



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
3100 (921 Gamper)
November 2016 Protests

OCT 31 2016

CERTIFIED – RETURN RECEIPT REQUESTED

Receipt No. 91 7199 9991 7036 1773 6019

Diana Dascalu-Joffe
Center for Biological Diversity
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CERTIFIED – RETURN RECEIPT REQUESTED

Receipt No. 91 7199 9991 7036 1773 6033

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Receipt No. 91 7199 9991 7036 1773 6026

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CERTIFIED – RETURN RECEIPT REQUESTED

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DECISION

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**NOVEMBER 1, 2016 OIL AND GAS LEASE SALE PROTEST OF 21 PARCELS
PROTEST DENIED**

ALL PROTESTED PARCELS WILL BE OFFERED

Between the dates of August 3, 2016 and September 2, 2016, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received three protests to the offering of parcels at the BLM Wyoming November 1, 2016, competitive oil and gas lease sale (CLS). WildEarth Guardians (WEG), Center for Biological Diversity, Sierra Club, and Great Old Broads for Wilderness (collectively referred to as CBD) are the protesting parties. The parties are collectively protesting all 21 final lease sale parcels listed within the November 1, 2016 CLS.

If a protester did not submit written comments to the BLM, during the 30-day leasing Environmental Assessment (EA) comment period, or otherwise could not demonstrate they have standing to file a protest, the BLM would deny such protests. Here, WEG, Sierra Club, Great Old Broads for Wilderness and CBD submitted written comments to the BLM High Desert District (HDD) office during the November 2016, CLS EA comment period which ran from April 19, 2016 through May 19, 2016, and therefore the BLM is considering and responding to the group's protests.

BACKGROUND

The BLM received nominations for the November, 2016 the CLS from September 21, 2015 through December 18, 2015. The November, 2016 CLS includes Federal fluid mineral estate located in the BLM Wyoming's High Desert District (HDD) and involves all four field offices including Pinedale, Rawlins, Rock Springs, and Kemmerer. 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 feasible), review of conformance with the applicable Resource Management Plan (RMP), and preparation of a CLS EA documenting National Environmental Policy Act (NEPA) compliance.

During the BLM's preliminary review of these parcels, the WSO independently reviewed each parcel for conformance with the applicable RMP,¹ coordinated with the State of Wyoming Governor's Office and the Wyoming Game and Fish Department (WGFD), considered recent changes to National and State BLM policies and ongoing efforts by BLM Wyoming to revise or amend the RMPs for planning areas subject to this sale.

After preliminary review at the WSO, those parcels that could be offered consistent with planning directives were provided to the HDD Office and associated field offices to begin the interdisciplinary review, including field visits to nominated parcels (where feasible), confirming conformance with the applicable RMP², and preparing an EA documenting NEPA compliance. The preliminary parcel list was provided to the WGFD for review, and split estate land owners were notified per Washington Office IM No. 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews. Following the signing of the Record of Decision and Approved RMP Amendments for the Rocky Mountain Region, including the Greater Sage Grouse (GSG) sub-regions (ARMPA) on September 21, 2015, under the discretion of the State Director, the WSO deferred all or portions of 43 parcels that are within Priority Habitat Management Areas (PHMAs) identified in the ARMPAs. An additional 75 parcels were deferred from detailed analysis in the EA because of the ongoing Rock Springs RMP revision. See EA, version 2, pages 1-2. The EA (DOI-BLM-WY-D040-2016-0138-EA), along with the

¹ See the BLM's Land Use Planning Handbook at page 42: "After the RMP is approved, any authorizations and management actions approved... must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP." See also 43 CFR §1610.5-3.

² A Record of Decision amending nine Resource Management Plans in Wyoming was signed on September 21, 2015. This amendment is entitled Wyoming Greater Sage Grouse Land Use Plan Amendment (ARMP).

draft and unsigned Finding of No Significant Impact (FONSI)³ were released on April 29, 2016, for a 30-day public review period, as required by Washington Office IM No. 2010-117. The EA tiered to the existing Field Office/Resource Area RMPs, as amended (2015) and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR §1502.20:⁴

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

The current RMP EISs and associated Record of Decisions considered compliance with all applicable laws and regulations. For leasing and development of fluid minerals, these include, but are not limited to: NEPA, the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), the 2005 Energy Policy Act (EPA), the Mineral Leasing Act (MLA), and the regulations at 43 CFR § 3100 and § 3160.

The NEPA guides the environmental analysis process. Generally, the scope of an analysis relates to the purpose and need for the proposed action. The BLM WY November, 2016 CLS EA described its purpose and need at (HDD EA v.2 at page 3):

The BLM's purpose for offering parcels and subsequent issuance of leases in the November 2016 lease sale is to provide for exploration and development of additional oil and gas resources to help meet the nation's need for energy sources, while protecting other resource values in accordance with guiding laws, regulations, and Land Use Planning decisions. Wyoming is a major source of natural gas for heating and electrical energy production in the United States. The offering for sale and subsequent issuance of oil and gas leases is needed to meet the requirements of the MLA, the FLPMA, and the minerals management objectives in the Kemmerer, Pinedale, Rawlins, and Green River Resource Management Plans (RMP). Oil and gas leasing provides the opportunity to expand existing areas of production and to locate previously undiscovered oil and gas resources to help meet the public's energy demands.

Decisions to be made based on this analysis include which parcels would be offered for lease, which parcels would be deferred, which parcels are not available for leasing, and what stipulations will be placed on the parcels that would be offered for lease at the November 2016 lease sale

The EA considered two alternatives in detail:

- The No Action alternative (Alternative A) which considered not offering any of the nominated parcels available for lease.

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

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

- The Proposed Action alternative (Alternative B) which included offering 21 parcels (whole or in part).

Based on all of the above described deferrals, approximately 30,197.030 acres are proposed to be offered at the November, 2016 CLS. All parcels proposed for offering have been determined to be available for leasing as they have been designated for multiple-use management, subject to the stipulations identified in the Rawlins Record of Decision (ROD) and Approved RMP, dated Dec. 24, 2008, at 2-22, Map 2-38 (Oil and Gas Classifications), Green River (Rock Springs) ROD and RMP, dated Aug. 8, 1996 at 12, 89 (Map 13(No Lease Areas)). On September 21, 2015, the BLM issued a ROD for the Greater Sage Grouse ARMPA for the Casper, Green River, Kemmerer, Newcastle, Pinedale, and Rawlins RMPs⁵, at Appendix A, page 114, Map 2-2: Wyoming Fluid Minerals (Oil and Gas). The EA and draft FONSI prepared for the November 2016 CLS tiers to these decisions and incorporates by reference specific information in the GSG ARMPA and a Hydraulic Fracturing White Paper contained in Appendix D of the EA.

The HDD EA considered one additional alternative but eliminated it from detailed analysis. This alternative would offer all nominated parcels with a No Surface Occupancy stipulation (NSO). This alternative was dismissed from further review because it would not be in conformance with the applicable RMPs and would unnecessarily constrain oil and gas occupancy in areas where the Kemmerer, Pinedale, Rawlins, and Green River RMPs, as amended (2015), have determined that less restrictive stipulations would adequately mitigate the anticipated impact.

Through the analysis in the EA, the HDD also analyzed whether the proposed parcels were appropriate for leasing. In doing so, the BLM reviewed the parcels for the presence of various resource values and conflicts, including the presence of wilderness characteristics and receipt of Citizen Proposed Wilderness Areas that have not yet been reviewed for new information (at Appendix C), and applied appropriate stipulations controlling the surface use of the individual parcels.

ISSUES – WILDEARTH GUARDIANS

Based on our review of the record, it does not appear that the WEG's arguments vary significantly from previous protest points raised in their November 2014, May 2015, or November 2015 lease sale protests. Because the WEG raises arguments previously addressed without showing how those arguments remain viable in light of previous decisions, we incorporate by reference our previous responses in full. The WEG's arguments are subject to summary disposition *See, Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

⁵ The ROD covers several planning areas and is entitled the :Rocky Mountain Region Greater Sage-Grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming, and the Approved Resource Management Plans (RMPs) for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland. The parcels in this sale are subject to the Approved RMP Amendment for Casper, Rawlins, Rock Springs, Pinedale, Newcastle, and Kemmerer Field Offices signed September 21, 2015.

“WildEarth Guardians protests the BLM’s November 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].” (Protest, page 3).

- 1. “The BLM completely rejected analyzing and assessing the potential direct and indirect greenhouse gas emissions, including carbon dioxide and methane, that would result from the reasonably foreseeable development of the proposed leases. Although acknowledging that development of the lease parcels would occur and that greenhouse gas emissions would be produced, no analysis of these emissions was actually prepared.” (Protest, page 5).**

BLM Response

We refer the WEG to the November 2015 Protest Decision, dated November 2, 2015, pages 14-20 for a detailed response to this comment. The WEG has provided no new information that would cause us to modify or supplement our previous decision.

For this reason, 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.” (Protest, page 7).**

BLM Response

We refer WEG to the November 2015 Protest Decision, dated November 2, 2015, pages 20-22 for a detailed response to this comment. WEG also overlooks that the BLM has included estimated emissions of GHGs in the EA (see page 57). WEG has provided no new information that would cause us to modify or supplement our previous decision.

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

- 3. The BLM failed to appropriately analyze and assess impacts to Sage Grouse.**

...We remain concerned that sage grouse stipulations prescribed in the 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 leases, and therefore protest these parcels.

...We also protest the sage grouse parcels because the leasing of PHMA and GHMA lands is inconsistent with the new plan amendment’s direction to

prioritize oil and gas leasing and development outside designated sage grouse habitats.

...The BLM should not issue these sage grouse parcels unless a rigorous set of stipulations, far stronger than those provided in the EA, are applied to the parcels. This should include at a minimum 4-mile NSO stipulations around active leks.

...The NSO stipulation of 0.6 mile surround lek locations is insufficient to prevent significant impacts to lek populations based on the best available science.

...The programmatic RMP allows a 5% level of surface disturbance within sage grouse Core Areas, a level of surface disturbance that is incompatible with maintaining sage grouse populations and preventing population declines caused by excessive habitat destruction and fragmentation.

...It is critically important for the BLM to identify and protect winter concentration areas. These lands should be closed to fluid mineral leasing, with Conditions of Approval applying the NSO stipulation inside and within 2 miles of these areas. (Protest, pages 11-22)

BLM Response

No parcels in the November 2016 CLS are located in a delineated Winter Concentration Area (WCA) outside or inside of PHMA areas. Applying an NSO stipulation within these areas and within 2 miles of these areas, would not be in conformance with the ARMPA ROD. Consideration of additional RMP-level management decisions are outside the scope of the November 2016 CLS EA.

The Draft EIS prepared for the ARMPA specifically analyzed various levels of protection for Sage Grouse including 4-mile NSOs and closing the lands altogether. The land use restrictions included in the Preferred Alternative and ultimately selected in the ARMPA ROD are appropriate to conserve Greater Sage-Grouse habitat. The BLM and Forest Service developed Alternative E in the ARMPA, and selected in the ROD, based on the Wyoming Executive Order (WY EO 2011-5) Core Area Strategy, BLM WY IM No. 2010-012, BLM WY IM No. 2012-019, BLM WO IM No. 2012-044, the National Technical Team Report, best available science, and input from the USFWS, State of Wyoming, cooperating agencies, and the public to create a Management approach to both protect Greater Sage-Grouse and allow for multiple uses of public lands. The combination of surface disturbance restrictions, timing limitations, limits on density of development, and other management meet the purpose and need of the planning effort and will allow the continued existence of the Greater Sage-Grouse in Wyoming and allows for multiple use of public lands as required by the Federal Land Policy and Management Act.

As a result of the ultimate RMP decisions in WY and surrounding states involved in the planning effort, the USFWS found the plans to be sufficient for protection of the Greater Sage-Grouse and found on September 22, 2015 that listing of the bird was no longer warranted.⁶

All parcels proposed to be sold at the November 1, 2016 CLS are offered in conformance with the Pinedale RMP, the Green River RMP, the Rawlins RMP and the Kemmerer RMP, as amended by the September 2015 ROD for the ARMPAs for the Rocky Mountain Region Greater Sage-Grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming, and the Approved Resource Management Plans (RMPs) for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland.

As provided for in Washington Office Instruction Memorandum No. 2016-143, Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments -Oil & Gas Leasing and Development Sequential Prioritization, the BLM has reviewed the subject parcels for consistency. All of the subject parcels are located within what is assumed to be suitable GSG habitat. This policy clarifies that the intent of prioritization is to ensure consideration of the lands outside of GHMAs and PHMAs for leasing and development before considering lands within GHMAs and, thereafter, to ensure consideration of lands within GHMAs for leasing and development before considering any lands within PHMAs for leasing and development in an effort to focus future surface disturbance outside of the most important areas for sage-grouse conservation consistent with the conservation objectives and provisions in the GRSG Plans [see page 44 of the Lease Sale EA which states: Fifteen of the proposed sale parcels for the November 1, 2016 sale, are located in General Habitat Management Areas (GHMA), and six (6) are located in PHMA as identified in the ARMPA ROD.

Following a detailed review in consideration of the WO IM No. 2016-143 factors, fifteen (15) of the proposed sale parcels for the November 1, 2016 sale, are located in General Habitat Management Areas (GHMA), and six (6) are located in PHMA as identified in the ARMPA ROD. The parcels located in PHMA are proximate or adjacent to existing production (within 2 miles of leases currently held by production), have moderate to very high potential for oil and gas development, and only one has an active GSG lek within its boundaries. Parcels being offered in PHMA are located within PHMAs that do not have more than 5 percent cumulative disturbance based on data provided by the University of WY (Wyoming Geographic Information Science Center-WYGISC) collected under the DDCT process (dated February 9, 2016). All of the PHMA parcels being offered are located within the Greater South Pass PHMA unit; several of the offered parcels have active sage grouse leks within their boundaries. These parcels have multiple GSG related stipulations attached to them including No Surface Occupancy, Controlled Surface Use and Timing Limitations (see Table 3-1)]. Information provided on page 44 of the EA has been updated to further clarify information regarding these parcels as they relate to Greater Sage-Grouse.

For the above-described reasons, this portion of WEGs protest is denied.

⁶ See US Fish and Wildlife Service, 12-Month Finding on a Petition to List Greater Sage-Grouse, 80 Fed. Reg. 59,858, 59,883 (October 2, 2015)

ISSUES –CENTER FOR BIOLOGICAL DIVERSITY

- 1. The EA fails to properly apply BLM’s Instruction Memorandum No. 2010-117 criteria to this leasing decision. (Protest, page 3)**

BLM Response

Based on our review of the record, it does not appear that the CBD’s protest arguments vary significantly from those raised during the 30-day public comment period for the November 2016 lease sale EA and we refer CBD to Appendix E, comment response #73 which provided the following response:

The BLM properly applies BLM's Instruction Memorandum 2010-117 Criteria to Its Leasing Decision. Out of 140 preliminary parcels, the BLM throughout the HDD is proposing to offer only 21 parcels containing approximately 30,197 acres, which is 11 percent of the nominated acreage.

Resource management plans (RMP) make resource allocation decisions concerning the availability of lands for oil and gas leasing, including cumulative impacts to surface resources from expected development. The cumulative impacts and RMP decisions appropriately balance the concerns raised by the Comment, through application of areas where development is allowed against areas which are not allowed. This EA and its leasing recommendations are in compliance with FLPMA's mandate to provide for both conservation and resource use, and FOGRMA's requirements for quarterly lease sales where lands area available..

This EA has specifically considered the items identified in WO IM 2010-117 Leasing Reform. Please see pages 78-80 of the subject EA. These lands remain available under the Greater Sage Grouse RMP amendment and the base RMP RODs.

To the extent possible, the BLM has prepared a site-specific review of the subject parcels, including conducting site visits where feasible, reviewing the best available information regarding resource conditions (see Table 1 in the EA), and attaching appropriate stipulations to control future development activity. Should the parcels be sold and leases issued, additional site-specific NEPA will be prepared if an Application for Permit to Drill (APD) is submitted.

Because CBD has provided no new information, or shown how their arguments were not adequately addressed in BLM’s response to their comments, this portion of CBDs protest is denied.

- 2. The EA fails to take a “hard look” at direct, indirect and cumulative environmental and climate change impacts that would result from new leasing in the Wyoming High Desert region. (Protest, page 8)**
 - a. The EA fails to analyze air quality impacts that would result from new leasing in the Wyoming High Desert region. (Protest, page 10)**
 - b. The EA fails to analyze greenhouse gas emissions and climate change impacts that would result from new leasing in the Wyoming High Desert region. (Protest page 19)**

BLM Response

Based on our review of the record, it does not appear that the CBD's protest arguments vary significantly from those raised during the 30-day public comment period for the November 2016 lease sale EA and we refer CBD to Appendix E, comment responses #12, 14, 15, 17, 18, 19, 20, 37, and 47 (provided in *italics* below).

The act of leasing does not generate any air emissions. However, air emission estimates were provided in the underlying RMP EIS', as amended (2015) and have been included in this EA. These air emission estimates were based on the expected development of the lease tracts included in this sale, based on information contained within the Reasonably Foreseeable Development scenario prepared for the ARMPA EIS. Assuming the parcel is sold and a lease is issued, and if development is proposed, additional site-specific NEPA analysis will be performed, which could include detailed air quality modeling. If any air pollutant will be released to the atmosphere from a new or modified facility, the facility is subject to the Wyoming Air Quality Standards and Regulations (WAQSR) and the Wyoming Environmental Quality Act. Owners/operators of all regulated air emission sources constructed or modified after May 29, 1974, must comply with the WAQSR Chapter 6, Section 2 permitting requirements. The point of issuing these permits by the State of Wyoming is to ensure compliance with all relevant state and federal air quality standards'. CBD overlooks information in the FONSI reiterating that any project which would cause a federal law or regulation to be violated would be denied; all APDs approved by the BLM are conditioned upon compliance with Wyoming's environmental regulations.

As stated in Section 1.1 of the EA, pursuant to 40 CFR 1508.28 and 1502.21, the EA tiers to and incorporates by reference the information and analysis contained in the EIS and RMP RODs for the Rawlins, Rock Springs, Pinedale, and Kemmerer Field Offices as amended (2015) and Bureau of Land Management September 21, 2015 Wyoming Approved Resource Management Plan Amendment (ARMPA) for Greater Sage-Grouse (GRSG). Therefore, a new EIS for leasing is not necessary. These EIS documents analyzed the effects of oil and gas leasing and development, and the specific management goals, plans and monitoring actions are addressed in the RMPs.

This lease sale EA has incorporated expected GHG emission information and discloses the relevant impacts potentially resulting from climate change and to air quality resources. An attempt to be more specific and quantitatively identify the potential impacts at the present stage was not employed because such an approach would be purely speculative and offer little value with respect to the informed decision-making objectives of the National Environmental Policy Act ("NEPA"). NEPA requires that agencies consider reasonably foreseeable impacts, but it does not require extensive consideration of impacts, the likelihood of which are speculative in nature. See e.g. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 356 (1989).

The BLM has acknowledged that climate science does not allow a precise connection between project-specific GHG emissions and specific environmental effects of climate change. This approach is consistent with the approach that federal courts have upheld when considering NEPA challenges to BLM federal coal leasing decisions. WildEarth Guardians v. Jewell, 738 F.3d 298, 309 n.5 (D.C. Cir. 2013) WildEarth Guardians v. BLM, , 8 F. Supp. 3d 17; 34 (D.D.C. 2014)

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

Because anticipated production from a particular lease parcel is speculative, and the resulting CO₂ emissions from eventual combustion of that production are even more speculative, a qualitative evaluation of climate change at the lease sale stage is appropriate. Should expected impacts be outside the scope of the ARMPAs, additional quantitative analysis may be appropriate at that time.

The EA acknowledges that the Federal action under consideration – leasing of the oil and gas for possible exploration and development – could eventually result in a variety of impacts to air quality (including the generation of GHG emissions) if the parcels were offered and sold, if a lease was issued, if the lessee or its operator proposed drilling projects on the leases, if the BLM approved the drilling project, if the projects were initiated and hydrocarbons are produced in economic quantities, and eventually combusted. In addition to the EA, the ARMPA also included estimates of the potential GHG emissions that could result from the Reasonably Foreseeable Development prepared for the ARMPA. These estimates can be found generally in section 4.2.4 starting on page 4-10 of the ARMPA Final EIS.

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

Currently, the WDEQ-AQD does not have regulations regarding greenhouse gas emissions, although these emissions are regulated indirectly by various other regulations.⁷

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

Some authorized activities within the Kemmerer, Pinedale, Rock Springs, and Rawlins Field Offices generate GHG emissions. Oil and gas development activities can generate CO₂ and NH₄ (during processing). Carbon dioxide emissions result from the use of combustion engines for OHV and other recreational activities. Wildland fires also are a

⁷ 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.”

source of CO₂ and other GHG emissions, and livestock grazing is a potential source of methane. Other activities in the Kemmerer, Pinedale, Rock Springs and Rawlins Field Office areas with the potential to contribute to climate change include soil erosion from disturbed areas and fugitive dust from roads, which have the potential to darken snow-covered surfaces and cause faster snow melt.

The EA's analysis of impacts for the subject Alternatives explained, however, that quantifying the potential GHG emissions from possible oil and gas activities on the Federal leases is precluded given the speculative nature as to whether, and how, the Federal leases would be explored or developed (at page 71):

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

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

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

The BLM issued an IM in 2008⁸ that included draft guidance for BLM offices to use in addressing potential impacts related to climate change. Although the IM expired in 2009, it remains the authoritative direction for BLM.

However, in 2011, the BLM WO circulated internal draft guidance to its Field Offices entitled "Integrating Climate Change into the NEPA Process" (BLM's 2011 Draft Guidance). On April 3, 2015, the BLM WO sent an e-mail notifying the BLM's leadership and management teams that the BLM's 2011 Draft Guidance document "remains in effect" and should continue to be followed although it is still only draft guidance.

Acknowledging the "unique challenges" posed by addressing GHG and climate change in NEPA documents, the BLM's 2011 Draft Guidance provides interim direction to the BLM that the agency has used until further guidance is 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

⁸ Washington Office IM 2008-171, Guidance on Incorporating Climate Change into Planning and NEPA Documents, issued August 19, 2008.

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 August 1, 2016, the Council on Environmental Quality (CEQ) issued final guidance for assessing greenhouse gas emissions and climate change impacts.⁹ 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. CEQ does not expect that implementation of this guidance will require agencies to develop new NEPA implementing procedures.

The CEQ's 2016 final guidance emphasizes use of the "rule of reason" which (at page 5):

Counsels agencies that the "rule of reason" inherent in NEPA and the CEQ Regulations allows agencies to determine, based on their expertise and experience, how to consider an environmental effect and prepare an analysis based on the available information.

When addressing the extent of the anticipated environmental consequences, the CEQ's final guidance also indicates the agency should (at page 13) "...consider both the context and intensity."¹⁰

In our review of the November 2016 lease sale EA, we find that the HDD appropriately disclosed that GHG emissions could result from Federal lease exploration and development

⁹ Available at: <https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance>

¹⁰ 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.

activities (and that such emissions would result in “an incremental contribution” to local and global GHG emissions (EA at page 58), 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 and production occur and the ultimate end use and combustion of produced Federal minerals.

The HDD EAs describe the substantial uncertainty that exists at the time the BLM offers a lease for sale regarding crucial factors that will affect potential GHG emissions at a site-specific level (or even at a regional level), including: well density; geological conditions; development type (vertical, directional, horizontal); hydrocarbon characteristics; equipment to be used during construction, drilling, production, and abandonment operations; and potential regulatory changes pertaining to GHGs over the life of the lease. Implicit in this acknowledgement is that – when actual operations are proposed on an issued lease through an APD or Sundry Notice (SN) --information related to potential GHG emissions will be less speculative. In this case, if an APD or SN is submitted, that is the appropriate time to estimate GHG emissions if possible based on the specific development proposal. Whenever the BLM determines it is appropriate to estimate GHG emissions, those emissions levels cannot be translated from the global phenomenon to actual on the ground impacts (either beneficial or not) within the project area. In the EA, BLM has provided both a quantitative and qualitative discussion of GHG emissions and the expected changes in the region based on current climate models.

As the EA acknowledges, it would be speculative to predict the manner in which the leases will be developed. According to BLM Wyoming lease data, as of April 2016, over one third (41 percent) of fluid mineral leases are currently not developed. If one looks at this further, in the last ten years 38 percent of issued leases have expired for failure to establish production in paying quantities, or were terminated for failure to pay rentals, or were never explored. As well, the Reasonably Foreseeable Development (RFD) reports prepared for the relevant land-use plans disclose variable rates of success (wells drilled and productive) over time for wells in the planning areas. These success rates have ranged from a low of 13% to upwards of 90 percent depending upon where you are within the individual field offices, the formations being targeted, price indexes, and technological advances. Where discussed, success rates are expected to decline (See Rock Springs RFD (2014), pages 24 - 27, Rawlins RFD (2004), pages 4 - 5, Kemmerer RFD (2006), pages 4-7 to 4-19, and Pinedale RFD (2006), Table 5). These numbers illustrate the substantial uncertainty as to whether and to what degree leases in WY will be explored or developed.¹¹

¹¹ 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 HDD's EA's conclusion that development of the subject parcels is "unknown" (HDD's 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

The proposed parcels in the November 2016 lease sale are located in four BLM Field Offices in Wyoming, whose jurisdiction encompasses 41 percent of the State of Wyoming and which include existing oil and gas fields with remarkably different conditions, characteristics, operators, well densities, and operational methods. While CBD believes that estimates of GHG emissions at the leasing stage for this sale would be helpful to inform the public and the decision-maker, we disagree, and believe the conclusions in the EA explaining the substantial speculation about whether and how the November 2016 lease parcels will be developed, limits the usefulness of attempting to further quantify direct or indirect GHG emissions at the leasing stage, beyond the information already disclosed in the 2015 Greater Sage Grouse ARMPAs, when those emissions cannot be translated into specific impacts that would meaningfully inform the Authorized Officer.

To the extent that CBD 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 fluid mineral 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.

Because CBD has provided no new information, or shown how their arguments were not adequately addressed in BLM’s response to their comments, this portion of CBDs protest is denied.

3. The EA improperly tiers to the Kemmerer, Pinedale, Rawlins and Rock Springs/Green River Resource Management Plans’ Federal environmental impact statements. (Protest, page 25)

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

- a. **The BLM should have conducted an EIS instead of an EA and FONSI for the Wyoming High Desert lease sale. (Protest, page 27-30)**

Despite that highly sensitive sage-grouse habitat would be threatened by new leasing, the EA fails in three major respects to disclose or analyze indirect and cumulative impacts of leasing on greater sage-grouse. It tiers to and relies on RMP decisions for management of Wyoming greater sage-grouse habitat that fail to follow the best available science regarding measures necessary to ensure the survival and recovery of the species. The proposed leasing action, moreover, violates FLPMA by failing to conform to a key management prescription of those plans – the obligation to “prioritize the leasing and development of fluid mineral resources outside GRSG habitat.” Furthermore, because the proposed leases are not in conformance with the 2015 RMP amendments and undermine significant assumptions of their accompanying FEISs (i.e., that new oil and gas development will tend to occur outside of greater sage-grouse habitat), the EA cannot tier to or rely on those EISs.

The CBD further states that: [The] level of controversy associated with fracking is sufficient to trigger the need for an EIS. The CBD continues: “While it is clear that oil and gas activities can cause great harm, there remains much to be learned about the specific pathways through which harm may occur and the potential degree of harm that may result; NEPA clearly dictates that the way to address such uncertainties is through the preparation of an EIS. The use of fracking fluid which is likely to occur as a result of the lease sale, and other risks associated with unconventional drilling, pose a major threat to public health and safety and therefore constitute a significant impact; BLM therefore must evaluate such impacts in an EIS.”

CBD also argues that the effects on the human environment will be highly controversial; the lease sale presents highly uncertain or unknown risks; and the lease sale poses threats to public health and safety.

BLM Response

Based on our review of the record, it does not appear that the CBD’s protest arguments vary significantly from those raised during the 30-day public comment period for the November 2016 lease sale EA; therefore, we incorporate by reference our response to comments 71 and 72 in their entirety.

As stated in Section 1.1 of the EA, pursuant to 40 CFR § 1508.28 and §1502.21, the EA tiers to and incorporates by reference the information and analysis contained in the EIS and RMP RODs for the Rock Springs, Rawlins, Pinedale, and Kemmerer offices as amended (2015) and Bureau of Land Management September 21, 2015 ARMPA for Greater Sage-Grouse. Therefore, a new EIS for leasing is not necessary. These EIS documents analyzed the effects of oil and gas leasing and development, and the specific management goals, plans and monitoring actions are addressed in the RMPs.

All parcels for the November 2016 Competitive Oil and Gas Lease Sale are being offered in conformance with the existing land use plans as required by 43 CFR §1610.5. Additional NEPA analysis at the site-specific level will occur at the development stage that will analyze resource conflicts and identify mitigation for specific impacts. The BLM's NEPA Handbook provides that tiering is "using the coverage of general matters in broader NEPA documents in subsequent narrower NEPA documents and that tiering allows the tiered NEPA document to narrow the range of alternatives and concentrate solely on the issues not already addressed.

In regards to the specific CBD arguments, the BLM has and will continue to appropriately consider impacts from hydraulic fracturing with information available at the leasing stage. The specific information that would be necessary to provide for meaningful analysis cannot be ascertained without specific reservoir and well installation information that is only available when a development proposal is submitted. At this time the BLM can adequately evaluate the fracking operations with knowledge of the geologic and hydrologic conditions.

This lease sale is not unique or unusual. Oil and gas leasing and post-lease development have been ongoing in the United States, including portions of the High Desert District for more than a century. The BLM has considerable experience reviewing and approving oil and gas operations with due consideration for the environment. The environmental effects to the human environment are considered in the corresponding RMPs/FEISs/RODs, as amended (2015). Gas exploration and drilling operations are regulated for health and safety concerns by local, State and Federal agencies. The subject protest has not raised any new effects on the human environment that are considered to be highly uncertain or involve unique or unknown risks that BLM has not already considered.

The BLM recognizes there is a concern regarding hydraulic fracturing operations, specifically the potential to impact drinking water supplies either from downhole migration, from spills on the surface, or the perceived potential for induced seismic activity. This EA, through incorporation of Appendix D, has disclosed that there are adequate water supplies available in Wyoming to meet the reasonably foreseeable development scenarios described in each of the subject RMPs and identifies potential mitigation from impacts from hydraulic fracturing. There are still questions about the relationship of hydraulic fracturing and induced seismic activity. Seismic activity in oil and gas development areas has repeatedly been shown to be associated with the reinjection of waste waters in disposal wells and/or through heavy pumping of groundwater combined with drought effects, and not related to hydraulic fracturing. The BLM has acknowledged that there is also uncertainty whether a hydraulic fracturing operation is capable of inducing the formation of a fracture network capable of intersecting unknown faults or extending into a formation containing usable water supplies. To date, this has not been proven after decades of oil and gas development in Wyoming and recent studies by the EPA indicate that the possibility of fault reactivation creating a pathway to shallow groundwater resources is remote (EPA, Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources: Progress Report Dec 2012, pg 74).

Finally, the Wyoming Oil and Gas Conservation Commission recently passed rules requiring both pre- and post-development groundwater sampling to document baseline groundwater conditions and to assess any subsequent changes in water quality post development. The BLM,

at all times, with or without applicable lease stipulations, has retained full authority to deny an APD whose proposed drilling/completion program would adversely impact usable water zones or violate a Federal law. This authority can be found at 43 CFR § 3165-2(d), Onshore Order #2, and applicable laws and regulations.

Because CBD has provided no new information, or shown how their arguments were not adequately addressed in BLM's response to their comments, this portion of CBDs protest is denied.

4. **BLM has failed to consider site-specific impacts to sensitive species and other wildlife species of concern.**
 - a. **The proposed lease sale is inconsistent with the revised RMPs requirement to prioritize oil and gas development outside of Greater Sage Grouse Habitat.**

...the proposed action is directly in conflict with a core provision of the 2015 sage grouse RMP amendments. Despite its acknowledgement of the prioritization requirement by deferring over 71,800 acres, however, the BLM's proposed action would lease 21 parcels which all contain general and priority habitat. In particular the EA fails to offer any explanation as to why approximately 71,800 acres are deferred as "consistent" with the prioritization requirement but the remaining parcels containing sage-grouse habitat are not.

The BLM Response

Based on our review of the record, it does not appear that the CBD's protest arguments vary significantly from those raised during the 30-day public comment period for the November 2016 lease sale EA and we incorporate by reference our response to comment #64 in its entirety.

The CBD is arguing that offering parcels in GHMA and PHMA is not consistent with the BLM Wyoming Greater Sage Grouse RMP RODs and FLPMA. The GSG ROD on page 1-25 states that:

Prioritization Objective-In addition to allocations that limit disturbance in PHMAs and GHMAs, the ARMPs and ARMPAs prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs. This is to further limit future surface disturbance and encourage new development in areas that would not conflict with GRSG. This objective is intended to guide development to lower conflict areas and as such protect important habitat and reduce the time and cost associated with oil and gas leasing development by avoiding sensitive areas, reducing the complexity of environmental review and analysis of potential impacts on sensitive species, and decreasing the need for compensatory mitigation.

According to the BLM Manual 1601 – Land Use Planning, page 2, Conformance is defined as “a proposed action shall be specifically provided for in the land use plan or, if not specifically

mentioned, shall be clearly consistent with the goal, objectives, or standards of the approved land use plan.” Further, on page 4, Objective is defined as “a description of a desired condition for a resource. Objectives can be quantified and measured and where possible, have established time frames for achievement.”

In a land use plan, Objectives are complemented by a Land Use Allocation, which is defined as “the identification in a land use plan of the activities and foreseeable development that are allowed, restricted, or excluded for all or part of the planning area, based on desired future conditions.”

For the subject lands proposed to be offered at the November 1, 2016 CLS, the RMP allocations, as amended (2015), are open and available for fluid mineral leasing: “Fluid mineral leasing would be allowed in Greater Sage-Grouse core habitat areas, except in areas that are unavailable for leasing due to the need to protect other sensitive resources. And, the agencies would allow oil and gas leasing consistent and subject to the leasing stipulations analyzed in the timing, distance, disturbance, and density restrictions sections. (See DEIS, Chapter 2, page 2-63)

We further refer CBD to page 2-2 of the GSG ROD which states that: Management decisions and actions are those provisions that help in meeting the established goals and objectives. They are the measures that will be applied to guide day-to-day activities on public lands, including but not limited to, stipulations, guidelines, BMPs (best management practices) and RDFs (required design features).” Prioritization was not an assumption in any of the impact analysis because the management actions were developed to meet the objective. (See FEIS, Chapter 4, page 4-13 and 4-14)

The subject parcels are being offered in conformance with the management decisions of the RMP ROD and include all appropriate stipulations as required to manage and control the rate and density of development should the parcels be sold, issued, and development proposed.

The BLM WSO further recognizes that the GSG ROD states that: “The BLM shall complete IMs for the following management direction and intends to complete these IMs within 90 days of the RODs: oil and gas leasing and development prioritization and livestock grazing.” On September 1, 2015 Washington Office IM 2016-143, Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments -Oil & Gas Leasing and Development Sequential Prioritization, was released as final policy which is after the BLM prepared the EA for the November 2016 CLS. The BLM has reviewed the policy guidance, and in consultation with the Washington Office, has found that the parcels proposed to be offered for sale are consistent with this guidance. We refer CBD to our response to comment 64, in Appendix E which states: BLMs prioritization of leasing in sage grouse habitat for this lease sale EA has taken into account the proximity of the parcels to existing development, development potential, and conflicts with sage grouse leks [see page 44 of the Lease Sale EA which states: Fifteen of the proposed sale parcels for the November 1, 2016 sale, are located in General Habitat Management Areas (GHMA), and six (6) are located in PHMA as identified in the ARMPA ROD. Following a detailed review in consideration of the WO IM 2016-143 factors, fifteen (15) of the proposed sale parcels for the November 1, 2016 sale, are located in General Habitat Management Areas (GHMA), and six (6) are located in PHMA as identified in the ARMPA

ROD. The parcels located in PHMA are proximate or adjacent to existing production (within 2 miles of leases currently held by production), have moderate to very high potential for oil and gas development, and only one has an active GSG lek within its boundaries. Parcels being offered in PHMA are located within PHMAs that do not have more than 5 percent cumulative disturbance based on data provided by the University of WY (Wyoming Geographic Information Science Center-WYGISC) collected under the DDCT process (dated February 9, 2016). All of the PHMA parcels being offered are located within the Greater South Pass PHMA unit; several of the offered parcels have active sage grouse leks within their boundaries. These parcels have multiple GSG related stipulations attached to them including No Surface Occupancy, Controlled Surface Use and Timing Limitations (see Table 3-1)]. Information provided on page 44 of the EA has been updated to further clarify information regarding these parcels as they relate to GSG.

Because none of the nominated parcels analyzed for this sale were located completely outside of Greater Sage-Grouse habitat, the BLM determined that the prioritization for this lease sale would offer parcels in the GHMA and several located in PHMA. The WO IM 2016-143 specifically states that: “This guidance is not intended to direct the Authorized Officer to wait for all lands outside GRSG habitat areas to be leased or developed before allowing leasing within GHMAs, and then to wait for all lands within GHMAs to be leased before allowing leasing or development within the next habitat area (PHMA, for example).”

Because CBD has provided no new information, or shown how their arguments remain valid in light of our previous response to their comments, this portion of CBD’s protest response is denied.

- b. While the EA acknowledges the potential for habitat loss (for Big Game), it erroneously concludes that the stipulations provided in the governing RMPs would be sufficient to offset these impacts.**

The CBD further elaborates: While the EA acknowledges the potential for habitat loss, it erroneously concludes that stipulations provided in the governing RMPs would be sufficient to offset these impacts. Other than No Surface Occupancy stipulations for a few parcels, the only protections are timing limitation stipulations, which prohibit surface disturbance during the winter months [unclear]. But this measure does nothing to offset the impacts of the substantial habitat loss that may occur with increased oil and gas infrastructure throughout the region which the mere presence of new well pads and other infrastructure will inflict. BLM’s proposed finding of “no significant impact” is baseless. (Protest, page 35)

- c. Parcel WY-16-11 falls within the Chain Lakes Wildlife Habitat Management Area. The offered parcel covers substantial portions of the special management area, but the EA provides no sense of the potential for new development to fundamentally alter and degrade its important habitat values via habitat fragmentation, noise, light pollution, and contamination of wetlands and artesian wells from increased runoff, frack fluid migration, and toxic spills. (Protest,**

BLM Response

Based on our review of the record, it does not appear that the CBD's protest arguments vary significantly from those raised during the 30-day public comment period for the November 2016 lease sale EA and we incorporate by reference our response to comment #65 in its entirety.

The BLM has adequately considered impacts to big game and offering the subject parcels is in conformance with the underlying RMPs, as amended (2015). Absent a definitive development proposal it is not possible to conduct a more specific impact and/or cumulative effects analysis and as stated in Section 1.3 of the EA, BLM cannot determine at the leasing stage whether or not a nominated parcel will actually be leased, or if leased, whether or not the lease would be explored or developed or at what intensity development may occur. See our response to CBD protest regarding Greenhouse Gas Emissions above; we incorporate this response as appropriate. As further stated in Section 1.3 of the EA, "additional NEPA documentation would be prepared at the time an APD(s) or field development proposal is submitted."

The development of oil and gas resources within the Chain Lakes management area was sufficiently analyzed in the lease sale EA, and the Rawlins RMP; a Controlled Surface Use stipulation has been added to the subject parcel which allows BLM the necessary discretion to control development within the subject management area. The RMP analyzed closing this area to oil and gas development and was found to not be necessary as the CSU would provide adequate mitigation for future development while still allowing for the objectives in the plan to be met (See Draft RMP, page 2-43 and various analysis in Chapter 4, RMP ROD page). No new information about conditions in the parcel was found during site specific review.

Additional mitigation, including adaptive management, could be developed during the site-specific NEPA analysis that would be required to address any specific post-lease exploration or development actions that are proposed and could include additional measures to mitigate impacts to wintering big game from production related activities. With appropriate site-specific analysis, restrictions on production related activities could be imposed. The Wyoming State Game and Fish Department (G&F) is encouraged to participate in the review of all APDs in identified big game crucial winter range and migration routes, and to submit "best practices" G&F considers necessary to mitigate any potential negative impacts, at that time in accordance with our MOU.

Because CBD has provided no new information, or shown how their arguments remain valid in light of our previous response to their comments, this protest point is denied.

DECISION

After careful review, all 21 protested parcels described in the Notice of Competitive Oil and Gas Lease Sale will be offered at the November 1, 2016 CLS. The protests submitted by the CBD et al. and WildEarth Guardians are DENIED.

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.


for Michael Valle
Acting Deputy State Director
Minerals and Lands

1- Attachments
1- Form 1 842-1