December 26, 2017

Randy Sorenson, Resource Advisor
Bureau of Land Management
Casper Field Office
2987 Prospector Drive
Casper, WY 82604-2968

Re: Protest of Six Parcels Proposed for BLM Wyoming's March 2018 Lease Sale

Dear Resource Advisor Sorenson,

Pursuant to 43 C.F.R. §§ 3120.1-3 and 4.450-2 the National Parks Conservation Association (NPCA) and the Powder River Basin Resource Council (PRBC), together “Parties,” protest the following parcels (Protested Parcels) proposed for the Bureau of Land Management’s High Plains District’s March 2018 Oil and Gas Lease Sale:

WYW-181Q-011
WYW-181Q-021
WYW-181Q-022
WYW-181Q-023
WYW-181Q-024
WYW-181Q-025

STATEMENT OF INTEREST

The mission of the National Parks Conservation Association is to “protect and enhance America’s National Park System for present and future generations.” Founded in 1919, NPCA is the leading citizen voice for the national parks. We are a national non-profit with 24 regional and field offices across the country, including our Northern Rockies Regional office in Bozeman, Montana and Grand Teton field office in Jackson, Wyoming. We have 779 active members in Wyoming as of September 2017. NPCA represents over 1.3 million members and supporters who care about America’s shared natural and cultural heritage preserved by the National Park System. NPCA commented on the BLM Wyoming High Plains and Wind River-Bighorn Basin District’s March 2018 Oil and Gas Lease Sale during the public comment period for the draft EA on August 17, 2017.

The Powder River Basin Resource Council (PRBRC) is a grassroots organization formed in 1973 dedicated to the stewardship of Wyoming’s resources. Our mission is the preservation and enrichment of our agricultural heritage and rural lifestyle; the conservation of Wyoming’s unique land, mineral, water and clean air resources consistent with responsible use of those resources to sustain the livelihood of present and future generations; and the empowerment of individuals through community organizing and leadership development to raise a coherent and effective voice in decisions that will impact their lifestyle.

STATEMENT OF REASONS
Parties protest the BLM's March 2018 oil and gas lease sale because the agency fails to adequately analyze and assess the general cumulative impacts and direct impacts of the reasonably foreseeable oil and gas development that will result from the sales to Fort Laramie National Historical Site, contrary to the requirements of NEPA, 42 U.S.C. §§ 4321-4370h.

I. BLM Improperly Deferred Impact Analysis to the APD Stage

The BLM's final EA for the March sale included no analysis or consideration of the lease sale's impacts on Fort Laramie National Historical Site, despite acknowledging concerns of the BLM's sister agency, the National Park Service (NPS), raised during the draft stage. In comments from May 2017, NPS staff at Fort Laramie described:

- a high level of concern for potential impacts that range from the visual intrusions that would exceed minor impacts on the historic scene and, hence, visitor experience to sharply increased heavy vehicle traffic, which would raise safety issues to an extreme level. There would also be less obvious, but no less insidious potential impacts to air quality, water quality, and night skies.

NPS staff asked that the BLM "carefully consider these and other impacts to this rural area of historic landscapes and events that are core to the heritage of America." Despite this direct request from a federal resource manager in close proximity to the proposed parcels, the BLM decided against considering any of the NPS' concerns, stating that "[NPS concerns] are impacts associated with lease development, and will be addressed site specifically if a development proposal is submitted."

As NPCA stated in comments on the draft EA, the BLM cannot defer its analysis of the impacts of leasing until the Application for Permit to Drill (APD) stage. Waiting until the APD stage to address park concerns will necessarily give inadequate consideration to park protections, as the BLM can only condition development after leasing, not prohibit it. Issuing leases is an irretrievable commitment of resources and confers to the lessee a valid existing right. Such a right cannot be extinguished should subsequent study find that the impacts of development on the neighboring national park site are too great. Postponing the majority of decisions to the APD stage means the scope of development will be shaped after the lease is in the legal authority of the oil and gas operator and after BLM has made an irretrievable commitment of resources.

The BLM has a clear responsibility to ensure the public has complete information about the impacts of a federal decision. Regulations guiding NEPA require that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and

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1 High Plains District Portion of the First Quarter 2018 Competitive Oil and Gas Lease Sale, DOI-BLM-WY-P000-2017-0002-EA, September 2017 at 11.
2 Letter from Superintendent Thomas M. Baker to District Manager Stephanie Connolly, May 25, 2017. (attached)
3 September 2017 EA, at 11.
4 See 43 CFR § 3101.1-2 "Surface use rights. A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes, and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed... At a minimum, measures shall be deemed consistent with lease rights granted provided they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year."
before actions are taken.” The BLM cannot simply split the action into different parts, i.e., leasing and development of a particular parcel, in order to avoid a finding of significant impact: “Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.”

Relatively, the BLM must consider the impacts of the development of the parcels because the actions of leasing and development are connected. NEPA guidance states that federal agencies must consider the impacts of “[c]onnected actions, which means that they are closely related and therefore should be discussed in the same impact statement.” Actions are connected when they, in part, “cannot or will not proceed unless other actions are taken previously or simultaneously,” or “are independent parts of a larger action and depend on the larger action for their justification.” Leasing lands is a necessary precursor to drilling. Drilling cannot proceed unless leasing has previously occurred, and the two actions are independent parts of the larger action: the development of the land. Courts have reinforced the connection between leasing and development, requiring that an EIS occurs “before an irretrievable commitment of resources occurs.” Issuing a lease without a No Surface Occupancy (NSO) stipulation constituted such a commitment, and the Richardson court found that BLM’s failure to prepare a site-specific analysis prior to lease issuance was arbitrary and capricious.

II. BLM Failed to Consider the Significance of Impacts to Fort Laramie NHS

The determination in the EA that this lease sale does not significantly affect the human environment is faulty, as the document does not consider the impacts of the sale and the development of the parcels on Fort Laramie NHS. To determine whether a proposed action may “significantly” affect the human environment and therefore require an EIS, agencies must consider both the context and intensity of that action. Context “means that the significance of an action must be analyzed in several contexts such as society as a whole..., the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action.”

Intensity “refers to the severity of impact,” including, among other factors: “unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, [...] wild and scenic rivers, or ecologically critical areas;” “the degree to which the effects on the quality of the human environment are likely to be highly controversial;” “the degree to which the action could establish a precedent for future actions with significant effects;” “the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in ... the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources;” and whether the action “threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” Despite this direction from NEPA’s implementing regulations, the BLM gave no consideration whatsoever to the impacts on Fort Laramie NHS, a proximate historic and cultural resource, and national park site. This lack of consideration is a clear violation of NEPA’s requirements to determine whether significant impacts are possible.

CONCLUSION

2 40 C.F.R. § 1500.1(b).
3 40 C.F.R. § 1508.27.
4 40 C.F.R. § 1508.27(1).
5 Id. at (ii) and (iii).
6 New Mexico ex. rel. Richardson, 565 F.3d 683, 718 (10th Cir. 2009).
7 Id.
8 40 C.F.R. § 1508.27.
9 Id. at § 1508.27(a).
10 40 C.F.R. § 1508.27(b)(1 – 10).
NPCA and the PRBRC request that the BLM withhold these six parcels scheduled for the March 2018 lease sales in the High Plains District Office because the BLM fails to comply with NEPA and its regulations as outlined above.

Sincerely,

Holly Sandbo
Northern Rockies Program Coordinator
National Parks Conservation Association
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Nicholas J. Lund
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Joyce Evans
Chair
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934 North Main St.
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August 16, 2017

Randy Sorenson, Resource Advisor
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Delivered via e-mail to: Casper_WYMail@blm.gov and U.S. Postal Service

RE: High Plains District “First Quarter 2018 Lease Sale Parcels”

Dear Resource Advisor Sorenson,

The National Parks Conservation Association (NPCA) writes today regarding the Bureau of Land Management’s (BLM) Casper Field Office First Quarter 2018 Competitive Oil and Gas Lease Sale. After reviewing the Environmental Assessment and documented concerns of the National Park Service (NPS), NPCA urges the BLM to defer nominated parcels WYW-181Q-011; WYW-181Q-021; WYW-181Q-022; WYW-181Q-023; WYW-181Q-024; WYW-181Q-025, which sit close to Fort Laramie National Historical Site. NPCA echoes concerns from the National Park Service itself, and seeks a site-specific analysis of potential impacts of development on the Fort before leases are issued.

National Parks Conservation Association

The mission of the National Parks Conservation Association is to “protect and enhance America’s National Park System for present and future generations.” Founded in 1919, NPCA is the leading citizen voice for the national parks. We are a national non-profit with 24 regional and field offices across the country, including our Northern Rockies Regional office in Bozeman, Montana and Grand Teton field office in Jackson, Wyoming. NPCA represents over 1.3 million members and supporters who care about America’s shared natural and cultural heritage preserved by the National Park System.

History of Resource Protection at Fort Laramie National Historical Site

Fort Laramie has a rich history dating back nearly 200 years to its beginnings as a fur trade post. When emigrants began moving westward in the 1840’s the United States government saw a need for a military base on the popular Oregon Trail and purchased the trade post in 1849. Fort Laramie became an oasis of civilization for hundreds of thousands of emigrants as they travel westward as it was the only populated stop for hundreds of miles after Fort Kearny (Nebraska). Fort Laramie was also the location of the 1851 peace treaty with several Plains Indians tribes and the infamous 1868 Sioux Treaty. Fort Laramie closed in 1890 after the end of the America-Indian Wars.
The historical significance of Fort Laramie was recognized by the state of Wyoming who purchased the land in 1937 and then offered the deed to the United States. The Department of Interior accepted the transfer and in 1938 the Fort became a part of the National Park System. Fort Laramie National Historical Site preserves many intact buildings from the operational days of the fort, including officers' quarters known as Old Bedlam, which is the oldest standing military structure in Wyoming as well as the oldest historical building documented in the state. Beyond the historical importance of the buildings that remain at Fort Laramie, the site itself played one of the most significant roles in the United States government's effort to settle the west. The site stands as a marker to both the perseverance of emigrants looking for a better life and the tragic end to the Plains Indians' way of life.

Visitors can visit Fort Laramie today and still feel its remoteness and grasp the sense of isolation from surrounding landscape known by emigrants as the "The Great American Desert". They can look out across the Laramie River and picture the solemn ceremony of the Sioux Treaty of 1868. These visitor experiences at Fort Laramie, however, are contingent upon an unimpacted viewshed and soundscapes surrounding the historical site.

National Park Service Concerns

In May 2017, Superintendent Baker of Fort Laramie National Historic Site wrote a letter to the BLM High Plains District expressing concern over the impact of the nearby lease parcels on the National Historic Site. Superintendent Baker described:

a high level of concern for potential impacts that range from the visual intrusions that would exceed minor impacts on the historic scene and, hence, visitor experience to sharply increased heavy vehicle traffic, which would raise safety issues to an extreme level. There would also be less obvious, but no less insidious potential impacts to air quality, water quality, and night skies.

Superintendent Baker asked that the Environmental Assessment "carefully consider these and other impacts to this rural area of historic landscapes and events that are core to the heritage of America."

Despite Superintendent Baker's request, the EA contained no analysis whatsoever of the lease sale's impacts on Fort Laramie National Historical Site. Rather, the BLM dismissed the Superintendent's letter by stating that:

[NPS] concerns include activities within the visual setting of the area, effects on visitor experience, and impacts to air quality, water quality and night skies. These are impacts associated with lease development, and will be addressed site specifically if a development proposal is submitted.¹

However, waiting until the Application for Permit to Drill (APD) stage to address park concerns will necessarily give inadequate consideration to park protections, as the BLM can only condition development after leasing, not prohibit it. Issuing leases is an irretrievable commitment of resources and confers to the lessee a valid existing right. Such a right cannot be extinguished should subsequent study find that the impacts of development on the neighboring

¹ High Plains District Portion of the First Quarter 2018 Competitive Oil and Gas Lease Sale, Environmental Assessment at 11.
national park site are too great. Postponing the majority of decisions to the APD stage means the scope of development will be shaped after the lease is in the legal authority of the oil and gas operator and after BLM has made an irretrievable commitment of resources.

Further, the APD stage requires little or no public input. The BLM not studying the potential impacts of development on Fort Laramie NHS before they've committed an irretrievable commitment of resources means that park visitors and the general public are unable to determine at this stage how the lease sale may impact the park. Leasing before the BLM fully accounts for the range of potential impacts from oil and gas drilling conflicts with the spirit of the National Environmental Policy Act process.

Courts have considered these issues and have found that "there is no bright line rule that site-specific analysis may wait until the APD stage." In *New Mexico ex rel. Richardson v. Bureau of Land Management*, an "assessment of all 'reasonably foreseeable' impacts must occur at the earliest practicable point, and must take place before an 'irretrievable commitment of resources' is made." The court conclude that issuing a lease without a No Surface Occupancy (NSO) stipulation constituted such a commitment. The *Richardson* court found that BLM's failure to prepare a site-specific analysis prior to lease issuance was arbitrary and capricious.

The six parcels we are requesting for deferral and subsequent site-specific study are those closest the Fort Laramie National Historical Site. Some of these parcels appear to be within .25 miles of the boundary of Fort Laramie, and all are within the "3 miles or visual horizon" standard that is the basis for the Controlled Surface Use (CSU) stipulation for the Oregon National Historic Trail.

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2 See 43 CFR § 3101.1-2 "Surface use rights. A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes, and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed...At a minimum, measures shall be deemed consistent with lease rights granted provided they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year."
3 New Mexico ex rel. Richardson v. Bureau of Land Mgmt., 565 F.3d 683, 717-18 (10th Cir. 2009).
4 Id. at 718.
5 Id.
6 Id. at 719.
Conclusion

Issuance of leases near the park ties the hands of the BLM to institute measures that may be necessary to protect Fort Laramie National Historic Site. We ask that the parcels for lease near Fort Laramie NHS – WYW-181Q-011; WYW-181Q-021; WYW-181Q-022; WYW-181Q-023; WYW-181Q-024; WYW-181Q-025 – be deferred until an analysis if the impacts of development of these parcels on the Fort is concluded. The National Park Service itself has raised concerns and questions about the potential impacts of this sale on its ability to protect its resources, and we ask that the BLM respect their concerns by examining reasonably foreseeable impacts of development.

We thank you for the opportunity to comment and we look forward to working on this important issue.
Respectfully,

Nick Lund  
Sr. Manager, Landscape Conservation

Holly Sandbo  
Sr. Program Coordinator, Northern Rockies Region

cc: Thomas Baker, Superintendent, Fort Laramie National Historic Site
May 25, 2017

Stephanie Connolly, District Manager
Bureau of Land Management
Wyoming High Plains District
2987 Prospector Drive
Casper, WY 82604-2968

RE: 3100/First Quarter 2018 Competitive Oil and Gas Lease Sale (WYP000)

Ms. Connolly,

Thank you for notification of the impending 2018 Competitive Oil and Gas Lease Sale and the associated Environmental Assessment being prepared this summer. In reviewing the provided map of the proposed Lease Sale Parcels, it is evident that this parcel sale is of high interest to Fort Laramie National Historic Site.

I have a high level of concern for potential impacts that range from the visual intrusions that would exceed minor impacts on the historic scene and, hence, visitor experience to sharply increased heavy vehicle traffic, which would raise safety issues to an extreme level. There would also be the less obvious, but no less insidious potential impacts to air quality, water quality, and night skies.

I ask that the Environmental Assessment (EA) carefully consider these and other impacts to this rural area of historic landscapes and events that are core to the heritage of America. I would welcome the opportunity to comment at every phase of the EA development. If and when you desire further information, comments, or have questions, please contact me at (307) 575-5948 or by email at thomas_m_baker@nps.gov.

Sincerely,

Thomas M. Baker, Superintendent
Fort Laramie National Historic Site