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WY2018Q2

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DECISION

JUNE 26, 2018 OIL AND GAS SALE PROTEST

PROTESTS DISMISSED
159 PARCELS WILL BE OFFERED

From May 14, 2018 to May 26, 2018, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received three protests to the offering of parcels at the June 26, 2018\(^1\) Competitive Oil and Gas Lease Sale (CLS).

On May 14, 2018, the WSO timely received a protest to the offering of 163 parcels from The Wilderness Society (TWS) on behalf of the Wyoming Outdoor Council (WOC), the National Audubon Society (NAS), and the Wyoming Wilderness Association (WWA) (collectively referred to as TWS). TWS generally protests the offering of 163 parcels because “there is a need to provide for better protection for this species by prioritizing leasing outside of GHMA and PHMA, as BLM’s land use plans, and FLPMA require. In addition, the proposed leasing is not based on a reasonable range of alternatives, the Environmental Assessment (EA) does not provide a “hard look” at environmental impacts or consider the cumulative impacts of leasing, it underestimates the impacts to groundwater resources and needed mitigation, and the leasing would not comply with the FLPMA multiple use mandate. Parcels in the Rock Springs Field Office should also be deferred to allow for an adequate decision space during the RMP revision in that office. There is also a need for better analysis of Lands with Wilderness Characteristics.”

On May 15, 2018, the WSO timely received a protest to the offering of 162 parcels from the Center of Biological Diversity (CBD), filed on behalf of WildEarth Guardians (WEG) (collectively referred to as WEG). WEG protests the offering of 162 parcels because the “EA does not comply with the requirements of the Clean Air Act because it fails to include a conformity analysis. The BLM also fails to comply with NEPA and FLPMA because it 1) fails to assess the new impacts that will result from the use of fracking and horizontal drilling, 2) fails to complete an EIS for the lease sale, 3) improperly defers analysis to the APD stage, 4) fails to properly analyze direct and indirect greenhouse gas emissions, 5) omits a cumulative impacts analysis of the other lease sales occurring in surrounding western states, and 6) omits the social cost of carbon calculation or otherwise explains its absence. As a result, the BLM must defer leasing any of the nominated parcels unless and until it corrects these deficiencies.”

\(^1\) On May 16, 2018, the WSO published an Information Notice changing the date of the competitive lease sale from June 21, 2018 to June 26, 2018.
On May 16, 2018, the WSO timely received a second protest to the offering of 162 parcels from CBD, filed on behalf of Rocky Mountain Wild, Sierra Club, Upper Green River Network, Western Watersheds Project and WEG (collectively referred to as CBD). CBD protests the offering of 162 parcels for “failing to comply with NEPA and FLPMA

BACKGROUND

The BLM’s nomination period for the June 2018 CLS ended June 23, 2017. This sale includes Federal fluid mineral estate located in the BLM Wyoming’s High Desert District (HDD) and involves four field offices including Rock Springs, Pinedale, Rawlins, and Kemmerer. After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the field offices and district office, including interdisciplinary review, field visits to nominated parcels (where feasible), review of conformance with the applicable Resource Management Plan (RMP), and preparation of an EA and FONSI 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, coordinated with the State of Wyoming Governor’s Office, the Wyoming Game and Fish Department (WGFD), and considered recent changes to the National BLM policies including ongoing efforts by the 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 RMP, 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 Instruction Memorandum (IM) No. 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews (WO IM 2010-117). As detailed in the unsigned FONSI, the State Director used her discretion to defer one whole and three (3) partial parcels containing 2,212.83 acres that are located in Greater Sage-Grouse Core Areas identified in Version 4 of the State’s Core Area Map (See State of Wyoming Executive Order 2015-04), and are not within Priority Habitat Management Areas (PHMA) in the BLM GSG ARMPA ROD (2015). The BLM Wyoming IM 2016-024 directs that “[U]ntil the subsequent planning process is completed, parcels nominated for oil and gas lease sales in these areas should be deferred until completion of the plan amendment process.” These deferred parcels were not analyzed in detail in the EA.

2 On October 27, 2017, the BLM-WSO issued a decision maintaining the GSG ARMPA ROD and adopting the State of Wyoming Version 4 Core Area boundaries. This maintenance decision was not in effect at the time the parcels were reviewed under NEPA. Because the parcels were deferred without analysis in this lease sale EA, they cannot be offered at the June, 2018 competitive lease sale. They could be offered at the next available sale.
The EA (DOI-BLM-WY-D000-2018-0001-EA), along with the draft and unsigned FONSI were released on October 24, 2017, for a 30-day public review period, as required by Washington Office IM 2010-117. On December 27, 2017, the BLM-WO issued WO IM No. 2018-034, *Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews*. As a result of WO IM 2018-034, the protest period was aligned with the regulatory requirement to post the sale notice 45 days prior to the lease sale, rather than the 90 days required by WO IM 2010-117, and the public comment period is no longer required.

The subject EA is 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:

*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 Records of Decision (ROD) 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 (EPAEct), the Mineral Leasing Act (MLA), and the regulations at 43 CFR § 3100 and § 3160.

NEPA guides the environmental analysis process. Generally, the scope of an analysis relates to the purpose and need for the proposed action. The BLM Wyoming June 2018 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 June, 21, 2018 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 Green River, Kemmerer, Pinedale, and Rawlins RMPs, as amended (2015), as well as the Lander 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 June, 21, 2018 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.
- The Proposed Action alternative (Alternative B) which included offering 163 parcels (whole or in part).

As described in the FONSI, after the above-described deferrals, approximately 198,588.57 acres are proposed to be offered at the June, 2018 CLS (See unsigned Version 2 FONSI, page 3) under a modified Alternative B. 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 applicable RMP RODs. On September 21, 2015, the BLM issued a ROD for the GSG ARMPA for the Casper, Green River, Kemmerer, Newcastle, Pinedale, and Rawlins RMPs, at Appendix A, page 114, Map 2-2: Wyoming Fluid Minerals (Oil and Gas). The EA and draft FONSI prepared for the June 2018 CLS also 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. All of the associated appendices were circulated with the EA and unsigned FONSI, and subjected to public comment.

The HDD EA considered two additional alternatives but eliminated them from detailed analysis. One alternative would offer all nominated parcels with a No Surface Occupancy (NSO) stipulation; 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 Lander, Kemmerer, Pinedale, Rawlins, and Green River RMPs, as amended (2015), have determined that less restrictive stipulations would adequately mitigate the anticipated impact. An additional alternative was considered but not analyzed in detail; this alternative would defer offering all parcels located within GSG PHMA and/or GHMA. This alternative was not analyzed in detail because it would not be in conformance with the respective RMPs as amended (2015).

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 unknown resource values and/or unresolved conflicts, including the presence of lands with wilderness characteristics and pending Citizen Proposed Wilderness Areas (CWP) that have not yet been reviewed for new information (see Appendix C), and applied appropriate stipulations controlling the surface occupancy and/or use of the individual parcels (see Appendix B). Response to public comments is found in Appendix D. On June 22, 2018 the BLM issued an Information Notice withdrawing from the sale three parcels (final parcels 143, 144 and 147) within unevaluated CWP. Pending formal response to these CWPs, these lands could be made available for future leasing.

Consistent with previous protest decisions, if a protester did not submit written comments regarding the adequacy of the EA to the BLM during the 30-day leasing EA comment period, or otherwise could not demonstrate standing, the BLM would deny any protest subsequently filed by that protester if they were protesting on grounds that the NEPA was insufficient. The record
shows that all parties but the Upper Green River Network submitted written comments to the BLM HDD office during the June 2018 CLS EA comment period. Because the Upper Green River Network did not provide any comments or otherwise participate in the decision-making process, the solely-NEPA driven issues raised by Upper Green River Network, as party of the CBD protest, are subject to summary dismissal and as such, are not considered to be a party to the case for purposes of this protest decision.

ISSUES – WYOMING OUTDOOR COUNCIL, NATIONAL AUDUBON SOCIETY, THE WILDERNESS SOCIETY, WYOMING WILDERNESS ASSOCIATION (TWS)

TWS is protesting the offering of 163 parcels that would cover approximately 199,701 acres of public lands. In their protest they state: “This is according to the Environmental Assessment (9EA) prepared for this lease sale. See DOI BLM-WY-D0000-2018-0001-EA at 7. However in a press release for this lease sale the BLM says 162 parcels would be offered covering 198,588 acres. The Finding of No Significant Impact (FONSI) for this lease sale also says 162 parcels will be offered for sale; due to comments received on the EA, the BLM deferred the remaining portion of a parcel that was already partially deferred (preliminary parcel 116), and then deferred a whole parcel (preliminary parcel 117).” These two parcels were analyzed in the EA, and the FONSI correctly notes that the proposed decision is to select a modified proposed action. That modified proposed action is correctly identified in the CLS notice which is to offer 162 parcels containing approximately 198,588.58 acres.

When filing a protest, a protestor must reference the final parcel numbers listed in the CLS notice since it lists those parcels proposed to be offered; the BLM has dismissed protests in the past which did not refer to the final parcels in the CLS notice.

By referencing parcel numbers in the final EA, the protestor has failed to comply with the directive of the competitive sale book and this protest point is dismissed.

The BLM requires that parcels numbers from the sale notice be used by protesters. As the June 2018 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

As a result, the BLM dismisses the protest from TWS, WOC, NAS, and the WWA in full.

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3 A review of this protest has revealed an error in version 2 of the EA that necessitates correction. The EA incorrectly says that 12 whole parcels, containing 18,377.78 acres were deleted as unavailable (EA v2, page 2). This is a typo and it should be 11 whole parcels were deleted as unavailable; 18,377.78 acres deleted is correct. As a result, the proposed action (EA, page 7) is corrected to say 164 unique parcels; the acres analyzed (199,701.79) is correct.
ISSUES – Center for Biological Diversity et al. (CBD)

CBD specifically requests that the BLM take the following actions:

1. That a FONSI be rescinded, and that the BLM initiate the process for preparing an environmental impact statement prior to authorizing any further leasing.
2. That the BLM defer all future sales within GSG habitat until at least such time as it complies with the requirements of the currently-effective Sage-Grouse Plan Amendments, including but not limited to the requirement to prioritize leasing outside of Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) and the requirement to document and comply with density and disturbance caps.
3. That any further consideration of potential leasing within greater sage-grouse habitat consider not only leasing, but also deferral and or withdrawal, under FLPMA § 204, of said habitat from further leasing, consistent with the best available science regarding GSG conservation,
4. That the select Parcels specifically identified in Section V be removed from the June 2018 lease sale because of the potential impacts to water quality, quantity, riparian habitat for sensitive species, and wildlife within the Yampa and White River Basin and Great Divide Basin that are likely to result from leasing parcels with the explicit goal of oil and gas development.

Their specific arguments are as follows:

1. The EA Fails to Disclose Basic Information, Acknowledge Scientific Information or Conform to Governing RMPs Regarding Conservation of Greater Sage-Grouse.

   A. “The body of the EA, moreover, fails completely to quantify or otherwise disclose the affected acreage, map the affected populations, or assess existing levels of disturbance within those populations. Without this information, it is impossible for either BLM or the public to understand whether new leasing-in light of land ownership and use, existing leases, and existing development- can meet the disturbance and density objectives of Green River, Kemmerer, Pinedale and Rawlins sage-grouse amendments. The EA does disclose, however, that the South Rawlins PHMA unit already has more than 5% cumulative disturbance, based on 2016 DDCT data.

      ... the BLM does not even consider an alternative that would exclude the South Rawlins population from further leasing until such time as disturbance caps can be met.

      ...the EA fails to provide any usable baseline information regarding existing
development levels for the Uinta, Greater South Pass, Fontenelle, and
Seedskadee PHMAs, that would allow either BLM or the public to assess
whether meeting disturbance caps is reasonably possible under both existing leases and the proposed new leases."

**WSO Response:**
The BLM has adequately disclosed that all of the proposed 162 parcels to be offered are in GSG habitat in addition to providing shapefiles and a map of the subject parcels, and as noted in the protest provided specific information regarding resources within the parcels (see Table 3-1), and has summarized which parcels have which stipulations attached (see Table 4-1). The BLM has further disclosed the existing levels of cumulative disturbance in each of the subject PHMA where proposed parcels are located, and provided an update to existing levels of leasing throughout all PHMA units in Wyoming as a result of public comments received on the EA (see EA page 85 and 136).

The BLM does not need to analyze an alternative that would not offer leases in the South Rawlins PHMA unit simply because it is currently has a cumulative disturbance level greater than 5%. The subject leases will be offered with a surface density and disturbance controlled surface use stipulation that specifies that if disturbance exceeds more than 5% or disruptions exceed more than 1 per 640 acres within a defined Density and Disturbance Calculation Tool (DDCT) analysis area, the project will not be authorized. The DDCT is based upon a four mile buffer and Greater Sage-grouse leks located within PHMA and then calculates total disturbance; Total acres within the 4 mile buffered analysis area is then divided by the total disturbance to determine compliance with the 5% threshold. The EA is disclosing that cumulative disturbance within the entire PHMA unit exceeds 5 percent, as reported by the University of Wyoming. Cumulative PHMA disturbance does not translate into a 5% DDCT exceedance. The subject Control Surface Use (CSU) clearly states that surface occupancy and use will be restricted if the conditions are not met; if such an exceedance of the DDCT analysis area would necessitate denial of an Application for Permit to Drill (APD), and approval could not be granted until disturbance levels are below the 5% and/or 1 per 640 acre stipulated limitations.

Accordingly, this protest issue is dismissed.

**B. The EA Fails to Acknowledge New and Relevant Scientific Information:**

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4 Forty-four (44) whole parcels, containing approximately 57,480.20 acres (See Appendix A) are located within Priority Habitat Management Areas (PHMA). Eighty-nine (89) whole parcels containing 99,255.38 acres are located within General Habitat Management Area (GHMA), as identified in the Wyoming Approved Resource Management Plan Amendment for Greater Sage-Grouse (ARMPA) Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) that was signed on September 21, 2015. Thirty (30) parcels containing approximately 42,562.99 acres have portions located in both PHMA and GHMA.

5 Based on GIS data from May, 2015, at the time the ARMPA ROD was issued, approximately 16% of all existing leases in Wyoming were located within PHMA (15,485 total, 2,427 wholly or partially within PHMA). Based on GIS data from October, 2017, this percentage has decreased to 13% (13,095 total; 1,762 wholly or partially in PHMA).
"Recent peer-reviewed scientific publications have reviewed Greater Sage-Grouse population response to oil and gas management measures in Wyoming, and reconfirmed lek attendance by male sage-grouse declines approximately 2.5% per year in response to oil and gas development, and that attendance declines as development increases, even where well pad density is limited. In light of this information, BLM cannot continue to assume, against scientific evidence, that the management measures in the 2015 RMP amendments will be sufficient to stem sage-grouse population decline.” CBD further argues: “...the EA further fails to disclose or analyze the effects of proposed leasing activities on sage-grouse population resilience and habitat connectivity. As discussed in the attached analysis by Dr. Amy Haak of Conservation Geography, the Rawlins-area leases targeted by the proposed lease sale serve an important conservation function in connecting multiple grouse populations identified as "Priority Areas of Concern" by the U.S. Fish and Wildlife Service.

WSO Response:
The point of tiering is not to repeat analysis that has already been completed. The information submitted by protestor is consistent with information already considered by the BLM. Specifically, habitat connectivity, linkage, and persistence of the species, was thoroughly evaluated under the Wyoming Core Area Strategy and in the associated BLM Final EIS for the ARMPA, and was a specific consideration of the listing assessment prepared by the US Fish and Wildlife Service (USFWS). The USFWS specifically found that:

Genetic analysis further indicated that sage-grouse in fragmented areas on the periphery of the range in Colorado, Utah, and Washington were not extensively moving between or breeding with other nearby populations (Oyler-McCance and Quinn 2011, p. 92). A recent analysis shows that core population centers and the habitat between those centers are important for maintaining connectivity (Crist et al. 2015, p. 18). This study examined the connectivity of populations across the range of sage-grouse and found that 20 of 188 priority areas contributed the most to range-wide connectivity (Crist et al. 2015, p. 11).

These results affirm the conclusion by Knick and Hanser (2011) that relatively large populations in southwestern Wyoming, and straddling the borders between Idaho, Nevada, Oregon, and Utah, were the most highly connected areas within the range of sage-grouse (Crist et al. 2015, p. 11) and, therefore, essential to species persistence. (59868)

In the Rocky Mountain portion, some habitat loss associated with energy development, infrastructure, agricultural conversion, and urbanization will continue into the future. Some sage-grouse populations may continue to decline in some parts of the Rocky Mountains. However, the existing and future effective regulatory mechanisms and conservation efforts in the Rocky Mountain portion of the range will protect the most important habitats and maintain relatively large, well distributed, and interconnected sage grouse populations across much of the eastern portion of its range. (59939)
The range wide analysis of impacts prepared under the Rocky Mountain ROD was in fact, a regional analysis and the EIS prepared for the WY portion of that decision considered the Continental-Divide Creston (CDC) project (see WY ARMPA FEIS page 4-522 and 4-523). These documents, including the USFWS decision, did not assume that leasing and development activity would not occur; it assumed the exact opposite: that leases would be offered consistent with the specified stipulations which were found to be sufficient such that if development were to occur, it would not lead to a listing of the bird under the Endangered Species Act. The ARMPA contains sufficient monitoring mechanisms and will be subject to review by the USFWS in 2020. The ARMPA also contains specific adaptive management protocols to be put in place should identified metrics be triggered. Should the conditions for a specific trigger be met, leasing and/or development activities could be curtailed; these decisions will be made in coordination with other state and Federal entities to determine causative factors, and determine an appropriate response. Response could include adjusting or ceasing specific activity levels and/or requiring additional mitigation.

In consideration of the above, this issue is dismissed.


CBD argues specifically:
The BLM is subject to clear direction in the RMP amendments that its greater sage grouse RMP plans and conservation strategy rely not only on stipulations within designated habitats (stipulations acknowledged as insufficient, in Wyoming, to result in a net conservation gain for general habitat. see 2015 RMPA ROD at 1-30 to 1-31), but also on a larger strategy of prioritizing development outside of all sage-grouse habitats. The proposed leasing decision, consisting of 227,502 acres entirely within greater sage-grouse habitat, including 44 parcels comprising 571,480 acres entirely within Priority Habitat Management Areas (PHMA), and another 30 parcels comprising 42,563 acres partially within PHMA, fails completely to provide a reasonable explanation of how this meets BLM's prioritization objective.

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6 While some development will occur in the future, the Wyoming Plan directs projects to areas that will avoid impacts, includes stipulations to minimize indirect effects, and if necessary, requires mitigation to benefit the species. (FR Vol 80, No 191, 59890) Rangewide, the Federal Plans, Wyoming Plan, and Montana Plan reduce impacts from nonrenewable energy development on approximately 90 percent of the modeled breeding habitat (FR Vol 80, No 191, 59891)

7 The Federal Plans provide coordinated monitoring strategies of disturbance caps. In response to monitoring, development allowed under the Federal Plans may be adjusted based on adaptive management criteria to provide an immediate, corrective response to any identified triggers for population or habitat declines. While the development of some valid existing rights may continue, these provisions provide a backstop for other disturbance if adaptive management triggers are exceeded. (FR Vol 80, No 191, 59891)
An apparent BLM policy of leasing parcels all within sage-grouse habitat is not only inconsistent with the RMPs and FLPMA’s consistency requirement, it also undermines a fundamental assumption of the RMP Amendment EISs - as well as the U.S. Fish and Wildlife Service’s determination that listing the greater sage-grouse under the Endangered Species Act was "not warranted." That assumption is that the measures adopted in the RMP Amendments will result in oil and gas development tending to occur outside of greater sage-grouse habitat. Proposing a lease sale for 44 parcels containing Priority sage-grouse strongly undermines that assumption. It further undermines the assumption in the Fish and Wildlife Service’s "not warranted" finding for the greater sage-grouse that federal and state implementation of the "Wyoming Plan" for fluid minerals will continue the 2012-15 pattern of reduced drilling within core areas. If BLM is not actually going to give meaningful content to its plan direction to prioritize leasing outside of sage-grouse habitats, it cannot rely on FEISs, such as the Wyoming Sage Grouse RMP FEIS, that assume the effectiveness of that plan direction.

**WSO Response**

The language quoted by CBD in their protest is a direct quote from the Rocky Mountain ROD (see page 1-25). WO IM 2016-143 was issued as a result of the ROD⁸; neither the Rocky Mountain ROD nor the subject IM direct the BLM to defer any parcels in PHMA or GHMA, nor do they obligate the BLM to even consider deferring parcels in PHMA or GHMA. CBD does not specifically articulate how the BLM’s action is not in conformance with the subject RMPs other than repeating to disagree with the BLM’s action of leasing parcels of land that have been nominated, and that are specifically available for oil and gas development within the subject field offices according to the subject RMPs.

Upon the closing of the Expression of Interest (EOI) nomination period, the WSO was able to adjudicate all the EOIs it had received; all of the subject EOIs received for the sale were either in PHMA, GHMA, or a combination of both, as reflected in the EA.

WO IM 2016-143 states that “when considering the GHMA/PHMA lands for leasing, the BLM State Offices will ensure that a decision to lease those lands would conform with the conservation objectives and provisions of the GRSG Plans (e.g., Stipulations).” The IM then explains that the BLM will consider, as appropriate, a combination of what applies from the identified prioritization factors and noted that the specific factors were not presented in any particular order of importance. On December 27, 2017, WO issued IM 2018-026, Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Prioritization Objective. This IM replaced policy

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⁸ Rocky Mountain ROD pg 1-40: Instructional Memoranda—Additional instruction and management direction will be necessary to implement certain land allocation decisions and management direction included in the ARMPAs and ARMPS. For example, additional guidance will be provided to clarify how the BLM will implement the objective of prioritizing future oil and gas leasing and development outside of GRSG habitat. IMs and related guidance will be completed by the BLM Washington Office. 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.
direction in WO IM 2016-143 and clarified that “where BLM has a backlog of EOI s, the BLM
will prioritize its work first in non-habitat management areas, followed by lower priority habitat
management areas, and then higher priority habitat management areas (PHMA).” It further
specifies that “BLM will use the stipulations to encourage lessees to acquire leases outside of
GRSG PHMA due to fewer restrictions in those areas than in higher PHMAs. Consistent with the
GRSG Plans, however, parcels may be leased within GRSG habitat management areas without
first leasing parcels in non-habitat areas.” While IM’s do not rise to the level of statute or
regulation, in this specific case the Authorized Officer (AO) decided that issuing an IM to guide
interpretation of the prioritization is appropriate and made it part of his ARMPA ROD decision.
The protestor has not shown how the BLM has not complied with the provisions of the ARMPA
ROD, as interpreted by policy.

Not offering any combination of parcels either in GHMA or PHMA is within the range of
alternatives analyzed. A similar argument was subject to disposition by the Interior Board of
Land Appeals (IBLA) in Biodiversity Conservation Alliance, 183 IBLA 97. In 183 IBLA 97,
Audubon specifically argued that the BLM should have considered a “sage-grouse conservation
alternative,” which would have deferred leasing all of the parcels that encompassed public lands
in Core Areas. Citing, as an example, Biodiversity Conservation Alliance, 171 IBLA at 238,
IBLA found that “BLM clearly considered the alternative advanced by Audubon in the course of
considering the no action alternative... Subsumed under the no action alternative was not leasing
all of the parcels within Core Areas... or the multitude of combinations of these parcels. BLM is
not required to devise a multitude of alternatives that specifically involve not leasing different
groupings of the various parcels proposed for leasing.”

As in 183 IBLA 97, the BLM utilized State Director discretion and deferred one whole parcel
and portions of three parcels located in areas designated by the State of WY as Core Areas, but
are not managed as PHMA under the BLM ARMPA RODs. Since the subject parcels, or
portions thereof, are in these areas, the BLM determined it could not offer them subject to the
protective stipulations required by the BLM for PHMA. This is consistent with the BLM’s
response regarding the ARMPA objective of prioritizing leasing and development outside of
PHMA- that the lease stipulations were found to be sufficient for providing the requisite levels of
protection required to provide for the GSG. The BLM reiterates that by policy (See BLM NEPA
Planning Handbook H-1790-1), it is the management actions specified in the ARMPA which are
designed to meet the objective and we incorporate into this response our response to protests
submitted by WOC for the December 2017 CLS. In this case those management actions are the
required stipulations for oil and gas leasing in PHMA and in GHMA, as the case may be. The
BLM is implementing prioritization through the application of the subject stipulations (See EA,
Table 4-1 and Appendix B).

Further, as discussed in our response to comments, the ARMPA Draft and Final EIS’ considered
several alternatives including closing PHMA to oil and gas development and only making lands
available within PHMA with a No Surface Occupancy (NSO) stipulation. These alternatives
were analyzed in full, but were ultimately not selected. They do not need to be reconsidered for
every subsequent lease sale.
There is no pending action(s) or additional information that the BLM is awaiting before offering the subject lands. The BLM has considered the items identified in WO IM 2016-043, which has since been superseded by WO IM 2018-026, and has disclosed that information in the EA and FONSI (see, page 77 of the EA and unpaginated 12 of the signed FONSI). CBD has provided no new information that the BLM has not already considered regarding the resources involved in the parcels themselves, potential impacts of leasing and/or development of the subject lands.

This answer is consistent with the WSOs previous response to this protest issue for the December 2017 CLS. This protest issue is dismissed.

D. The BLM Fails to Consider Reasonable Alternatives Prioritizing Leasing Outside of All Designated Sage-Grouse Habitat.

...The High Plains District February 2017 leasing EA fails to meet this core NEPA obligation by arbitrarily excluding from consideration any alternative that could meaningfully preserve BLM Wyoming offices' authority to adopt effective and scientifically credible conservation measures for greater sage-grouse.

...The June 2018 leasing EA considers only the no-action and proposed alternatives. EA at 7. The EA explicitly rejects an alternative, regularly considered and adopted by other field offices, would defer all remaining parcels located within sage grouse "Priority Habitat Management Areas" and "General Habitat Management Areas," at least until such time as BLM completes a strategy for the implementation of the sage-grouse RMP amendments.

...The EA explicitly rejects an alternative, regularly considered and adopted by other field offices, would defer all remaining parcels located within sage grouse "Priority Habitat Management Areas" and "General Habitat Management Areas," at least until such time as BLM completes a strategy for the implementation of the sage-grouse RMP amendments. We request that BLM give consideration to such a habitat prioritization alternative. Agencies may not reject an otherwise reasonable alternative out of hand simply because it shares some characteristics with the no-action alternative. See Colorado Environmental Coalition v. Salazar, 875 F. Supp.2d 1233, 1248-50 (D. Colo. 2012). Indeed, the EA improperly relies on a Presidential Executive Order to effectively re-write, without FLPMA compliance, the 2015 Approved Resource Management Plan Amendments, and FLPMA itself, to prioritize oil and gas development over sage-grouse conservation and all other resource values.
WSO Response
We incorporate our response to CBD Issue #1c.

As stated in the subject EA, the lease sales themselves have no direct impact to GSG, or in connection with the CDC project until a lease is developed. Conducting a lease sale auction itself, has no indirect impact to any environmental resources. The RMP’s socioeconomic analysis did prepare analysis projecting bonus bids and rental payments from the offering of lands for sale, under the assumption that leases would be sold and issued.

Further, the range wide analysis of impacts prepared under the Rocky Mountain ROD was in fact, a regional analysis and the EIS prepared for the WY portion of that decision considered the CDC project (see WY ARMPA Final EIS page 4-522 and 4-523). These documents, including the USFWS decision, did not assume that leasing and development activity would not occur; it assumed the exact opposite: that leases would be offered consistent with the specified stipulations which were found to be sufficient such that if development were to occur, it would not lead to a listing of the GSG under the Endangered Species Act. The ARMPA contains sufficient monitoring mechanisms and will be subject to review by the USFWS in 2020. The ARMPA also contains specific adaptive management protocols to be put in place should identified metrics be triggered. Should a specific trigger be exceeded, leasing and/or development activities could be curtailed.

The BLM is not responding exclusively to a Presidential Executive Order. Our response to this protest issue is consistent with prior protest responses; offering the subject lands is in conformance with the ARMPA ROD and the underlying RMPs, and is compliant with regulation and policy. This protest issue provides no new information that the BLM hasn’t already considered and is dismissed. Further, any reference to the February 2017 lease sale EA is outside the scope of the current action and is dismissed.

2. The EA Fails to Analyze Site-Specific Impacts to Mule Deer, Pronghorn, and other Big Game Habitat.

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9 While some development will occur in the future, the Wyoming Plan directs projects to areas that will avoid impacts, includes stipulations to minimize indirect effects, and if necessary, requires mitigation to benefit the species. (FR Vol 80, No 191, 59890) Rangewide, the Federal Plans, Wyoming Plan, and Montana Plan reduce impacts from nonrenewable energy development on approximately 90 percent of the modeled breeding habitat (FR Vol 80, No 191, 59891)

10 The Federal Plans provide coordinated monitoring strategies of disturbance caps. In response to monitoring, development allowed under the Federal Plans may be adjusted based on adaptive management criteria to provide an immediate, corrective response to any identified triggers for population or habitat declines. While the development of some valid existing rights may continue, these provisions provide a backstop for other disturbance if adaptive management triggers are exceeded. (FR Vol 80, No 191, 59891)
...BLM's EA fails to take a hard look at significant new research showing adverse effects to mule deer and pronghorn habitat use, migration corridors, and ultimately survival and abundance resulting from indirect effects of energy development, and the compounding effects of climate change. The EA further fails to justify BLM's refusal to engage in actual site-specific assessment of effects on particular deer and pronghorn subpopulations, winter use areas, and/or migration corridors. Merely describing "the category of impacts anticipated from oil and gas development" fails to meet NEPA's hard look requirement when it is reasonable for BLM to do more. See \textit{New Mexico ex rel Richardson v. BLM}, 565 F.3d 683, 707 (10th Cir. 2009) (emphasis in original). "NEPA does not permit an agency to remain oblivious to differing environmental impacts, or hide these from the public, simply because it understands the general type of impact likely to occur. Such a state of affairs would be anathema to NEPA's 'twin aims' of informed agency decision-making and public access to information." \textit{Id.}

   a. Energy Development Significantly Reduces Pronghorn Habitat and Abundance.

   b. Mule Deer Habitat Loss and Population Declines Are Well Documented.

\textbf{WSO Response}

CBD's reliance on \textit{New Mexico ex rel Richardson v. BLM}, 565 F.3d 683, 707 (10th Cir. 2009) is unavailing in this particular case, because the BLM is not asserting that impacts would be different from what it has already disclosed in the EA or the underlying RMP's. \textit{New Mexico ex rel Richardson v. BLM}, 565 F.3d 683, 707 (10th Cir. 2009) found that: "BLM's unanalyzed, conclusory assertion that its modified plan would have the same type of effects as previously analyzed alternatives does not allow us to endorse Alternative A-modified as "qualitatively within the spectrum of alternatives" discussed in the Draft EIS. Because location, not merely total surface disturbance, affects habitat fragmentation, Alternative A-modified was qualitatively different and well outside the spectrum of anything the BLM considered in the Draft EIS, and the BLM was required to issue a supplement analyzing the impacts of that alternative under 40 C.F.R. § 1502.9(c)(1)(i)."

The protestor has not asserted how the BLM action will result in impacts not already considered. The BLM has acknowledged that actual impacts will be dependent upon the intensity of what are currently not reasonably foreseeable actions and would have to assume that all parcels sold are developed to the full Reasonably Foreseeable Development Scenario (RFD) and that other existing actions are ongoing and have not been reclaimed. Such an assumption is unreasonable and therefore this protest issue is dismissed.

3. The BLM Cannot Tier to the RMP-EISs.

\textbf{WSO Response}
While CBD asserts that the BLM cannot tier to the RMP EIS', it makes no significant argument as to why tiering to the underlying RMPs is not appropriate except to continue argue that the analysis in the RMPS, and the EA, are inadequate.

CBD ends its statements of this issue claiming that “it is unclear the extent to which crucial winter range and migration corridors on specific lease parcels overlap with GSG habitat areas subject to timing and surface use stipulations”; yet CBD lists all of the parcels that are in crucial winter or migratory habitat that do not contain any GSG timing restrictions, and go on to list parcels they claim to “contain winter or migratory habitat for mule deer and pronghorn do not have the CSU restricting density of development of one disturbance location per 640 acres.”

First, the only recognized migration corridor by the State of WY (which is delegated the authority to designate corridors), is the Red Desert to Hoback corridor that traverses both the Rock Springs and Pinedale Field Offices. None of the subject parcels proposed for lease in the June 2018 sale are within this designated corridor.

Second, regulations promulgated by the Council on Environmental Quality for implementing NEPA specifically direct agencies to use tiering in 43 CFR 1500.4(i) as a tool that can be utilized to reduce excessive paperwork: “Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues.” Part 1502.4(d) further directs “Agencies shall as appropriate employ scoping, tiering and other methods listed in Secs 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.” Finally, Section 1502.20 specifically encourages agencies “to tier their environmental impact statement to eliminate repetitive discussions of the same issues.” Tiering is defined in Section 1508.28 as:

...the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.
The offering of lands that are designated as available in the underlying RMPs, which is based upon analysis within a programmatic EIS, is an appropriate use of tiering. This protest issue has identified no new information about the subject parcels or the spectrum of impacts that the BLM hasn’t already disclosed; this issue is subsequently dismissed.

4. **Lease Stipulations Do Not Adequately Protect Winter and Migratory Habitat.**

   a. **Timing limitations for crucial winter range are inadequate:**

   ...BLM should require NSO stipulations on crucial winter range or it should modify the timing limitation to prohibit vehicle traffic, noise, and other activities that disturb wintering ungulates during winter months.

   ...BLM should defer these parcels containing crucial winter range until each of these suggested alternatives are properly considered in an EIS.

**WSO Response:**

CBD claims that: “While the 28 parcels identified above include a timing limitation stipulation prohibiting surface use during winter (November - April), an exception is made for operation and maintenance of production facilities. See Sale Notice at 57 (internal p. 40). This stipulation therefore only prohibits surface use during the winter months for exploration, construction, and well development activities.” This is not an accurate statement. While the timing limitation, and lease stipulations in general, do not outright apply to well operations and/or maintenance, with site-specific analysis, the BLM has the option when supported by impact analysis to apply the timing limitations to operations and maintenance, as necessary to prevent undesirable impacts.\(^1\)

The BLM has already prepared EIS for each of the field office RMPs. These RMPs have adequately considered multiple management alternatives for big game in coordination with WGFD and other cooperating agencies. This protest issue has not provided any new information that the BLM has not considered and is dismissed.

b. **Lease parcels containing migratory routes lack any protections.**

**WSO Response:**

We refer this protest issue to our answer to CBD issue 4a.

CBD identifies all parcels that are traversed by migration routes and asks that the EA be corrected to disclose all of the parcels containing migratory routes, and requests that the BLM consider recommendations made by the Wyoming Game and Fish Commission for development within migration corridors.

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\(^1\) Final Recommendations prepared by the Rocky Mountain Regional Coordinating Committee, Uniform Format for Oil and Gas Stipulations (1989), page 3: Timing Limitation (Seasonal Restriction): Prohibits surface use during specified time periods to protect identified resource values. This stipulation does not apply to the operation and maintenance of production facilities unless the findings of analysis demonstrate the continued need for such mitigation and that less stringent, project specific mitigation measures would be insufficient.
The BLM has reviewed the information in the protest and in the EA and refined the information presented in Table 3-1 and summarized the information in Section 3.2.2, page 75, and section 4.2.2, page 109.

While the BLM agrees that the WGFD has made specific recommendations for the management of corridors, corridors are not the same as routes\textsuperscript{12} and none of the subject parcels are located within a designated migration corridor. Further, WGFD does not have any specific recommendations for the management of migration routes.

The only designated migration corridor by the State of WY (through the Game and Fish Commission which is delegated the authority to designate corridors for active management) is the Red Desert to Hoback corridor that traverses both the Rock Springs and Pinedale Field Offices. Migration of big game animals in these field offices is not new information, nor is the importance of these lands new information.

During review of the subject parcels, the BLM coordinated at both the local and statewide level with appropriate personnel from the WGFD; the subject lease notice discussed in CBD’s protest, was added to additional parcels at their request but did not make any further requests regarding the subject parcels in relation to any wildlife concerns. Per the BLM-WGFD MOU, the WGFD has asked for specific coordination for projects involving crucial winter range and are granted cooperating agency status on all NEPA projects, where requested. As such, they will be offered the opportunity to participate and/or comment on all requested projects.

Appropriate mitigation will be identified at the time development is proposed if the level and type of impacts are of concern for big game, in conformance with the underlying RMPs\textsuperscript{13}. If a subject project is determined to potentially result in significant impacts, an EIS will be prepared should the proponent choose to go forward, or, the project will be denied. Until a project proposal is received however, presuming that mitigation may or may not be applied is not appropriate until there is a discrete development proposal.

As such, this protest issue is dismissed.

c. Sage Grouse stipulations are inadequate to protecting wintering habitat and migratory corridors.
   i. Site specific analysis is required to show sage grouse stipulations will protect big game. Density restrictions for the protection of sage grouse do not fully protect winter range habitat.

\textsuperscript{12} \url{https://wgfd.wyo.gov/WGFD/media/content/PDF/Habitat/Habitat%20Information/Seasonal-Range-Definitions.pdf}: An Ungulate Migration Corridor is defined as: an area of the landscape that a substantial portion of the herd or herd segment uses consistently to move between seasonal habitats. An Ungulate Migration Route is defined as: a specific path consistently used by an individual animal to make seasonal movements between winter and summer ranges.

\textsuperscript{13} E.g. Green River RMP FEIS pg 24, 29, 32, 34, 194; Pinedale RMP FEIS pg 2-104, 2-114, 2-141, 2-142, 2-149, 2-156; Rawlins RMP FEIS pg 2-106, 2-107, 3-91, 3-147, 3-148, 4-226; Kemmerer RMP FEIS: 2-29, 2-52/53, 2-60, 3-59, 3-136, 4-111, 4-126
i. Site specific analysis is required to show sage grouse stipulations will protect big game. Density restrictions for the protection of sage grouse do not fully protect winter range habitat.

ii. BLM should defer leasing parcels containing crucial winter range habitat and migratory habitat until it complies with Secretarial Order 3362. Until BLM has prepared Action Plans and revised management plans addressing specific habitat management objectives with measurable outcomes for big game habitat within these field offices, it should not allow any oil and gas leasing in areas containing winter range and migratory corridors.

iii. Leasing parcels within crucial winter range habitat before the revision of the [Rock Springs] plan is completed would prejudice the consideration of specific habitat management objectives that should be considered for the protection of this habitat, in compliance with Secretarial Order 3362, including alternatives prohibiting or limiting oil and gas activities within this habitat (beyond simply imposing timing limitations). Until BLM has completed the RMP revision, it should also defer all parcels within the Rock Springs Field Office containing pronghorn winter crucial range habitat, including parcels WY 182Q-095, -107, -108, -133, -134, -135, and -138.

**WSO Response:**

i. CBD claims that the BLM inappropriately relies on various stipulations formulated specifically for the protection of GSG and GSG habitat, as mitigation for impacts on crucial winter range and migratory routes for pronghorn, mule deer, and other ungulate species stating specifically: “BLM’s reliance on these stipulations lacks factual support showing these stipulations will adequately protect big game habitat.” They further ask:

> The following four parcels in mule deer crucial winter range also lack any density restrictions: WY-182Q-021, -022, -30, -33. Again, while withdrawal of these areas from leasing or requiring an NSO would be more protective of winter range habitat, BLM should at least consider imposing a stipulation limiting density to 1 well pad location per square mile on the four parcels identified above. BLM should remove the above identified parcels within pronghorn or mule deer crucial winter range, until it has considered an alternative requiring development density restrictions on these parcels in an EIS.

Nowhere in the subject EA does the BLM claim that the stipulations required for operations in GSG habitat alone will protect big game species -although we do recognize that application of the management actions developed for PHMA will provide additional protection above the crucial winter range Timing Limitation Stipulation (TLS) where a proposal is located in PHMA and Crucial Winter Range, by limiting habitat disturbance and fragmentation in the ARMPA EIS as noted by CBD. The EA acknowledges that there is a full suite of measures that the BLM can apply to minimize and avoid impacts to big
parcels identified are not wholly within crucial winter range (see Map 1) and the majority of the parcels are within the approved CDC project which has analyzed impacts from development to big game and big game migration routes. Further, crucial winter range boundaries can change when they are reviewed by the WGFD which generally happens every 5 years; this means that even though they are managed as crucial winter range today, in 5 years, they may not be.

If and when a development proposal is received, additional measures that could be considered include but are not limited: to site-specific conditions of approval developed through a site-specific environmental review of the proposal, potential application of Best Management Practices, monitoring by the BLM and/or the Operator, and statutory requirements for reclamation of disturbances no longer necessary to support lease operations. The BLM can also contemplate the need for offsite mitigation in accordance with WO IM 2008-054.

ii. The BLM is aware and is complying with the requirements of Secretarial Order 3362; The BLM is unable to find the specific language cited by CBD in the actual Order. While the provisions of the IM are being responded to, the BLM also complies with other policy including WO IM 2018-026 regarding leasing decisions and the BLM Handbook (see H-1601-1.E)\(^\text{14}\), and with FLPMA through imposition of the Purpose and Need statement. There is no requirement in the Secretarial Order to offer lands currently available within the existing RMPs and there is no new information or actions that the BLM must take prior to offering the subject lands. This protest point is dismissed.

iii. We refer the protester to *Biodiversity Conservation Alliance, Wyoming Wilderness Association, Center For Native Ecosystems*, 174 IBLA 174, (April 4, 2008)\(^\text{15}\) and incorporate our response to 4ii here. This protest issue is dismissed.

5. **The Final EA Fails to Address Site-Specific Impacts to Aquatic and Riparian Habitats.**

\(^{14}\) Existing decisions remain in effect during the amendment process "unless it is determined that this would violate Federal law or regulation," and directs BLM to "review all proposed implementation actions through the NEPA process to determine whether approval of a proposed action would harm resource values so as to limit the choice of reasonable alternative actions relative to the land use plan decisions being reexamined."

\(^{15}\) See also *Wyoming Outdoor Council et al.*, 156IBLA377 (2002): In addition, our preliminary review of WOC's challenges to the offering of the parcels for conventional oil and gas leasing fails to convince us that WOC has shown a likelihood of success on the merits of its arguments. In *Sierra Club Legal Defense Fund, Inc.*, 124 IBLA 130, 140 (1992), the Board rejected the argument that BLM must suspend action in conformance with an existing land use plan when it decides to prepare a new plan. The Board has also held that 40 CFR 1506.1(c) does not apply where the proposed action is covered by an existing environmental statement, thus repudiating the contention that ongoing environmental studies bar BLM from acting until such studies have been completed. In *Re Bryant Eagle Timber Sale*, 133 IBLA 25, 29 (1995). This precedent undermines WOC's contention that BLM violated NEPA and FLPMA by offering the parcels for leasing during the amendment process for the existing RMP. See also *ONRC Action v. Bureau of Land Management*, 150 F.3d 1132, 1137-40 (9th Cir. 1998).
... The Final EA does not properly take into account the proximity of leased parcels to waterbodies and riparian areas for the June 2018 sales. By moving forward with the leasing of parcels delineated in this letter, we feel that site-specific impacts have not properly been analyzed; thus suggesting an unlawful restriction of the NEPA process. Potential impacts to water quality, quantity, riparian habitat for sensitive species, and wildlife will be discussed within the Yampa and White River Basin and Great Divide Basin.

... Overall we feel the stated buffer of 500' from surface water is insufficient, and that due to the variability of surface and groundwater connection that site-specific analysis need to be undertaken for all parcels listed below.

... Further, the June 2018 Wyoming Final EA explicitly, and incorrectly, states that hydraulic fracturing has not been shown to contaminate groundwater.

... Finally, we respectfully believe that the state of Wyoming needs a third party to vet the studies the Final EIS is based on.

All parcels listed in this section reflect the parcel numbers within the Final EA.

**WSO Response**
The protestor has raised issues that show a level of disagreement rather than showing that the BLM has failed to consider something of material significance, that the decision is premised on a clear error of law or demonstrable error of fact. The EA has recognized the claims of resultant groundwater impacts and also recognized our regulatory provisions that are meant to protect usable groundwater. The protestor’s arguments fails to recognize that the BLM retains significant authority to modify and move operations at the APD stage, and also to require additional mitigation identified as a result of the NEPA process. Until a proposal is received, the BLM cannot determine what future, site-specific impacts could result, or whether they would be significant; nor whether a proposal will meet technical drilling requirements. Because leases are valid for 10 years, potential impacts today could also be very different and by necessity need to take into account the conditions that exist at the time lease development is proposed, should it ever occur. The intensity and context of lease development will be evaluated at the time an APD is submitted.

By referencing parcel numbers in the final EA in their protest regarding NEPA deficiencies for aquatic resources in the Yampa and Great Basin watersheds, the protestor has failed to comply with the directive of the competitive sale book and this protest point is dismissed.

The BLM requires that parcels numbers from the sale notice be used by protesters. As the June 2018 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, the BLM cannot be left to speculate about which parcels a protester is referring to. 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 CLS Notice.16

The CBD did not follow the BLM’s published procedures for submitting protests to oil and gas lease sale parcels provided in the June 2018 CLS Notice for this portion of their protest; resultantly, the WSO dismisses this portion of CBD's protest in its entirety.

ISSUES – WILDEARTH GUARDIANS

1. The BLM Fails To Conduct A Conformity Analysis in Compliance with the Clean Air Act and FLPMA.

   At least one parcel for the lease sale is located within Wyoming’s nonattainment area for the 2008 Ozone NAAQS. Yet BLM summarily concludes that the emissions from the lease sale are not reasonably foreseeable. BLM’s failure to conduct an applicability analysis to determine conformity with the CAA also violates the plain language of FLPMA: BLM must “provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards.

   WEG further claims that BLM cannot rely on WildEarth Guardians vs US Bureau of Land Management, 2018 WL 1905145 (Apr, 23, 2018) because that was a Colorado lease sale and the “court did not rule that BLM was categorically excluded from completing conformity analysis for any other lease sales.

WSO Response
In WildEarth Guardians vs US Bureau of Land Management, 2018 WL 1905145 (Apr, 23, 2018), a Colorado District Court ruled that “WildEarth has not carried its burden to show that BLM acted arbitrarily or capriciously in determining that the information in its possession was insufficient to permit it to make a reasonable forecast of indirect emissions.” WildEarth has made an almost identical claim for this lease sale. Just as WildEarth’s arguments were rejected by the Colorado District Court, here WildEarth has provided no objective information to show that the BLM had a duty to undertake a conformity determination or analysis for this lease sale. The BLM complies with Federal regulations for demonstrating conformity at the appropriate stage should a lease be issued and if or when lessee development proposal is submitted for review and approval to the appropriate office. Once the BLM makes a decision on development, a request for formal review of that decision may be submitted consistent with regulations at 43 CFR 3162.5. But until that time, there is no obligation for the BLM to undertake conformity analysis for this lease sale.

16 Available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/85072/144642/178251/182Q.CrossoverList.pdf
Furthermore, 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 December 2017 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).

2. The BLM Fails to Comply with NEPA and FLPMA.

    a. The BLM fails to take a "hard look" at the impacts of multi-stage hydraulic fracturing and horizontal drilling in violation of NEPA and FLPMA.

The Green River and Kemmerer RMPs do not mention fracking and although both the Rawlins and Pinedale RMPs briefly mention that fracking may be used, these documents fail to include any substantive analysis of the impacts. Although the Guardians and the Center appreciate the additional information, the white paper (Appendix D) remains incomplete: for example, it defers analysis of any air quality emissions and geologic hazards such as earthquakes until the APD stage. At a minimum, the use of multi-stage fracking coupled with horizontal drilling in the RSFO constitutes a new, intensified or changed use on public land. The BLM cannot move forward with leasing until it either completes an amendment to the various RMPs or includes a full analysis of the impacts of fracking and horizontal drilling in an EIS for the lease sale.

The BLM improperly defers its site-specific NEPA analyses to the APD stage; when a lease constitutes an irretrievable commitment of resources and impacts at the lease sale stage are reasonably foreseeable, an agency is required to analyze the site-specific impacts of a lease before its issuance. The Tenth Circuit has explicitly held, within the context of oil and gas leasing, that the BLM must prepare a site-specific EIS at the lease sale stage when two factors are met: 1) there is an irretrievable commitment of resources and 2) impacts are reasonably foreseeable. Here there is no proposal by the BLM to impose NSO stipulations for the entirety of any of the lease parcels. Additionally, a map of the parcels as compared to exploratory and developed wells demonstrates that all of the parcels are in areas that have been thoroughly explored. Thus both factors are met and BLM must conduct a full site-specific analysis now.

The BLM must prepare an EIS: Not only does BLM fail to fully discuss the highly controversial, uncertain impacts associated with fracking in the EA, the BLM also fails to disclose the cumulative impacts that will result from the sale in conjunction with other BLM lease sales.
**WSO Response**

The BLM has prepared an appropriate level of analysis based upon the information available and on what we consider to be reasonably foreseeable. As incorporated by reference into the EA and FONSI, the BLM has considered potential future impact pathways and associated process needs; until project specific information is available, no additional analysis is available and it is not prudent to speculate about what future project proposals may entail. As noted in *Biodiversity Conservation Alliance et al. v. BLM* (183 ILBA 97), such an approach complies with NEPA. As the Ninth Circuit has also explained “Future hypothetical projects will not be considered connected actions, and a NEPA analysis need only focus on the impact of the particular proposal at issue and other pending or recently approved proposals that might be connected to or act cumulatively with the proposal at issue.”

Just because the BLM is offering lands for lease, this does not automatically trigger nor guarantee future APD submittals, approval of those APDs subject to Conditions of Approval, or specific drilling, completion, and/or production operations.

b. The BLM fails to properly analyze the direct and indirect impacts of greenhouse gas emissions that would result from issuing the proposed lease parcels in violation of NEPA. Citing the EA at page 10, WEG claims that this information appears to be based on field office wide emissions and not the specific lease parcels. Therefore, it gives the BLM no basis to determine whether or not to approve the proposed actions. This approach is particularly frustrating because BLM has the tools to estimate emissions from the specific lease parcels. Either way, the BLM has the capability to analyze direct emissions and cannot forgo a site-specific analysis at the lease sale stage.

The indirect emissions analysis suffers from a similar problem “The agency again uses field-office wide calculations from the respective RMPs which gives the BLM no information with which to weight (sic) the impacts of the proposed action.”

**WSO Response**

We incorporate our response from the preceding issue into this answer and again state that the NEPA analysis prepared for the subject parcels has determined that the potential direct greenhouse gas emissions should the parcels be sold, and development proposed and approved, and productive wells drilled, are within the impacts analyzed in the underlying RMPs. Preparing redundant analysis of these direct emissions is contrary to NEPA and would not be compliant with the BLM policy and/or Council on Environmental Quality (CEQ) regulation. The inventories prepared for the ARMPA (2015), from which these direct Greenhouse Gas (GHG)

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17 See *State of New Mexico v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009) ("[A]n agency's failure to conduct site-specific analysis at the leasing stage may be challenged, but ... a 'particular challenge' lacked merit when environmental impacts were unidentifiable until exploration narrowed the range of likely drilling sites," citing *Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 973, 977-78 (9th Cir. 2006)); e.g. J EA at 2, 6, 92 ("BLM cannot determine exactly where a well or wells may be drilled or what technology ... may be used to drill and produce wells, so the impacts listed [in the EA] ... are more generic, rather than site-specific")

emissions were incorporated from, considered emissions coming from completion activities. The White Paper in Appendix D was incorporated into the lease sale EA and any uncertainty associated with the use of hydraulic fracturing is further addressed in the lease sale FONSI. The protestor has not raised any new information not considered.

The BLM respectfully declines to breakdown a field office wide RFD emissions estimate and present it on a parcel by parcel basis; the protestor has not explained how this duplicative analysis necessary and/or without it, prevents a reasoned decision. The BLM has already determined that the direct GHG emissions which may stem from an implementation decision in the RMP, which span the entire planning area(s), have been appropriately considered. Any information provided by such an analysis is within the scope of the impacts already analyzed.

The analysis in the EA has elected to provide a similar analysis for the indirect GHG emissions and acknowledge the level of uncertainty in such an estimate. Because of this uncertainty, the preparation of quantitative indirect GHG emissions necessarily assumed that all of the parcels will be sold, development proposed and approved, and economically productive wells drilled. It further had to assume that all future production would be combusted and that the full RFD will be realized in the next 10-15 years. As discussed in the EA, these may not be reasonable assumptions due to the ultimate uncertainty and future permitting requirements.

To summarize, calculating as per parcel emission estimate of direct or indirect GHGs, would not provide any additional information for the Authorized Officer to consider because it would be based on the same field-office wide RFD broken down on a lease parcel basis. This is repetitive analysis.

WEG further claims:

*The BLM fails to analyze the cumulative impacts of Greenhouse Gas Emissions that would result from issuing the proposed lease parcels in violation of NEPA by failing to account for GHGs from cumulative and similar actions: including the geographically adjacent March 2018 lease sale in the High Plains and Wind River/ Bighorn Basin District, the Colorado June 2018 lease sale and lease sales in other western states.*

*The BLM has the legal authority to not lease the protested parcels under the mineral leasing act and must take a hard look at the no action Alternative.*

Regulations implementing NEPA define “similar actions” as actions that “have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.” The regulations however leave it up to the agency to decide whether similar actions exist and, if so, whether to analyze them in the same NEPA document. In this particular case, as the BLM has explained in our response to comments (see Appendix E, Comment response #15), analyzing actions in neighboring states is not something that the BLM-Wyoming has been delegated authority for, nor are potential leasing actions in neighboring states reasonably foreseeable to the extent that the BLM knows what parcels will ultimately be offered and/or sold and/or developed to the point of having economic production what their RFD has
projected or their decision concluded regarding availability. Again, the actual act of leasing results in no direct, indirect, or cumulative GHG emissions but the BLM has provided an appropriate analysis of GHGs based on what may be reasonably foreseeable and on the state of science. Finally, these other sales are not considered to be connected actions such that NEPA requires their inclusion in Wyoming’s June 2018 competitive lease sale EA.

Finally, WEG argues:

*The BLM fails to analyze the costs of reasonably foreseeable carbon emissions using well-accepted, valid, credible, GAO-endorsed, interagency methods for assessing carbon costs in violation NEPA.*

This claim is similar to previous protest points made by WEG and does not vary significantly from those made since November 2014.

While we’ve provided additional response to some of the new or modified arguments that WEG has made, arguments made in regards to cumulative impacts of GHGs do not vary significantly from protest points made by WEG for the CLS’ in August and December of 2017.

Because 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).

**DECISION:**

On June 22, 2018 the BLM issued an Information Notice deferring from the June 2018 CLS final parcels 143, 144, and 147 pending a final decision to Citizens Wilderness Proposals received by the RSFO. Any protest to these parcels is dismissed as moot.

The remainder of the protests received from CBD et al., WEG et al., and TWS et al., are dismissed for the reasons discussed within. We affirm that the parcels to be offered are in conformance with the underlying RMPs, and are compliant with NEPA and FLPMA in regards to Hydraulic Fracturing, GHG emissions, Big Game Migration Route and Corridors, and Greater Sage-grouse and the 159\(^{19}\) parcels that are proposed to be offered, will be offered for sale at the June 26, 2018 competitive lease sale.

\(^{19}\) See signed FONSI and DR. The proposed action analyzed offering 164 parcels; the proposed action was modified through State Director discretion in response to public comments on the EA (CLS offering 162), and new information received for 3 additional parcels (159 parcels offered following protest). In response to public comments, the available portion of preliminary parcel 116 and all of parcel 117 were deferred pending completion of the Rawlins RMP amendment. Then, final parcels 143 and 144 were determined to be within an unevaluated citizen proposed wilderness area known as the Alkali Basin-Sand Dunes East Contiguous LWC and preliminary parcel 163 (final parcel 147) is within the Red Lake Wilderness Study Area Additions LWC. Pending a final determination and response to the CWPs, these parcels were deferred from sale under State Director discretion. A total of 159 parcels are proposed to be offered.
**Appeal Information**

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 (copy attached).

If an appeal is taken, your notice of appeal must be filed in this office 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 on the attached document. Copies of the notice of appeal and petition for a stay must be submitted to the Interior Board of Land Appeals and the appropriate Office of the Solicitor (see 43 CFR §4.413) at the same time the original documents are filed with this office. Copy of the notice of appeal and petition for a stay must also be submitted to each adversely affected party named in this decision 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 parties if the stay is granted or denied,

2. The likelihood of the protesters’ success on the merits,

3. The likelihood of the immediate and irreparable harm if the stay is not granted, and

4. Whether the public interest favors granting the stay.

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Duane Spencer  
Deputy State Director  
Minerals and Lands

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Attachments:  
1 - Appeal Form (1842-1)  
2 – Map 1
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
Bureau of Land Management, Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003

WITH COPY TO
SOLICITOR
Department of the Interior, Office of the Solicitors
755 Perifet Street, Suite 151
Lakewood, Colorado 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 state 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
Department of the Interior, Office of the Solicitors
755 Perifet Street, Suite 151
Lakewood, Colorado 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.

(Form 1842-1, September 2006)