG's protest.

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 August 2, 2016 Notice of Competitive Oil and Gas Lease Sale will be offered, with the exception of the two deferred by the BLM through the Information Notice dated May 11, 2016.

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.

Mike Valle

Mike Valle
Acting Deputy State Director,
Minerals and Lands

1 - Attachment
1 – Form 1842-1

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL..... A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL..... U.S. Department of Interior, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009

WITH COPY TO SOLICITOR... U.S. Department of the Interior, Office of the Solicitor, 755 Parfet Street, Suite 151 Lakewood, CO 80215

3. STATEMENT OF REASONS Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR..... U.S. Department of the Interior, Office of the Solicitor, 755 Parfet Street, Suite 151 Lakewood, CO 80215

4. ADVERSE PARTIES..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY..... Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ---------- Alaska
Arizona State Office --------- Arizona
California State Office ------- California
Colorado State Office -------- Colorado
Eastern States Office --------- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ---------- Idaho
Montana State Office --------- Montana, North Dakota and South Dakota
Nevada State Office ---------- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ---------- Oregon and Washington
Utah State Office ---------- Utah
Wyoming State Office -------- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.