The Bureau of Land Management (BLM), Wyoming State Office (WSO), has received three timely protests to oil and gas lease sale parcels expected to be offered at its Third Quarter 2018 competitive oil and gas lease sale, planned to be held September 18-20, 2018 (2018Q3 Sale). The three protests were received from the following parties: (1) WildEarth Guardians (WEG); (2) the Center for Biological Diversity, Sierra Club, Upper Green River Network, Western Watersheds Project, and WildEarth Guardians (CBD et al.); and (3) The Wilderness Society, National Audubon Society, Wyoming Outdoor Council, and Wyoming Wilderness Association (TWS et al.).

The National Outdoor Leadership School (NOLS) submitted a letter to the WSO on August 20, 2018 (after the end of the protest period for the 2018Q3 Sale), raising concerns with offering certain parcels in southwest Wyoming where NOLS has “taught extended horse-packing courses in Wyoming’s Red Desert.” (NOLS letter at page 1). NOLS objects to offering oil and gas leases on the public lands in this area because (id., at page 2):

NOLS students seeking a wilderness-quality horse-packing expedition will instead find a complex of drilling rigs, wells, roads, powerlines, pipelines, and other infrastructure associated with oil and gas production.
NOLS noted its position that “the BLM’s shortened 2-week comment period on the sale’s environmental assessment was a barrier to capturing the voices of stakeholders who could be adversely impacted by this lease sale.” (Id., at page 1). However, the BLM has not extended the protest period for this lease sale and this letter was not timely submitted; NOLS’ protest is dismissed and will not be addressed further.

**Background**

In October 2017, the WSO began reviewing 124 parcels (97,144.88 acres) for the 2018Q3 oil and gas lease sale located in the BLM’s Wind River/Bighorn Basin District (WRBBD) and High Plains District (HPD).

Two Environmental Assessments (EAs) were prepared documenting the BLM’s review and National Environmental Policy Act (NEPA) compliance for these parcels, and these EAs and their unsigned Findings of No Significant Impact (FONSI) were released for a 30-day public comment period beginning January 22, 2018.\(^1\)

In the EAs, the BLM disclosed that it intended to delete\(^2\) and defer\(^3\) a number of parcels for various reasons:

- 3 entire parcels (1,598.21 acres) deferred pending U.S. Forest Service consent
- 1 entire parcel (160.00 acres) deleted since it was already leased
- 6 entire parcels and portions of 3 others (8,591.90 acres) deleted since they are located in an area closed to leasing under the Casper Resource Management Plan (RMP)
- 8 entire parcels and portions of 1 other (6,644.17 acres) deferred due to potential oil & gas - coal mining conflicts

On January 31, 2018, the BLM Washington Office (WO) issued new policy regarding oil and gas leasing, IM 2018-034.\(^4\) Among other things, this policy required “[t]he timeframe for parcel review for a specific lease sale is to be no longer than 6 months.” In order to comply with Instruction Memorandum (IM) No. 2018-034, since there were more than six months until the WSO would hold the September 2018 lease sale, the WSO decided to add a second batch of parcels (Part 2) to the sale, extending the nomination period for lease parcels under this sale until March 1, 2018.\(^5\) The 124 parcels previously reviewed are considered Part 1 of the sale.

In March 2018, the WSO began reviewing 270 additional parcels (345,672.77 acres\(^6\)) for Part 2 of the 2018Q3 oil and gas lease sale located state-wide, including lands in the BLM’s WRBBD, HPD, and High Desert District (HDD). An EA was prepared documenting BLM’s review and NEPA compliance for the

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2. Delete: removed from further consideration in the sale because the lands are located in areas closed to leasing or otherwise not available under the law, BLM regulations, or the approved RMPs; these parcels generally are removed from any action alternative considered by the BLM in its lease sale NEPA compliance documentation.
3. Defer: offering is delayed from the current sale in order to address potential conflicts or other management considerations; these parcels are generally considered under at least one of the action alternatives considered by the BLM in its lease sale NEPA compliance documentation, reflecting the BLM’s discretion to determine which parcels to lease, in compliance with applicable laws and regulations. See, e.g., the Mineral Leasing Act of 1920, as amended, providing that lands subject to disposition under the Act “which are known or believed to contain oil or gas deposits may be leased by the Secretary.” (Emphasis added). 30 U.S.C. § 226(a). This discretion may be exercised in the interest of conservation, wildlife protection, and other purposes in the public interest.
4. IM No. 2018-034 (“Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews”).
5. See BLM-Wyoming’s Oil and Gas Lease Sale Schedule for Calendar Years 2018 and 2019, available at: https://go.usa.gov/xUJCp
6. During the BLM’s sale review process, there are often slight acreage changes to individual parcels as the BLM completes review of the parcels, our Master Title Plats, and coordinates with its cadastral survey program; as a result, the actual acreage reviewed in the Part 2 EA (345,672.77 acres) differs slightly from what was disclosed in the EA (345,672.28 acres).
Part 2 parcels, and this EA and an FONSI was released for a 14-day public comment period beginning May 24, 2018. In the EA, the WSO disclosed that it anticipated deleting and deferring a number of parcels:

- 2 entire parcels and portions of 1 other (709.21 acres) deferred due to potential oil and gas - coal mining conflicts
- 14 entire parcels and portions of 26 others (59,940.87 acres) deleted since they are located in various areas closed to leasing under the approved Rock Springs RMP

Prior to publication of the EA for Part 2 of the sale, the WSO met and coordinated with the Wyoming Game and Fish Department (WGFD) for various aspects of the sale, including for 46 parcels that intersected a designated mule deer migration corridor located in the Rock Springs Field Office (the Red Desert to Hoback migration corridor for the Sublette Mule Deer Herd Unit). The EA describes the BLM and WGFD’s coordination efforts, and addressed the BLM’s intent to offer those remaining lands (after the deletion of lands closed to leasing under the approved RMP) intersecting the migration corridor with a special lease notice. Prior to the end of the public comment period, the WGFD (responding to concerns raised by local government, conservation groups, and others about offering lands in the migration corridor) requested that WSO defer offering three entire parcels (4,965.81 acres) among those parcels that intersect the migration corridor.

On August 1, 2018, the WSO published the Notice of Competitive Oil and Gas Lease Sale for the September 18-20, 2018 sale (Sale Notice), including placement of a copy in the WSO’s Information Access Center (IAC). The publication of the Sale Notice started a 10-day protest period, which ended on August 13, 2018. On August 3, 2018, the WSO published its response to public comments for the three EAs to its e-Planning public website for the Part 2 EA.

The BLM’s response to public comments for the Part 2 EA explained (at page 1, footnote omitted):

Where appropriate, the BLM may modify portions of the EA(s) prior to issuing its final decision; the BLM currently intends to prepare and issue the signed FONNSI/DR for this sale concurrently with the resolution of any protests to parcels included in the sale (as described in the BLM’s Notice of Competitive Oil and Gas Lease Sale – September 18-20, 2018, or “Sale Notice”). The DR may contain an addendum to the EA to address any final modifications to the EA.

Note: Where the BLM has decided to delete or defer parcels or portions of parcels from the 2018Q3 sale, those parcels are not listed in the Sale Notice. The deletions and deferrals are generally described in the EAs or in our responses to public comments, below. After resolution of the protests, the BLM plans to summarize all deletions and deferrals in our FONNSI/DR for the 2018Q3 sale. However, 7 parcels (4,387.99 acres) were deferred to the First-Quarter 2019 sale to resolve corrections to adjudicated legal land descriptions...

In addition to the seven parcel deferrals to resolve corrections to adjudicated LLDs, the BLM’s response to public comments described that the WSO intended to adopt the WGFD’s recommendations to defer three parcels (4,965.81 acres) intersecting the mule deer migration corridor (at pages 3-4).

The WSO has also issued six information notices since the Sale Notice was published. The first, dated August 6, 2018, corrects the LLD for a single parcel. The second, dated August 20, 2018, added a stipulation to protect burrowing owls to two parcels (responding to a request by the WGFD) and issued an

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7 The Part 2 EA’s document number is DOI-BLM-WY-0000-2018-0003-EA. Though the BLM has elected to release a draft, unsigned FONSI for public review in this instance, the BLM is not asserting that any of the criteria in 40 CFR 1501.4(e)(2) are met.
8 The actual acreage differs slightly from that described in the EA due to corrected legal land descriptions (LLDs).
9 Available at: https://go.usa.gov/xQEpU
updated Stipulation Code Index (to address stipulation code changes that were made between and during the BLM’s processing of Part 1 and Part 2 of the sale). The third, also dated August 20, 2018, corrected acreages of seven parcels described in the Sale Notice (though not all of these parcel acreage changes altered the acreages originally evaluated in the EAs). The fourth, dated September 10, 2018, added stipulations to several parcels that were initially overlooked by the BLM. The fifth, dated September 10, 2018, deleted a single parcel (final parcel -162) from the sale. The sixth, dated September 10, 2018, responds to a supplemental request submitted by the WGFD to the WSO on September 10, 2018, and deferred a single parcel (final parcel -307) that is located within the mule deer migration corridor.

With the changes described above, the Sale Notice (as modified by the information notices) anticipates offering 348 parcels comprised of 353,220.33 acres. The WSO has prepared a DR and FONSI, which is being issued concurrently with this protest decision. The DR includes an attachment with a table summarizing the parcels, parcel acreages, and final dispositions for each parcel.

During the BLM’s review of the 2018Q3 parcels, the BLM’s field offices, district offices, and the WSO screened each of the parcels, confirmed plan conformance, and coordinated with the State of Wyoming Governor’s Office and Game and Fish Department, particularly to ensure coordination regarding the recent Greater sage-grouse RMP revisions and amendments.

Conservation of the Greater sage-grouse (Centrocercus urophasianus) and their habitats has been an ongoing land-management issue for the BLM, the public, and the BLM’s partner agencies across the West.

Sage-grouse currently occupy approximately about one-half of their historic distribution. On October 2, 2015, the U.S. Fish and Wildlife Service (FWS) published its finding that listing of sage-grouse under the Endangered Species Act of 1973 was not warranted. The FWS’s finding was based, in part, on the conservation strategies developed in Wyoming and other States which led the FWS to conclude that “the primary threats to greater sage-grouse have been ameliorated by conservation efforts implemented by Federal, State, and private landowners.” (80 FR 59858, dated October 2, 2015). As the FWS also acknowledged (id. at page 59882):

The key component of the Wyoming Plan is the application of State regulatory measures associated with the Wyoming Plan on all lands in Wyoming... The Federal Plans in the State incorporate the Wyoming strategy, thereby ensuring implementation of the strategy on Federal land surfaces and subsurface regardless of the need for a State permit (see further discussion below). The completion of the Federal plans also facilitates greater coordination between the State and Federal agencies in implementing and monitoring the Wyoming Plan. This addition to the Wyoming Plan further increases the value of this effort in conserving sage-grouse by covering all lands in the State with a single regulatory framework to reduce affects to sage-grouse in the most important habitats in the State. Therefore, the strategy conserves sage-grouse through an effective regulatory mechanism for conservation.

For BLM-administered public lands in Wyoming, the BLM adopted the State’s sage-grouse conservation strategy by revising and amending its RMPs. The State of Wyoming’s Core Area Protection strategy for sage-grouse “is based on the identification of important habitat areas for Greater sage-grouse and a set of actions that when taken are intended to ensure the long-term survival of Greater sage-grouse populations

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

11 On August 1, 2008, the Wyoming Governor issued Executive Order 2008-2, establishing a “core population area strategy” for sage-grouse in Wyoming. This Executive Order has since been re-issued (June 2, 2011 as EO 2011-5 and, most recently, on July 29, 2015 as EO 2015-4). The BLM and State of Wyoming use identical core population area boundaries; see https://go.usa.gov/xUJr9
in Wyoming.” (State of Wyoming Governor’s Executive Order 2015-4, at Attachment A, page 5). The important habitat areas referred to in Executive Order (EO) 2015-4 are the Core Population Areas (CPAs) designed by the State of Wyoming’s Sage-Grouse Implementation Team (SGIT). These CPAs encompass approximately 83% of the sage-grouse population within the State (see 80 FR 59882) as identified by peak male lek attendance, and were mapped by the SGIT to:

...assimilate[... the highest sage-grouse density areas identified [in published conservation studies] as they were identified as the most productive habitats for sage-grouse in Wyoming. In addition, the mapping of Core Areas considered current and potential energy development and encapsulated areas historically low in production [citation omitted]...

Recent scientific publications\(^\text{13}\) indicate that though strategies such as this “may be successful at limiting sage-grouse range-wide population declines, if implemented, [] the conservation measures are not expected to reverse the declines, particularly where active oil and gas operations are present.” However, these publications also “support the conclusion that overall the Wyoming Governor’s Executive Order is helping safeguard critical sage-grouse habitats at the statewide scale.”

On October 11, 2017, the BLM notified the public that:\(^\text{14}\)

On March 31, 2017, the United States District Court for the District of Nevada held that the [BLM] violated [NEPA] by failing to prepare a supplemental [Environmental Impact Statement, or EIS] for the designation of Sagebrush Focal Areas (SFA) in the Nevada and Northeastern California Greater Sage-Grouse [RMP] Amendment in Nevada... In order to comply with the court’s order, to address issues raised by various interested parties, and to consider recommendations in the August 4, 2017, report prepared by the Department of the Interior’s Greater Sage-Grouse Review Team in Response to Secretary’s Order 3353 (SO 3353), the BLM seeks comment on the SFA designation, mitigation standards, lek buffers in all habitat management area types, disturbance and density caps, habitat boundaries to reflect new information, and reversing adaptive management responses when the BLM determines that resource conditions no longer warrant those responses.

The oil and gas lease sale EAs tiered to the existing Field Office/Resource Area RMPs and their respective EISs, in accordance with 40 CFR 1502.20:

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

All of the protesting parties submitted comments to the BLM on one or more of the EAs prepared by the BLM.

The BLM’s Part 2 EA (at Section 1.3, page 1-6) described its purpose and need for the 2018Q3 Sale (see also HPD’s Part 1 EA at page 6; WRBBD’s Part 1 EA at page 1-4):

It is the policy of the BLM as derived from various laws, including the Mineral Leasing Act of 1920, as amended (MLA) and the Federal Land Policy and Management Act of 1976 (FLPMA) to make mineral resources available for disposal and to encourage development of mineral


\(^{14}\) 82 FR 47248-47249 (October 11, 2017).
resources to meet national, regional, and local needs. Continued sale and issuance of lease parcels in conformance with the approved Resource Management Plans (RMPs) would allow for continued production of oil and gas from public lands and reserves.

The need is to respond to Expressions of Interest, as established by the Federal Onshore Oil & Gas Leasing Reform Act of 1987 (FOOGLRA), MLA, and FLPMA.

1.3.1 Decisions to Be Made

Decisions to be made based on this analysis include which parcels are located in areas open or closed to leasing, which parcels would be offered for lease, which parcels would be deferred, and what stipulations will be placed on the parcels that would be offered for lease at the Third-Quarter 2018 (Part 2) competitive oil and gas lease sale, in conformance with the approved RMPs.

The 2018Q3 Sale Part 1 EAs considered two alternatives in detail: a proposed action and a no action alternative; the 2018Q3 Sale Part 2 EA considered an additional alternative in detail: a BLM-modified alternative that including deferring lands to avoid potential oil and gas – coal conflicts. The EAs also considered, but eliminated from detailed analysis, several other alternatives including:

- Offering the parcels subject to only standard lease terms and conditions (see WRBBD’s Part 1 EA at page 2-1 and the Part 2 EA at page 2-5)
- Offering all parcels with a No Surface Occupancy (NSO) stipulation (see Part 2 EA at page 2-5)
- Deferring all parcels located in Greater sage-grouse habitats (see Part 2 EA at page 2-5)

The remainder of our response will address the three protests and their arguments. The BLM has reviewed the arguments in their entirety; the substantive arguments to which we respond are numbered and provided in bold with BLM responses following.

Wild Earth Guardians (WEG)

In WEG’s protest to all 350 parcels listed in the Sale Notice, it argues that the BLM failed to comply with the Clean Air Act, NEPA, and the Federal Land Policy Management Act (FLPMA). (WEG Protest at pages 11-12).

We note that WEG continues to submit many similar or identical arguments to those submitted by WEG for previous lease sales, including the BLM Wyoming’s August 2015 Competitive Oil and Gas Lease Sale (Aug 2015 Sale) where many of WEG’s recurring arguments were addressed fully by the WSO. WSO decisions addressing other recent lease sale protests submitted by WEG have also addressed many of WEG’s recurring or substantively identical arguments (including the Feb 2016 Sale, Aug 2016 Sale, Feb 2017 Sale, the Third-Quarter 2017 Sale, and First-Quarter 2018 Sale), to which we refer WEG for many of the arguments that they have raised again in this protest.

With respect to the 2018Q3 sale, WEG also raised a number of new positions or arguments, or arguments that pertain to different circumstances, to which we respond, below.

1. “The EPA has designated the Upper Green River Basin Area of Wyoming as in marginal nonattainment with the 2008 [National Ambient Air Quality Standards, or NAAQS] for ozone... Thus, the BLM, a federal agency, is prohibited from undertaking any activity in

See the WSO’s Aug 2015 Protest Decision, available at: https://go.usa.gov/xUJrX
this area that does not conform to Wyoming’s [State Implementation Plan, of SIP].” (WEG Protest at page 12). “...leasing is clearly a cause of future, reasonably foreseeable project emissions. Thus, BLM’s failure to conduct a conformity analysis violates the Clean Air Act.” (WEG Protest at page 14).

A total of 12 of the parcels (19,212.69 acres) listed in the Sale Notice for the 2018Q3 sale intersect the Upper Green River Basin Ozone Non-Attainment Area (O3NAA), including five parcels located in the Rock Springs Field Office and seven parcels located in the Pinedale Field Office (see Attachment 1).

As we have explained in the EAs and in our response to WEG’s comments (as well as our responses to other’s comments), there is substantial uncertainty at the time a parcel is leased whether, and to what extent or of what nature, development operations may be proposed (see Part 2 EA at page 4-1), including for potential emissions affecting air quality from oil and gas operations (see Part 2 EA at page 4-10). The EA acknowledged our CAA responsibilities with regard to ozone, including for parcels located in the O3NAA (see Part 2 EA at pages 3-3, 3-6 through 3-10).

If the proposed parcels are offered, leased, and actual oil and gas exploration and development operations are proposed, the BLM (in coordination with its State and Federal partners) will evaluate the proposal to ensure compliance with the CAA. In WildEarth Guardians v. U.S. Bureau of Land Management, No. 1:2016-cv-03141 (D. Colo. 2018), WEG challenged a November 2015 oil and gas lease sale in Colorado making an identical argument. In that litigation, the Colorado District Court affirmed BLM’s decision to offer oil and gas leases for sale and found that WEG had 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” and therefore was not required to conduct a conformity analysis. The same applies here and this portion of WEG’s protest is denied.

2. “...the proposed lease parcels are directly within the Pinedale Anticline and next to a slew of active wells. Thus, the agency could easily estimate potential well emissions based on surrounding development.” (WEG Protest at page 14). “...BLM points to the decision in WildEarth Guardians v. U.S. Bureau of Land Mgmt., No. 16-CV-3141-WJM-STV, 2018 WL 1905145 (D. Colo. Apr. 23, 2018)... the court held that the specific emissions reports at issue did not provide enough information to make emissions reasonably foreseeable for a particular lease sale in Colorado. Id. Because the Pinedale area is heavily developed and studied, the situation here is different.” (WEG Protest at page 16). “The Pinedale RMP does not address the air quality issues presented by the Upper Green River Basin nonattainment area or otherwise conduct a conformity analysis... And, based on the date of the Rock Springs RMP... there is no way that it addresses the 2008 standard either.” (WEG Protest at page 16). “Because BLM has not amended the Pinedale and Rock Springs RMPs to incorporate the 2008 and 2015 ozone standards and otherwise assess its management of lands to ensure these standards are not being exceeded, the RMPs cannot ensure compliance with the Clean Air Act.” (WEG Protest at page 17).

First, while WEG asserts that “the proposed lease parcels are directly within the Pinedale Anticline and next to a slew of active wells,” this assertion is incorrect; only one of the 12 parcels located in the O3NAA (parcel WY-183Q-340, 129.75 acres) is located within the Pinedale Anticline project area. All of the other parcels are located in areas with little to no adjacent leased lands or existing active wells (see

16 Some activities may be exempt or presumed to conform under general conformity for the O3NAA in compliance with the CAA. The WSO has developed a Draft Presumed to Conform List of Actions under General Conformity for the Upper Green River Basin (UGRB) ozone nonattainment area in accordance with the Clean Air Act. The list identifies proposed activities that are presumed to conform and do not exceed established de minimis emission levels and the basis for those presumptions. The UGRB Presumed to Conform List will benefit the agency and the public by eliminating unnecessary agency costs associated with evaluating actions with minimal emissions. As a result, the BLM will be able to streamline its environmental review process by applying more resources to actions that have the potential to reach regulated emission levels or adversely impact air quality. See: https://go.usa.gov/xUJC2
Attachment 1), and are located in areas ranging from “high” to “low” potential for recoverable oil and gas under the BLM’s analysis of Reasonably Foreseeable Development (RFD) scenarios for the 2015 Greater sage-grouse RMP amendments and revisions. This contradicts WEG’s assertion that the potential emissions from oil and gas exploration and development activities are reasonably foreseeable and that the BLM could “easily” estimate well emissions based upon surrounding development.

As we have explained in the EAs and in our response to WEG’s comments (as well as our responses to other’s comments), there is substantial uncertainty at the time a parcel is leased whether, and to what extent or of what nature, development operations may be proposed (see Part 2 EA at page 4-1), including for potential emissions affecting air quality from oil and gas operations (see Part 2 EA at page 4-10). The EAs acknowledged our CAA responsibilities with regard to ozone, including for parcels located in the O3NAA (see Part 2 EA at pages 3-3, 3-6 through 3-10).

As the BLM explained in the Part 2 EA response to comments at page 24-25, including at page 26:

In addition, FLPMA imposes on BLM an obligation to “provide for” (at Section 202(c)(8)) compliance with applicable air quality standards, and the Wyoming Department of Environmental Quality’s Air Quality Division is the entity that is responsible for regulating and enforcing compliance with such standards. The BLM may rely on the State, which is subject to oversight by the EPA, to ensure permitted activities, once proposed and authorized, do not exceed or violate any State or Federal air quality standard under the Clean Air Act.

This is consistent with the CAA and BLM regulations and policy. This portion of WEG’s protest is denied.

3. “Because the validity of the Buffalo RMP and FEIS have been called in question by a recent legal ruling, the BLM’s proposal to lease parcels within the Buffalo Field Office without a valid, underlying RMP or FEIS or site-specific EIS violates FLPMA and NEPA.” (WEG Protest at page 18).

In this argument, WEG refers to an Order from the U.S. District Court for the District of Montana, Great Falls Division dated July 31, 2018 for a case challenging the BLM’s RMP FEISs and Records of Decision (RODs) for the Miles City, Montana and Buffalo Field Office, Wyoming planning areas (Western Organization of Resource Councils et al. v. BLM, CV 16-21-GF-BMM). In the Order, the Court ordered the BLM to undertake several remedies, including remedial NEPA analysis for the RMP EISs to address shortcomings identified in the Court’s opinion and amended order dated March 26, 2018 (see Part 2 EA at pages 1-8 through 1-9).

There are a total of 50 parcels (26,547.09 acres) proposed to be offered in the 2018Q3 sale and located in the Buffalo Field Office.

To address the Court’s decision, the BLM included additional analysis and discussion in the Part 2 EA, as supplemented in an addendum to the EAs attached to the DR prepared concurrently with this protest decision.17 Contrary to WEG’s position that the Buffalo RMP and FEIS is “invalid” (WEG Protest at page 20), the Court’s Order did not vacate the Buffalo RMP and adopted the BLM’s expedited timeframe for remedial NEPA analysis to address the RMP FEIS’s shortcomings, expressly declining to enjoin issuance of new leases with the condition that “[a]ny new or pending leases of coal, oil, or gas resources in the planning areas subject to the Buffalo RMP and the Miles City RMP must undergo comprehensive environmental analysis in compliance with the Court’s March 26, 2018, Order...” The BLM has complied with the Order, and has completed a comprehensive environmental analysis for the 50 parcels

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17 This approach, though different than the previous use of three EA “versions” for Federal oil and gas lease sales in Wyoming, is procedurally correct and consistent with BLM’s NEPA policies. See the BLM’s NEPA Handbook (H-1790-1), Section 8.5.1 #4(a)-(d) at page 85.
proposed in the 2018Q3 lease sale including “analysis of the environmental consequences of downstream combustion of coal, oil, and gas” (March 26, 2018 Order at page 47) and addressing the “use of [Global Warming Potentials, or GWPs] based on a 100-year time horizon rather than the 20-year time horizon” (id., page 48).

For these reasons, we deny this portion of WEG’s protest.

4. **“The BLM must also prepare an EIS for the lease sale...”** (WEG Protest at page 21).

In this argument, WEG asserts that the BLM failed to account for various factors to address both the context and intensity of the actions being considered.

WEG continues to overlook that the BLM has prepared numerous EISs that address potential effects from the reasonably foreseeable impacts arising from oil and gas leasing – the RMP EISs. Further analysis at the lease sale stage of speculative lease-specific impacts arising from possible future operations not currently proposed or under consideration, including hydraulic fracturing, would not be helpful to the decision-maker or the public. We refer WEG to our previous protest decisions on this issue, the EAs, our responses to public comments, and the other similar issues raised by WEG or other protesters for the 2018Q3 sale. We deny this portion of WEG’s protest.

5. **“The BLM must analyze the site-specific impacts from its decision to lease federal minerals at the lease sale stage.”** (WEG Protest at page 25). “[The BLM’s assertion that development activities are uncertain at the time of leasing] is undermined by the extensive oil and gas development which stretches across the state of Wyoming, as demonstrated by the map below [reflecting a map entitled “The September 2018 lease parcels in the northeastern corner of the state are barely visible underneath existing oil and gas wells” on page 27].” (WEG Protest at page 26).

In this argument, WEG continues to contend that the BLM “must analyze the site-specific impacts from its decision to lease federal minerals at the lease sale stage.” (WEG Protest at page 25). The BLM has addressed this argument from WEG previously, particularly with regard to potential Greenhouse Gas (GHG) emissions from site-specific operations if lands are leased (see numerous previous WSO protest decisions beginning with the Aug 2015 Sale).

The BLM’s responses to WEG’s comments on the EAs for the 2018Q3 Sale also addressed this argument (e.g., see the BLM’s responses to public comments for the Part 2 EA at page 27).

The EAs tier to and incorporate by reference the applicable RMP EISs, which include analysis of reasonably foreseeable impacts from leasing and development of public lands.

As we have previously and repeatedly explained to WEG, there remains substantial uncertainty at the time of leasing whether and to what extent lease sale parcels may eventually be developed, which limits the ability of the BLM to meaningfully evaluate potential site-specific impacts for future actions. The EAs acknowledge that the Federal action under consideration – leasing of the oil and gas for possible exploration and development – could eventually result in a variety of impacts (including GHG emissions) if the offered parcels were successfully issued under lease, if the lessee or its operator proposed certain construction/drilling activities on the leases, if the BLM were to authorize such activities (with modifications and conditions based upon the circumstances at the time the permit is submitted), if the operator received appurtenant authorizations from other Federal and State agencies (including the WDEQ, which may require its own modifications or conditions), if the economic conditions were conducive to initiation and completion of the activities, and if some amount of hydrocarbons were produced then transported and eventually used in combustion or another end-use. The predictive
limitations arising from such a chain of speculation is likely to make analysis of future site-specific operations less than meaningful for the decision-maker and the public. The BLM has disclosed the reasonably foreseeable effects from leasing in the EAs and the EISs to which the EAs tier. Once a lease is issued, if a site-specific project is proposed to the BLM, the agency will ensure compliance with NEPA, FLPMA, and other applicable Federal laws such as the CAA. None of these statutes require speculation about potential site-specific development at the lease sale stage.

In our review of the 2018Q3 Sale EAs, we find that the EAs appropriately disclosed the reasonably foreseeable future impacts that could result from Federal lease exploration and development activities, but acknowledge that there remains substantial uncertainty whether and how exploration and development of the Federal oil and gas resources would occur.

The uncertainty that exists at the time the BLM offers a lease for sale includes crucial factors that will affect potential impacts including GHG emissions, such as: well density; geological conditions; development type (vertical, directional, horizontal); hydrocarbon characteristics; equipment to be used during construction, drilling, production, and abandonment operations; and potential regulatory changes over the life of the 10-year primary lease term.

The BLM has provided an illustration of the uncertainty associated with speculating about lease exploration and development through the drilling of wells on existing Federal oil and gas leases (Part 2 EA at page 4-1, and updated through the BLM’s response to public comments for the Part 2 EA at page 27):

As an illustration of the uncertainty as to whether a lease parcel, if issued, will be developed, GIS data (as of April 2018) indicate that most (58%) of Federal oil and gas leases in Wyoming do not have any active wells located within their boundaries. Using the April 2018 GIS data, the active well spacing on individual leases ranges from 5,494.7 acres per well to 0.3 acres per well ($\mu = 298.9, \sigma = 438.8$). Thus, there exists substantial uncertainty as to whether and to what degree leases will be explored or developed at the leasing stage.

WEG continues to avoid addressing the implications to its arguments in light of this illustration. As the BLM has disclosed, a majority of existing Federal oil and gas leases in Wyoming do not have any active wells located within their boundaries (58%). For those that do contain active wells, the well spacing (acres per well) has a very large range (5,494.7 to 0.3) and a high standard deviation (438.8) relative to the mean (298.9). It is likely that other possible metrics associated with oil and gas exploration and development activity intensity (such as production rates, drilling depths, average daily traffic to/from wellsite, drilling equipment horsepower, water consumption, etc.) would exhibit similar variation across the geographic extent of the proposed lease parcels, and to a currently unforeseeable degree.

As evidence to support its contrary opinion that lease exploration and development operations on the proposed leases are reasonably foreseeable at the lease sale stage, WEG also points to a map in its protest (at page 27) showing a large number of dots – existing oil and gas wells – relative to proposed 2018Q3 Sale parcels in northeastern Wyoming. However, after correcting for the visual bias WEG introduces by using large dots to symbolize the wells (“lease parcels... are barely visible underneath the existing oil and gas wells”), the area WEG highlights to support its opinion actually shows the opposite: oil and gas exploration and development operations are actually spatially heterogeneous in this area, emphasizing the difficulty in predicting the extent and intensity of oil and gas exploration and development operations on individual leases over a discrete period of time. The map in Attachment 2 displays approximately the same area as was used by WEG in its protest map at page 27; first, it is apparent that the number and spatial arrangement of wells in this area is heterogeneous (clustered) and not uniformly dispersed (using Euclidean distance the Average Nearest Neighbor ratio=0.295586). It is likely the heterogeneity of

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18 As ArcGIS explains, “The Average Nearest Neighbor Distance tool measures the distance between each feature centroid and
exploration and development operations would also be exhibited temporally, too. Second, it is apparent that the proposed 2018Q3 Sale parcels tend to be located in areas at the periphery or far removed from existing oil and gas fields that have been developed, where the certainty of eventual operations is even less reasonably foreseeable. Outside of the Powder River Basin in northeastern Wyoming, where WEG attempts to illustrate its argument that the spatial arrangement of wells is “extensive” (WEG Protest at page 26) and therefore reasonably foreseeable, much of the existing wells and associated oil and gas operations are even more spatially heterogeneous.

Similarly, in a new analysis of existing oil & gas-related surface disturbance (from well pads, pits, etc.) on Federal oil and gas leases (based on the State of Wyoming’s Density Disturbance Calculation Tool, or DDCT data), there is a high amount of variability in the amount of surface disturbance on leased lands (another surrogate metric for certain impacts arising from oil and gas operations). In this analysis, only 49% of Federal oil and gas leases contain DDCT surface disturbance arising from discrete oil and gas operations. Of the leases that did contain mapped surface disturbances, existing Federal leases ranged from less than 0.01 acres to 716.3 acres of disturbance, and the average amount of surface disturbance per lease equaled 13.0 acres (with, similar to the illustration of well density on existing Federal leases, a high standard deviation relative to the mean: \( \sigma = 29.5 \)). Thus, it is apparent that these readily-available surrogate measures for the extent and intensity of development in Wyoming show that it is difficult to predict with any certainty which actual oil and gas operations would take place on leases at any given time, and that the variability of actual operations from lease to lease is very high.

The objective evidence indicates that it would be speculative for the BLM to attempt to analyze the site-specific effects from future drilling and other development operations on the lands proposed to be offered for the 2018Q3 lease, particularly when there will still be the opportunity for the BLM to evaluate potential site-specific impacts from any potential future operations once those operations are actually proposed. For these reasons, this portion of WEG’s protest is denied.

6. “...the BLM has failed to consider any alternatives that will reduce the permitted development in order to address other resource concerns such as air quality or climate change.” (WEG Protest at page 28).

WEG continues to overlook that the BLM prepared RMP EISs to which the lease sale EAs are tiered. In the RMP EISs, the BLM considered a range of alternative land use allocations for the public lands in Wyoming. For example, the BLM considered various alternatives in the RMP amendments completed in 2015 to address conservation of Greater sage-grouse and their habitats. In the FEIS for the RMP amendment effort, the BLM considered various land use allocations that would modify the anticipated emissions from anticipated and resultant land use activities. These various alternatives included a range of anticipated emissions increases, for example, from 4,696 tons of NO\(_x\) per year in 2020 to 8,340 tons of NO\(_x\) per year in 2020 (FEIS at page 2-204). The RMP EISs similarly all considered a range of alternatives to address multiple uses and considering the numerous resources affected by the BLM’s management of public lands.

WEG may disagree with the approved RMP’s decisions to not close the lands currently proposed for leasing in the 2018Q3 Sale, but they have not shown that the BLM failed to conform to the approved...
RMP or failed to comply with NEPA. Furthermore, WEG overlooks that the BLM has routinely selected elements of both an action and no action alternative in previous lease sales, in compliance with BLM regulations and policy.\textsuperscript{20} For example, in the HPD’s 2017Q3 Sale, the BLM selected elements of the Proposed Action Alternative and the No Action Alternative (2017Q3 Decision Record at page 1).

We deny this portion of WEG’s protest.

7. **“The BLM fails to analyze the impacts of multi-stage hydraulic fracturing and horizontal drilling in violation of NEPA and FLPMA.”** (WEG Protest at page 29).

As a preliminary matter, multi-stage hydraulic fracturing operations (and other well completion techniques) and horizontal drilling operations are not a part of the proposed action and so are not considered in detail by the BLM for this lease sale (under 43 CFR 3162.3-1 and 3162.3-2, the lessee or their designated operator must first submit to the BLM a proposal to drill a well before conducting operations; the BLM has not received and would not accept an APD proposing exploration and development of unleased lands). Once the BLM receives an APD or Sundry Notice proposing drilling or well completion operations on a Federal lease, the BLM will evaluate the proposed operations. These operations are not reasonably foreseeable future actions at this time, and so the BLM need not evaluate them in detail beyond the extent to which it already has in the RMP EISs and lease sale EAs.

In making this argument, WEG relies on its previously-discredited opinion that “the areas proposed for leasing are heavily developed, therefore there is no doubt that BLM could estimate emissions from fracking for the sale based on current drilling in the area.” (WEG Protest at page 30; see also at page 31: “...as discussed above, the impacts from the sale are reasonably foreseeable because much of Wyoming is heavily developed.”). However, as we have demonstrated to WEG in the EAs, BLM’s Response to Comments, and above (see response to No. 5, above), oil and gas exploration and development operations are heterogeneous throughout Wyoming, and it would be speculative to attempt to predict the extent and intensity of oil and gas exploration and development operations on individual leases over a discrete period of time (such as a 10-year lease term).

As described in the applicable RMP EISs, the BLM generally prepares a Reasonably Foreseeable Development (RFD) scenario. The RFD provides “analytical assumptions” (BLM Land Use Planning Handbook H-1601-1 at Appendix F, page 17) for the purposes of preparing the RMP EIS. Preparation of an RFD includes delineation of areas with similar exploration and production development potential, along with an estimate of the number of wells that would likely be drilled over the life of the plan within the planning area (BLM Planning for Fluid Mineral Resources Handbook H-1624-1 at page III-7). The RFD “projects a baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order. The baseline RFD scenario provides the mechanism to analyze the effects that discretionary management decisions have on oil and gas activity” (BLM WO IM No. 2004-089, “Policy for Reasonably Foreseeable Development (RFD) Scenario for Oil and Gas”, January 16, 2004 at Attachment 1-1). While the RFD report will project oil and gas development over the life of the plan, “[b]ecause it is speculative to project oil and gas activity far into the future, the RFD is not expected to cover the entire life span of an area’s development” (BLM WO IM No. 2004-089 at 1-2). The RFD scenarios may become stale as technological changes to exploration activities occur, as new discoveries are made or techniques to explore and characterize oil and gas reservoirs change, and as economic conditions change.

In the RFD prepared for the 2015 RMP amendments and revisions that addressed conservation of Greater sage-grouse and their habitats, the BLM prepared an RFD for the Rocky Mountain region. The proposed 2018Q3 lease sale parcels are, under this RFD, located in areas that range from “low” to “high” oil and

\textsuperscript{20} 43 CFR 46.420(c): “The Responsible Official must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents, but may select elements from several alternatives discussed.”
gas potential (see Attachment 3). This lack of uniformity in the RFD’s oil and gas potential statewide highlights the impracticality and need for speculative assumptions were the BLM to predict parcel-specific emissions at the lease sale stage.

For these reasons, we find that the EAs (and the RMP EISs to which they tier) adequately address reasonably foreseeable future actions, and do not need to evaluate in further detail the conduct of specific future operations that are not reasonably foreseeable at this time. We deny this portion of WEG’s protest.

8. “Although [WEG] appreciates the fact that the Wyoming BLM included some information and calculations on direct greenhouse gas emissions in the EA, unfortunately, the agency still fails to calculate site-specific emissions from the actual lease parcels.” (WEG Protest at page 31).

In order to predict potential site-specific emissions from the proposed lease sale parcels, the BLM would be required to speculate as to the possibility and nature of operations. As the above response to WEG explains, such speculation is not helpful and is not required. This portion of WEG’s protest is denied.

9. “The BLM’s analyses also completely fail to account for greenhouse gas emissions from cumulative and similar actions... the BLM is essentially relying entirely on the various RMPs/FEISs, most of which are outdated and/or invalid, and all which fail to analyze the site-specific cumulative impacts.” (WEG Protest at page 33).

As the EAs acknowledge (see, e.g., the Part 2 EA at page 4-7), there are a number of contributing factors to greenhouse gas emissions, and the emissions rates are likely to change in the future for different sectors (such as for electricity generation, transportation, and fossil fuel extraction), and will respond to various influences such as resource supply and public demand.

The EAs also acknowledge that analysis of potential air quality effects is more meaningful at the point in time when the BLM receives a proposal that might actually result in emissions, whereas leasing is an administrative act that does not (Part 2 EA at page 4-4):

*The administrative act of offering any of these parcels and the subsequent issuing of leases would have no direct impacts to air quality. Any potential effects to air quality would occur if the leases are developed. Any proposed development project would be subject to additional analysis of possible air effects before approval, when necessary. The analysis may include air quality modeling for the activity in accordance with the National BLM, EPA and NPS Air Quality Memorandum of Understanding (MOU).*

Furthermore, while WEG may believe that the RMP EISs are “outdated and/or invalid,” the BLM has continued to update its RMPs through revision or amendments, when necessary. For example, the region-wide amendments to RMPs to address Greater sage-grouse conservation completed in 2015 also included cumulative effects to air quality, including for those associated with oil and gas development (see FEIS at pages 4-488 through 4-490).

To the extent necessary and reasonably foreseeable, the BLM has addressed potential cumulative effects from offering these lands at the oil and gas lease sale. We deny this portion of WEG’s protest.

10. “...the agency omits a discussion on the social cost of carbon protocol, a valid, well-accepted, credible, and interagency-endorsed method of calculating the costs of greenhouse gas emissions and understanding the potential significance of such emissions while simultaneously disclosing that monetary benefits will result from the lease sale.” (WEG Protest at page 37).
In arguments substantively similar to those from previous lease sale protests, WEG argues that the BLM must use a Social Cost of Carbon (SCC) protocol to assess economic and climate impacts from the lease sale. As we have pointed out to WEG in our previous protest decisions, this is not necessary and would be speculative at this point in time for this lease sale; using a SCC protocol would require the BLM to haphazardly quantify monetized values associated with speculative impacts from possible activities that are untethered from any regulatory context or threshold. While certain policies of the Federal Government have changed in the intervening time, and recent decisions by Federal District Courts have occurred, the WSO’s position remains that use of the SCC protocol for this Wyoming oil and gas lease sale would be (August 2015 Protest Decision at pages 20-21):

...less than helpful in informing the public and the decision-maker about the consequences of selecting [an] action alternative[]. Given the confusion that this speculation and wide range of uncertainties introduces, we find that it is prudent for the BLM to avoid quantifying and analyzing specific estimates of GHG emissions from possible exploration or development of the lease parcels in the [oil and gas lease] Sale. If it is later determined to be necessary and appropriate, quantified analysis of GHG emissions and SCC would be less speculative at the point in time the BLM receives a proposal to conduct actual operations on the leases, if issued...

While we find that it would be speculative for the BLM to use the SCC Protocol to assign potential costs associated with the 2018Q3 Sale from GHG emissions, we agree with WEG that it is not appropriate for the BLM to attempt to assign specific potential monetary benefits that could result from the 2018Q3 Sale (though we do not foreclose that possibility for other circumstances). The WRBBD Part 1 EA made no such assignment (at page 3-4: “Actual economic impacts will vary if actual development or production varies from the projections, or as commodity prices and operation expenses change.”). Similarly, the Part 2 EA did not assign specific potential monetary benefits if the proposed parcels were to be leased. The HPD Part 1 EA also acknowledged the deficiencies of attempting to make such an assignment (at page 64: “Due to the volatility and complex dynamics of energy markets, it is not feasible to predict the exact amount of revenue that would be collected at an oil and gas lease sale since there are no guarantees that offered parcels will receive bids, or that any leased parcels would be explored and result in discovery of viable fluid mineral production in the future.”). However, the HPD Part 1 EA did venture that, if all the parcels were offered at their minimum bid, certain economic impacts would result (HPD Part 1 EA at pages 64-65: “If all acres were leased at the minimum per acre bid of $2.00, lease sale revenues would exceed $122,000.”). In the EA addendum to the DR prepared concurrently with this protest decision, the WSO has eliminated this sentence from the HPD Part 1 EA.

We deny this portion of WEG’s protest.

Center for Biological Diversity, Sierra Club, Upper Green River Network, Western Watersheds Project, and WildEarth Guardians (CBD et al.)

CBD et al. protest all 350 parcels in the 2018Q3 Sale for various reasons, as described below.

1. “BLM has unlawfully restricted its NEPA analysis by arbitrarily limiting the scope of its

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21 The 2014 and 2017 decisions in the Districts of Colorado and Montana to which WEG references (WEG Protest at page 40) address issues related to coal mine leasing and mine expansion. There are some important differences between coal leasing and mine expansion and oil and gas leasing. Nevertheless, the court in High Country Conservation Advocates, et al. v. United States Forest Service, 52 F. Supp. 3d 1174 (D. Colo. 2014) did not order the agency to use the Social Cost of Carbon protocol. Rather, the Court held that the agency did not offer non-arbitrary reasons why the quantification of the lease modifications' contribution to the social cost of carbon were abandoned in the FEIS. The Court determined that the agency did not demonstrate that it took a “hard look” at whether using the Social Cost of Carbon protocol should not have been included in the FEIS when the protocol was included in the DEIS (Id. at 1191-1192). And in High Country Conservation Advocates v. U.S. Forest Service, Civil Action No. 17-ev-03025-PAB (D. Colo. August 10, 2018), “the Court finds that the omission of a social cost of carbon analysis from the leasing SFEIS was not an abuse of discretion.” WEG also overlooks the Orders from which they have argued all leasing in the Buffalo Field Office should cease; in the March 23, 2018 Order in Western Organization of Resource Councils, et al. v. BLM, the Court found no support for “the assertion that NEPA requires the agency to use a global carbon budget analysis.”
CBD et al. argue that the BLM “must analyze all site-specific impacts now, before it has leased the land and is unable to prevent environmental impacts.” (CBD et al. Protest at page 15). However, for the BLM to analyze “all site-specific impacts now” would require the BLM to speculate about whether the offered parcels will be sold and whether and how the parcels would be developed.

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

As we have described above (see BLM’s response to WEG, No. 5), there is still much uncertainty about the exact manner in which the proposed leases would be developed, if leased.

The BLM’s analysis of impacts associated with oil and gas development occurs in an iterative manner, with a proportionate level of detail in its impacts analysis under NEPA correlated to the action being contemplated by the BLM. First, an RMP EIS is prepared to comply with NEPA and FLPMA’s land use planning requirements, and to provide allocation decisions for oil and gas leasing and development on public lands; second, the BLM considers lands nominated for leasing in areas open to leasing during its lease sale review process, and supplements the RMP EIS with an EA or other NEPA compliance documentation as appropriate, ensuring that leasing conforms to the RMP and to provide for public participation; next, when field-development activities require, the BLM may prepare a programmatic or site-specific EIS to evaluate impacts from operations proposed on the leases; finally, and in all cases, the BLM will evaluate a site-specific action on individual oil and gas lease(s) at the Application for Permit to Drill (APD) or sundry notice stage, in compliance with 43 CFR 3162.5-1(a) and Onshore Oil and Gas Order No. 1. CBD et al. argue that, at the lease sale stage, the BLM should attempt to divine and analyze potential effects of development activities that may occur far removed in the future. However, such speculation about the nature of specific activities which are not currently reasonably foreseeable is not required, and the BLM’s iterative analysis of impacts in the manner described above satisfies NEPA’s requirements, BLM policy, and provides for proper management of public lands with ample public participation.

For the reasons described here and in our answer to WEG argument No. 5, we deny this portion of CBD et al.’s protest.

2. “To the extent that the September lease sale implements IM 2018-034, including abbreviated comment and protest periods and the addition of substantial new acreage without time for adequate analysis, the lease sale is unlawful.” (CBD et al. Protest at page 15).
Two of the protesters with CBD et al. recently submitted an opening brief in support of a motion for a preliminary injunction to the U.S. District Court for the District of Idaho (Western Watersheds Project et al. v. Zinke et al., 1:18-cv-00187-REB), making many of the same arguments as they raise in the 2018Q3 Sale protest.

On August 10, 2018, the U.S. Department of Justice (DOJ) filed the Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction.

Since this matter is currently under consideration by the Court, the BLM refers CBD et al. to the Opposition filing submitted by the DOJ. The WSO finds that it has correctly followed current BLM policy in its processing of the 2018Q3 Sale, including the BLM’s current regulations and policies related to public involvement. The WSO denies this portion of CBD et al.’s protest.

3. “The EA fails to fully and accurately analyze the impacts of increased oil and gas development on greenhouse gas (GHG) emissions and climate change based on this particular Wyoming oil and gas lease sale... Failure to fully account for the full downstream emissions that will foreseeably result from oil and gas development and resulting combustion, particularly within the Buffalo Field Office, violates the March 2018 order of the U.S. District Court in Western Organization of Resource Councils v. BLM...” (CBD et al. Protest at page 18).

In our responses to WEG, above, we have addressed these arguments. See BLM responses Nos. 3, 5-6, and 8-9, above. We deny this portion of CBD et al.’s protest.


In our responses to WEG, above, we have addressed this argument. See BLM response No. 7, above. We have also explained that the BLM’s iterative analysis of reasonably foreseeable impacts associated with oil and gas development, commensurate with the action being considered by the BLM, will ensure that the agency has the ability to address reasonably foreseeable impacts before authorization, including from hydraulic fracturing operations. We deny this portion of CBD et al.’s protest.

5. “[The EAs] fail to meaningfully inform the reader or the decision-maker of the extent of new leasing within priority and general habitat management areas, both in this lease sale and cumulatively in lease sales since the finalization of the sage-grouse RMP amendments.” (CBD et al. Protest at page 22).

The EAs, which tiered to the detailed cumulative effects analysis in the RMP EISs, addressed the potential impacts to Greater sage-grouse and their habitats from leasing and potential future lease development operations, to the extent such operations are reasonably foreseeable.

In addition, the Part 2 EA specifically summarized the extent of leasing Federal lands across the entire State of Wyoming in Greater sage-grouse habitats (at page 3-23):

Since the BLM, State of Wyoming, and other partners began development and implementation of the current sage-grouse conservation strategy in 2008, there has been a 73% reduction in the area of Federal oil and gas leases in Core Population Areas. Similarly, there has been a 48% reduction in the area of Federal oil and gas leases that are Held by Production (HBP) within Core Population Areas.

See accompanying graph in the EA. The Part 2 EA continued by summarizing the extent of leasing in Greater sage-grouse habitats (id.): “The current area of Federal oil and gas leases in Core Population...”
Areas is the lowest since before the BLM adopted its revised and amended RMPs designed to increase conservation of Greater sage-grouse and their habitats.” CBD et al. appear to overlook this (and similar) discussions in the EAs, but we find that the BLM has adequately informed the decision-maker and the public about the leasing in Greater sage-grouse habitats “since the finalization of the sage-grouse RMP amendments,” as CBD et al. advocate. We deny this portion of CBD et al.’s protest.

6. “[The EAs] tier to and rely on RMP decisions... that do not address the most recent and best available science regarding measures necessary to ensure the survival and recovery of the species.” (CBD et al. Protest at page 22).

Arguing that the BLM’s 2015 RMP revisions and amendments to address conservation of Greater sage-grouse and their habitats are “outdated,” (CBD et al. Protest at page 23), CBD et al. argue that the EAs do not provide enough site-specific analysis of potential impacts to sage-grouse and do not contain “current sage-grouse information, though it is readily available to BLM from [the WGFD].” (Id.). CBD et al. believe the BLM should incorporate information from the WGFD’s 2016-2017 Sage-Grouse Job Completion Report, since “[t]his information is highly relevant to the BLM’s decision whether to offer additional parcels for oil and gas lease sale...” (id. at page 29). Furthermore, CBD et al. argue the BLM “fails to acknowledge” recent peer-reviewed scientific publications (id. at page 30).

First, it seems arbitrary that CBD et al. believe the 3-year old comprehensive 2015 RMP revisions and amendments are “outdated.” Regardless, the WGFD publishes annual Job Completion Reports (JCRs), to which the BLM contributes data through our partnership with the WGFD and of which the BLM is well aware.

The BLM considers all relevant scientific and technical information, including the WGFD’s JCRs, when evaluating implementation decisions under the approved RMPs, such as when a site-specific permit authorization is requested for lease exploration operations. However, these data and information likely change over time as environmental conditions (such as climatological conditions) and sage-grouse populations fluctuate. Over the 10-year primary term of the lease, these conditions will be evaluated at the time the BLM receives a site-specific permit requesting authorization of actual oil and gas operations. The approved RMPs also include monitoring requirements to ensure that decision-makers are aware of changing conditions and adaptive management.

We have already explained to CBD et al., above, why further analysis of potential site-specific impacts from future operations is not warranted. As for the remainder of its argument, CBD et al. appear to primarily disagree with the decisions made in the approved RMPs. However, that is not subject to protest at this time (both Western Watersheds Project and WildEarth Guardians protested the RMP decisions, but its protests were denied – see the Wyoming Greater Sage-Grouse Land Use Plan Amendment/Final Environmental Impact Statement Protest Resolution Report at page 5). To the extent that CBD et al. argue that the BLM should assess the 2016-2017 JCR in the lease sale EA, we find that such assessment is not warranted given the monitoring and adaptive management requirements under the approved RMPs and the opportunity for additional review if leases are issued and future actual operations are proposed on the leases.

The BLM has also participated in review of recent scientific publications addressing Greater sage-grouse population response to oil and gas management in Wyoming. Though CBD et al. cite numerous recent scientific publications in its protest to support its argument that the BLM “fails to acknowledge new and

22 As we have noted above (refer to n. 14), the BLM is currently considering amending and updating the 2014 and 2015 RMP decisions.
23 Available at: https://wgfd.wyo.gov/WGFD/media/content/PDF/Hunting/JCRS/2016-17_SG_JCR_Complete.pdf
24 See, e.g., the Rocky Mountain Region ROD at page 1-21, identifying a “key component” of the approved RMPs as “[m]onitoring and evaluating the effectiveness of conservation measures and implementing adaptive management, as needed.” See also this ROD at Section 1.6.1 (“Monitoring, Evaluation, and Adaptive Management”) and Chapter 6 (“Plan Monitoring for [Approved RMPs]”).
relevant scientific information,” (CBD et al. Protest at page 30), in its EAs the BLM has cited to or referenced all of the studies identified by CBD et al. that were published prior to preparation of the Part 2 EA. While CBD et al. might disagree with how the BLM incorporated or addressed them, it can hardly be said that the BLM has failed to acknowledge these publications.

We deny this portion of CBD et al.'s protest.

7. “The proposed leasing action violates FLPMA by failing to conform to a key management prescription of the still-operative Wyoming 2015 plan amendments—the obligation to ‘prioritize the leasing and development of fluid mineral resources outside GRSG habitat.’” (CBD et al. Protest at page 22). “The BLM should consider an alternative, regularly considered and adopted by other field offices, would [sic] defer all remaining parcels located within sage grouse ‘Priority Habitat Management Areas’ and ‘General Habitat Management Areas,’ until new information regarding sage-grouse populations and the effectiveness of mitigation measures can be analyzed and applied.” (CBD et al. Protest at page 38).

The recently-revised RMP revisions and amendments include a “key component” of the land use plans (ARMPA ROD at page 19):

Prioritize the leasing and development of fluid mineral resources outside [Greater sage-grouse, or GRSG] habitat.

The Rocky Mountain ROD for the BLM’s sage-grouse plan revisions and amendments describes this as an “objective” in the plans (at page 1-25):

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

This priority was not included as an allocation decision or management decision in the BLM’s RMP revisions and amendments. To clarify how this objective would be implemented by the BLM, on September 1, 2016, the WO issued IM No. 2016-143. These IMs only provided guidance on implementation of the land use plans, was not issued for public notice and comment, and therefore did not constitute rulemaking for the BLM.

On December 27, 2017, the BLM WO issued a new policy, rescinding and replacing IM No. 2016-143. While some aspects of the policy changed, one aspect remained the same. As the new policy, IM No. 2018-026, states (and similar to the original policy; see IM No. 2016-143 at page 2):

...the BLM does not need to lease and develop outside of GRSG habitat management areas before considering any leasing and development within GRSG habitat.

26 See Wyoming Outdoor Council et al. (171 IBLA 153, 153): “A BLM IM is not a regulation, has no legal force or effect…”
The new policy also provides that the more-stringent lease stipulations from the approved RMPs “may be used... to encourage lessees to acquire leases outside of [Greater sage-grouse] PHMA due to fewer restrictions in those areas than in higher priority management areas.” Finally, as both policies acknowledge (at n. 1 in both IMs), the prioritization objective is merely an “administrative function” and is not an allocation decision.

The Part 2 EA also considered, but eliminated from detailed analysis, an alternative “Deferring All Parcels Located in Greater Sage-Grouse Habitats.” (Part 2 EA at page 2-5):

This alternative was not analyzed in detail because it would not be in conformance with the approved RMPs. Further, this alternative would effectively, if temporarily, close areas to oil and gas leasing and development where the field office RMPs have determined that these lands are open to leasing with applicable stipulations to conserve Greater sage-grouse and their habitats.

There are about 43 million acres of sage-grouse habitats in Wyoming (of which 15.5 million acres is designated PHMA). The historic range of sage-grouse habitats occupy about 76% of the State. Of the 348 proposed parcels (353,220.33 acres) in the 2018Q3 Sale, only 3 parcels (625.44 acres) are located in non-sage-grouse habitats. This reflects that so much of the Federal lands in Wyoming coincide with sage-grouse habitats, and that known oil and gas reserves also happen to coincidentally intersect these habitats. As a result, less than 0.2% of the 2018Q3 sale is located outside of PHMA and GHMA sage-grouse habitats. While CBD et al. may prefer that the BLM close PHMA and GHMA to leasing (even temporarily), that would not be in conformance with the approved RMPs which were subject to a multi-year review process by the public and cooperating agencies such as the U.S. Fish and Wildlife Service, WGFD, other State agencies, and local Governments. By advocating for the deferral of all parcels in PHMA and GHMA, CBD et al. would have the BLM elevate the protesters’ preferred uses of public lands over the multiple-use balance the BLM struck in the 2015 RMP revisions and amendments. This is contrary to FLPMA, would jeopardize the BLM’s important partnerships in managing sage-grouse habitats, and would have significant adverse effects upon the State’s economy.

We find that offering the lands proposed for lease in the 2018Q3 Sale located in PHMA and GHMA conforms to the approved RMPs, and the BLM need not defer the protested parcels. CBD et al. have not provided objective evidence demonstrating that offering these parcels for lease, with the numerous stipulations added to protect sage-grouse and their habitats, is not in conformance with the approved RMPs. For the reasons described above, we deny this portion of CBD et al.’s protest.

8. “Despite the deferral of a small number of parcels and the addition of a lease sale notice that simply reiterates existing BLM regulations, the vast majority of the proposed parcels will have adverse effects on mule deer and pronghorn seasonal and migration habitats. The EAs provide only cursory analysis of the impacts of oil and gas development on pronghorn antelope and mule deer, and lacks [sic] any site-specific analysis.” (CBD et al.’s Protest at page 38, footnote omitted). “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.” (CBD et al.’s Protest at page 41).

In this argument, CBD et al. challenged numerous parcels located in several BLM planning areas throughout Wyoming (CBD et al. Protest at page 38). As we have described, above (see response to CBD

28 In pending litigation filed in the U.S. District Court for the District of Idaho in the matter of Western Watersheds Project and Center for Biological Diversity v. Ryan Zinke, David Bernhardt, and the BLM (1:18-cv-00187-REB), the plaintiffs also seek to prevent leasing by the BLM, including for the WSO’s 2018Q3 Sale. As the State of Wyoming, citing to the 2018Q3 Part 2 EA, explained in its Response to Plaintiffs’ Motion for Preliminary Injunction (at page 9), “In 2017, the BLM generated $173 million in revenues from federal oil and gas leases in Wyoming providing the State with approximately $85 million... That money funds public schools, highway and county road infrastructure, the University of Wyoming, capital construction projects, and the State’s budget reserve account.”
et al., No. 1), the BLM is not required to speculate about potential site-specific impacts to resources, including for big game and their seasonal habitats, when preparing a lease sale EA.

The EAs address, to the extent reasonably foreseeable, the potential impacts to big game from future exploration and development operations on the proposed leases. See WRBBD Part 1 EA at page 3-33; HPD Part 1 EA at pages 45-46, 53; and Part 2 EA at pages 3-24 – 3-26, 4-21). The RMP EISs to which the EAs tier also address impacts to big game from oil and gas, including the consideration of various alternatives regarding multiple use of big game habitats, and final decisions to apply mitigation measures to protect big game. See, e.g., the January 2008 “Proposed Resource Management Plan and Final Environmental Impact Statement” for the Rawlins Field Office at pages 2-106 – 2-107, 2-142, 2-146 – 2-151, 3-143 – 3-144, 3-147 – 3-151, 4-87 – 4-88, 4-529 – 4-531; see also the December 2008 ROD at page 2-3, 2-53 – 2-54, 2-63, 2-66, A1-3 – A1-4, A9-1 – A9-2, A15-1.

We find that the BLM need not further evaluate the potential future site-specific impacts from not-yet-proposed and not reasonably foreseeable oil and gas exploration or production operations. For these reasons, we deny this portion of CBD et al.’s protest.

9. “BLM should not lease any of these parcels containing crucial winter range habitat for pronghorn and mule deer, given the potential for long-term loss of this important habitat. In the alternative, it should require NSO stipulations on crucial winter range of these parcels. Or, at a minimum, it should modify the timing limitation to prohibit vehicle traffic, noise, and other activities that disturb wintering ungulates during winter months.” (CBD et al.’s Protest at page 46).

While CBD et al. might have preferred that the approved RMPs made different allocation decisions in order to tip the balance of multiple uses on public lands towards the benefit of big game habitats with greater restrictions to other uses (such as energy development), a lease sale protest is not the proper point in time or the correct administrative remedy to address this preference. The BLM and its partners (such as the WGFD) conduct resource inventories and monitoring, and the BLM evaluates changes to resource conditions to ensure its land use plan decisions and implementation decisions address changing circumstances over the life of the RMPs.

The approved RMPs and the lease sale EAs were prepared in close coordination with the WGFD, the State agency with authority and expertise to manage the big game populations in the State. As the BLM explained in its response to public comments for the Part 2 EA (at pages 4, 5) and in recognition of the special role the State of Wyoming enjoys in managing wildlife populations throughout Wyoming, the BLM coordinated during the 2018Q3 sale review process with the WGFD. The BLM accepted the WGFD’s recommendation (described in the WGFD’s letter dated June 5, 2018), with the concurrence of the Governor’s Office, to defer three entire parcels (4,965.81 acres) intersecting the designated Red Desert to Hoback Mule Deer Migration Corridor for the Sublette Mule Deer Herd Unit. The BLM and WGFD also coordinated to develop and apply a special lease notice to facilitate the formulation of mitigation for potential impacts, at the time a site-specific lease authorization is requested (if the lease is

29 See Section 202(c)(9) of the Federal Land Policy Management Act of 1976 (FLPMA): “to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States... provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands.” See also Section 302(b) of FLPMA: “…nothing in this Act shall be construed as... enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife.” (43 U.S.C. § 1732). The coordination process between the BLM and WGFD for oil and gas lease sales is described in a Memorandum of Understanding (Appendix 5g), dated September 3, 2013.
issued and if a site-specific project is proposed to the BLM). More recently, the BLM adopted the WGFD's supplementary recommendation to defer another parcel (final parcel number -307 comprised of 2,558.50 acres) located partially within the migration corridor.

CBD et al. have not provided objective evidence demonstrating that offering these remaining parcels for lease, with adoption of the WGFD’s recommended deferrals, the special lease notice, and the numerous stipulations added to protect big game and their habitats, is not in conformance with the approved RMPs. For the reasons described above, we deny this portion of CBD et al.'s protest.

10. “BLM has not imposed... stipulations on lease parcels containing migratory routes, or performed site-specific analysis to evaluate whether any of the parcels need stipulations to protect migratory corridors.” (CBD et al.'s Protest at page 47). “BLM relies on various stipulations formulated specifically for the protection of sage grouse habitat, as mitigation for impacts on crucial winter range and migratory routes for pronghorn, mule deer, and other ungulate species.” (CBD et al.'s Protest at page 48). “BLM should defer all parcels with pronghorn and mule deer migratory routes and crucial winter range until it has conducted site-specific analysis disclosing the effect of sage-grouse stipulations and any other applicable mitigation measures on the big game habitats.” (CBD et al.'s Protest at page 48). “Until BLM has completed the [Rock Springs] RMP revision, it should also defer all parcels within the Rock Springs Field Office containing pronghorn winter crucial range habitat.” (CBD et al.'s Protest at page 50).

See our response to CBD et al.’s argument, above, in response No. 9. See also our response to the public comments submitted by CBD et al. to the Part 2 EA on page 15. We disagree with CBD et al.’s assertion that the BLM “relies on” stipulations for non-big game species and habitats for the protection of big game in the 2018Q3 Sale. While there is undoubtedly corollary benefit to various resources that may be present from the application of stipulations for other resources, the BLM is not relying upon those stipulations to protect big game.

In 2011, the BLM initiated an EIS in preparation of its Rock Springs RMP revision. A draft EIS is in preparation by the BLM.

The Council on Environmental Quality’s (CEQ’s) regulations at 40 CFR 1506.1 describe the limitations on actions during the NEPA process, including (a):

\[
\text{Until an agency issues a record of decision... no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives.}
\]

The Department of the Interior’s (DOI’s) NEPA regulations at 43 CFR 46.160 further explain:

\[
\text{During the preparation of a program or plan NEPA document, the Responsible Official may undertake any major Federal action in accordance with 40 CFR 1506.1 when that action is within the scope of, and analyzed in, an existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.}
\]

Lastly, the BLM’s NEPA Handbook provides:

\[
\text{You must not authorize any action that would limit the choice of alternatives being analyzed under the NEPA until the NEPA process is complete (40 CFR 1506.1). However, this}
\]


requirement does not apply to actions previously analyzed in a NEPA document that are proposed for implementation under an existing land use plan.

Offering and subsequently issuing competitive oil and gas leases at the 2018Q3 Sale is an implementation decision under the applicable RMPs.\textsuperscript{32}

The IBLA has held that BLM may offer parcels for lease and issue new leases while an RMP is being revised, if the leasing decision conforms to the existing RMP (see Sierra Club Legal Defense Fund, Inc., 124 IBLA 130, 140 (1992)): \textsuperscript{33}

Acceptance of appellants’ position that once BLM has decided to prepare a new land use plan for an area, it must suspend action in conformance with the prevailing plan would seriously impair BLM’s ability to perform its management responsibilities. We therefore reject this challenge to BLM’s decision.

As in Sierra Club Legal Defense Fund, Inc., the proposed 2018Q3 Sale implements the goals and objectives in the approved RMPs.

As we explained to CBD et al. in our response to its comments on the Part 2 EA (at page 14):

The EA and the RMPs to which it tiers acknowledge that big game habitats on BLM-administered public lands, if leased and if oil and gas development occurs, may be adversely affected (EA at page 4-21). The RMP EISs (see Green River RMP EIS at pages 34-35, 347-348, 438-441, 461-462, and 721-725; see also JMH CAP EIS at pages 2-13, 3-16 through 3-17, 4-53 through 4-80, and 4-157 through 4-160) analyzed and disclosed potential impacts to big game and evaluated alternatives to address balancing the various multiple uses on the public lands. The EISs and RODs provide for allocation decisions and lease stipulations to address potential impacts to big game (see, e.g., Green River RMP at pages 24, 63-65) while balancing other multiple uses on the public lands.

While the BLM is preparing the Rock Spring RMP EIS for its land use plan revision, the BLM is adopting the WGFD’s recommendations to defer certain parcels and apply a special lease notice to others that intersect the designated migration corridor. In this manner, the BLM ensures compliance with 40 CFR 1506.1 while implementing the goals and objectives of the approved RMP, so as not to impair the BLM’s management responsibilities.

In its protest, CBD et al. merely repeat the complaints raised in its comments on the EA, without addressing the BLM’s response. CBD et al. have not provided objective evidence to show that our conclusion that offering these lands is in conformance with the approved RMP, or that offering these lands would not be in compliance with the law, BLM regulations, and our policies. We deny this portion of CBD et al.’s protest.

11. “BLM’s Round 2 September 2018 EA fails to convey significant site-specific information regarding wildlife, recreational, scenic, and wilderness values for several significant landscapes that will be affected by the proposed action.” (CBD et al.’s Protest at page 50).

CBD et al. allege that the BLM “fails to convey significant site-specific information” about the certain parcels, and provides its own detailed descriptions of these lands (CBD et al.’s Protest at pages 50-54), without substantiating why this alleged failure requires the parcels be deferred. The BLM continues to fulfill its obligations to maintain an inventory of the public lands considered in the 2018Q3 Sale, in


\textsuperscript{33} See also Southern Utah Wilderness Alliance, 163 IBLA 14, 27 (2004).
accordance with Section 201(a) of FLPMA, and has satisfied NEPA’s procedural obligations by preparing multiple EISs and EAs which consider leasing of these proposed parcels. These analyses meet FLMPA’s goals to “create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans” (Section 101(a) of NEPA, 43 U.S.C. § 4331). While CBD et al. or other members of the public may wish for the BLM to describe, in greater detail than what the lease sale EAs provide, certain resources present on certain lands, this is not what NEPA requires.

The BLM’s NEPA Handbook summarizes some of NEPA’s requirements, stating (at page 4):

The [Council on Environmental Quality, or CEQ] regulations require NEPA documents to be “concise, clear, and to the point” (40 CFR 1500.2(b), 1502.4). Analyses must “focus on significant environmental issues and alternatives” and be useful to the decision-maker and the public (40 CFR 1500.1). Discussions of impacts are to be proportionate to their significance (40 CFR 1502.2(b)). Similarly, the description of the affected environment is to be no longer than is necessary to understand the effects of the alternatives (40 CFR 1502.15). “Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.” (40 CFR 1500.1).

Consistent with the CEQ’s regulations and BLM policies, we find that the lease sale EAs provided “information relevant to understanding the effect(s) of the proposed action or alternative” (BLM Handbook H-1790-1 at page 81), particularly since further detail regarding the potential site-specific effects that may arise from future operations on the leases, if issued, are not known at this time; no more is required.34

CBD et al. have not shown that the information they advocate be detailed in the EA is not otherwise available to the decision-maker, or is necessary to describe for the decision-maker to make an informed decision. We deny this portion of CBD et al.’s protest.


TWS et al. protest all 350 parcels due to “a number of concerns,” (Protest at page 2), alleging violations of NEPA and FLPMA.

1. __For this lease sale, BLM has not analyzed any alternatives that fall between the two extremes. Instead, each of the three EAs just considered the ‘No Action’ and ‘Proposed Action,’ under which BLM would possibly sell all 350 parcels... For example, the EAs fail to evaluate an alternative that would defer leasing in PHMA and/or GHMA for Greater sage-grouse.” (TWS et al. Protest at page 4).

TWS et al.’s argument is similar, if not identical, to the argument raised by CBD et al., above. Please refer to our response to CBD et al., No. 7, above. TWS et al, like CBD et al., continue to overlook or misunderstand the detailed analysis of a range of alternatives in the applicable RMP EISs to which the EAs tier. In essence, TWS et al. ask the BLM to supplant the approved RMP allocation decisions by deferring public lands from the 2018Q3 sale that are allocated as open to oil and gas leasing (with appropriate stipulations).

34 Recent DOI policy has further encouraged the BLM to not amass needless detail; in a memorandum dated August 6, 2018, the Deputy Secretary provided guidance for the preparation of EAs (“Additional Direction for Implementing Secretary’s Order 3355 Regarding Environmental Assessments”). The guidance states that, in seeking to streamline agency reviews in compliance with NEPA, “Bureaus should strive to complete EAs in 75 pages or less, excluding appendices, and to conclude the EA review within 180 calendar days of the commencement date...” The 2018Q3 Part 2 EA is 73 pages, not including appendices/attachments. Other protesters, such as TWS et al., complain that the Part 2 EA is “mammoth.” (TWS et al. Protest at page 1).
TWS et al. are also simply incorrect in alleging that “[n]one of the RMP alternatives addressed closing some or all of the particular parcel areas at issue here to leasing...” (Protest at page 5). For example, the FEIS for the 2015 RMP amendments of land use plans in Wyoming to address conservation of sage-grouse and their habitats evaluated an Alternative C that considered closing lands to oil and gas leasing that are included in the 2018Q3 Sale (see Map 2-6 in the FEIS, “Alternative C Oil and Gas Leasing Restrictions Related to Greater Sage Grouse Habitat”).

We deny this portion of TWS et al.’s protest.

2. “...the BLM should have analyzed an alternative that deferred leasing in the Red Desert to Hoback migration corridor. The BLM decided to defer a handful of parcels within this corridor based on [WGFD] recommendations, and to attach a Special Lease Notice... However, in electing this approach, the BLM failed to disclose the substantive limitations of the lease notice, failed to consider applying a much stronger lease stipulation, and failed to develop an alternative that would have deferred leasing within the corridor.” (TWS et al. Protest at page 5). “…the BLM should have considered an alternative that deferred the leasing of parcels within the RSFO in order to preserve decision space for the upcoming RMP revision.” (TWS et al. Protest at page 5).

As we explained above, the proposed 2018Q3 Sale implements the goals and objectives in the approved RMPs, that balance multiple uses on public lands, including the stewardship of big game habitats and energy production. We refer TWS et al. to our responses to CBD et al.’s protest, above, response Nos. 8-10.

By adopting the WGFD’s recommendations to defer certain parcels that intersect the designated mule deer migration corridor, the BLM has recognized the special role the WGFD plays in managing the State’s big game wildlife populations.

We deny this portion of TWS et al.’s protest.

3. “…BLM must take the site-specific impacts of leasing into account at this stage.” (TWS et al. Protest at page 6). “The ARMPA does not address the site-specific impacts associated with issuing these particular lease parcels.” (TWS et al. Protest at page 6).

See our responses to WEG’s (No. 5) and CBD et al.’s (Nos. 1, 11) protests, above. As we have explained, the BLM need not further evaluate potential site-specific impacts from not-yet proposed future oil and gas development operations. We deny this portion of TWS et al.’s protest.

4. “BLM has failed to consider the cumulative impacts of leasing.” (TWS et al. Protest at page 6). “BLM’s NEPA analysis must consider the cumulative impact of all the recent and currently-planned oil and gas auctions in which BLM has offered hundreds of leases affecting sage grouse habitat protected under the RMPs.” (TWS et al. Protest at page 7). “In addition, the cumulative impacts from the following oil and gas projects have not been considered in the EAs [listing 5 oil and gas projects]... These projects need to be considered as part of a cumulative impacts analysis.” (TWS et al. Protest at page 8). “BLM must analyze and disclose the cumulative impacts of this wave of leasing and oil and gas projects on the Greater sage-grouse and its habitat.” (TWS et al. Protest at page 8).

Again continuing to overlook the RMP EISs to which the lease sale EAs tier, TWS et al. argue (Protest at page 8):

*BLM must analyze and disclose the cumulative impacts of this wave of leasing on the Greater sage-grouse and its habitat.*
But evaluating the cumulative impacts of oil and gas leasing (and development) is exactly what the RMP EISs have done. Furthermore, at least in Wyoming, the “wave of leasing” that TWS et al. fear should be put in proper context. As we explained in the EAs or our response to public comments (see, e.g., Part 2 EA at page 3-23), the current extent of Federal oil and gas leases in Core Population Areas is at the lowest level since before the BLM, State of Wyoming, and other partners began developing and implementing the Core Population Area strategy. While TWS et al. may fear a “wave of leasing” in sage-grouse habitats, the proposed lease sale is in conformance with the approved RMPs (including the sage-grouse conservation measures and stipulations) and occurs at a point in time where threats in Wyoming to sage-grouse and their habitats from Federal oil and gas lease development are at the lowest point in a decade.

Additionally, when the BLM prepared its 2014-2015 Greater sage-grouse RMP revisions and amendments, it purposely considered Western Association of Fish and Wildlife Agencies (WAFWA) management zones for Greater sage-grouse, which encompass multi-state regions, in coordination with the U.S. Fish and Wildlife Service and the state agencies responsible for managing sage-grouse populations. Similarly, the BLM issued RODs for two regions: the Rocky Mountain region and the Great Basin region. These RODs acknowledged the decisions and effects that were considered on a regional basis.

Furthermore, the list of projects provided in TWS et al.’s protest (at page 8) were all included in the BLM’s cumulative effects analysis (see, e.g., The Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment and FEIS at Table 4-109, “Summary of Other Activities Considered”). In fact, highlighting the uncertainty in determining when a project may be considered reasonably foreseeable that is common with oil and gas exploration and development projects, one of the projects listed by TWS et al. (the Greater Crossbow Oil and Gas Project) has even been indefinitely suspended by the proponents prior to completion of an EIS.\

We find that the BLM adequately evaluated the cumulative impacts of leasing in the RMP EISs to which the leasing EAs tier, and have satisfied NEPA’s procedural requirements in this regard. TWS et al. have not provided objective evidence that conclusively refutes this or that demonstrates the assumptions and analyses in the RMP EISs or the lease sale EAs are incorrect. For the reasons described above, we deny this portion of TWS et al.’s protest.

5. “The EAs underestimate impacts to groundwater resources by incorrectly assuming that useable water sources will be protected... ...the reality is that useable water zones are not protected.” (TWS et al. Protest at page 9). “BLM cannot simply defer this issue until the APD stage and assume that all laws will be met.” (TWS et al. Protest at page 12).

The BLM’s lease sale EAs do not propose to deviate from compliance with applicable BLM regulations; regardless, construction, drilling, completion, and other activities are not currently proposed on the subject lease sale parcels. When appropriate, and keeping with the BLM’s iterative analysis of impacts commensurate with the action under review by the agency, the BLM will consider potential effects to groundwater resources at the time it reviews a site-specific proposal.

Most of TWS et al.’s arguments pertain to the BLM’s existing regulations in our Onshore Oil and Gas Order No. 2 and 43 CFR 3162.5-2(d), and the BLM cannot answer a challenge of those rules in a protest decision for an oil and gas lease sale, when the operations of concern to TWS et al. are not currently proposed nor reasonably foreseeable.

In addition, as the Interior Board of Land Appeals has previously found (Powder River Basin Resource Council et al., 180 IBLA 32, 57, decided September 15, 2010):

35 See August 2018 BLM-Wyoming NEPA Hotsheet, available at https://go.usa.gov/xPcBn: “The EIS was formally suspended in March 2018 at EOG’s request.”
BLM need not evaluate the potential environmental consequences resulting from noncompliance with Federal and State permitting requirements or assume that violations of Federal and State standards will inevitably occur.

Yet that is exactly what TWS et al. seek of the BLM, here, while disregarding the role of other state and Federal agencies in protecting groundwater resources.

For these reasons, we deny this portion of TWS et al.’s protest.

6. “BLM has not prioritized leasing outside of PHMAs and GHMAs, as required by the Rocky Mountain Region ROD and Wyoming BLM ARMPA.” (TWS et al. Protest at page 13). “The entire point of the prioritization objective is to limit development and surface disturbance in important sage-grouse habitat—not simply to order BLM’s administrative paperwork.” (TWS et al. Protest at page 14).

In our review of TWS et al.’s arguments regarding prioritization of leasing under the objective in the 2014-2015 Greater sage-grouse RMP revisions and amendments, we find that they are substantively similar or identical to those raised by CBD et al., above. We refer TWS et al. to our response to CBD et al., above (No. 7).

TWS et al. are incorrect that the prioritization objective’s purpose was to “limit development and surface disturbance in important sage-grouse habitat” (Protest at page 14). That is the purpose of RMP allocation decisions and the applicable Greater sage-grouse lease stipulations (such as the Controlled Surface Use stipulation which limits cumulative surface disturbances and their densities to no more than 5% of an analysis area and one disturbance per 640 acres, on average), all of which were conformed to in the 2018Q3 lease sale.

We deny this portion of TWS et al.’s protest.

7. “BLM is not meeting the multiple use requirements of FLPMA.” (TWS et al. Protest at page 14). “The mere fact an RMP makes lands available for leasing does not mean that actually leasing the lands meets BLM’s multiple use obligations.” (TWS et al. Protest at page 15).

TWS et al. have not provided objective evidence that offering the proposed lease sale parcels is not in conformance with the approved RMPs – the documents which spell out how the BLM will accomplish multiple-use management and sustained yield for public lands within the respective planning areas. While TWS et al. may disagree with the RMP decisions already made, the BLM is leasing lands in conformance with the approved RMPs. In almost all lease sales, the BLM receives nominations for lands that are located in areas closed to leasing under the approved RMP. In those cases, the nominated lands are very rarely provided in the preliminary lease sale parcel list sent by the WSO to BLM Field Offices for review. The decision to open public lands for leasing was made in the approved RMPs, subject to protest and challenge at the time they were approved. Members of TWS et al. have protested the RMP decisions, and these protests were denied by the BLM Director in 2014-2015. The implementation of the RMPs through the 2018Q3 lease sale does not provide for yet another opportunity for TWS et al. to protest the underlying RMP decisions.

TWS et al. have not provided objective evidence to demonstrate that offering any of the protested parcels in the 2018Q3 lease sale is not in conformance with the approved RMPs, and have not provided a convincing rationale for why the BLM would elect to not offer the lands for which we have received nominations. We find that the BLM continues to comply with FLPMA and our regulations and policies by offering the protested parcels, in conformance with the land use plans prepared pursuant to FLPMA, and deny this portion of TWS et al.’s protest.
8. "The Part 2 EA has not adequately addressed Lands with Wilderness Characteristics [LWCs], in violation of NEPA and FLPMA." (TWS et al. Protest at page 15). "The LWCs in the RSFO have the opportunity to be managed for their wilderness character, because the LWCs in this field office do not have management direction." (TWS et al. Protest at page 16). "The LWCs inventories are new information that should be considered during this lease sale and incorporated into the next plan." (TWS et al. Protest at page 16).

In the 2018Q3 Sale, Part 2, a number of parcels are located in Rock Springs Field Office’s Jack Morrow Hills (JMH) Coordinated Activity Plan (CAP) vicinity, near existing Wilderness Study Areas (WSAs) and lands outside of the WSAs that have been identified as having wilderness characteristics (LWCs).36 See map in Attachment 4.

Section 603(a) of FLPMA directed the BLM, for a period of 15 years after the approval of FLMPA (until 1991), to review “roadless areas of five thousand acres or more” having wilderness characteristics and for the Secretary of the Interior to report to the President regarding the suitability or nonsuitability of such areas for preservation as wilderness. The President was to provide advice to the Congress regarding his recommendations with respect to the designation of wilderness of each area within two years of the Secretary’s report. Those areas recommended as suitable for preservation as wilderness became the BLM’s WSAs, which (in accordance with Section 603(c) of FLPMA) are managed so as not to impair the suitability of such areas for preservation as wilderness, unless Congress has determined otherwise.

Regarding the BLM’s inventory of wilderness characteristics on public lands, Section 201(a) of FLPMA requires:

The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

Importantly, as the language of the statute acknowledges, preparation and maintenance of an inventory or identification of areas (such as lands with wilderness characteristics) shall not, of itself, change or prevent change to the management of public lands.

This acknowledgement that preparation and maintenance of the inventory will not change or prevent change to the management of public lands is also repeated in applicable BLM policies; furthermore, in order to identify public lands with wilderness characteristics, BLM Manual Section 6310.06 provides policy guidance to the BLM:37

The primary function of an inventory is to determine the presence or absence of wilderness characteristics...

36 The BLM uses the same criteria for identifying wilderness characteristics as described in Section 2(c) of the Wilderness Act (see FLMPA § 103(i)): “...an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.”

When evaluating new information, such as citizen-proposed LWCs or after updating BLM inventory information, BLM policy is that the new information will be reviewed as soon as practicable, evaluate the information, and document its findings (id.):

*The BLM will document the rationale for the findings, make the findings available to the public, and retain a record of the evaluation and the findings as evidence of the BLM’s consideration.*

BLM Manual Section 6320.06 provides the following direction on how to address findings when LWCs are present:

*Consistent with FLPMA and other applicable authorities, the BLM will consider the wilderness characteristics of public lands when undertaking land use planning. The BLM will use the land use planning process to determine how to manage lands with wilderness characteristics as part of the BLM’s multiple-use mandate...*

*Considering wilderness characteristics in the land use planning process may result in several outcomes, including, but not limited to: (1) emphasizing other multiple uses as a priority over protecting wilderness characteristics; (2) emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to wilderness characteristics; (3) the protection of wilderness characteristics as a priority over other multiple uses.*

So, BLM policy directs the agency to use the RMP process in making the determination as to how manage LWCs, where present. For lands outside of WSAs where wilderness characteristics may be present, the BLM ensures implementation decisions conform to the approved RMPs, but the agency is not required to manage these lands to the nonimpairment standard under FLPMA Section 603(c). In this case, the 1997 Green River RMP did not close the areas encompassing the protested parcels to oil and gas leasing or prioritize protection of wilderness characteristics outside the adjacent WSAs over other multiple uses.

While the 1997 Green River RMP FEIS stated “[w]ilderness management will not be addressed” (FEIS at page 8), it acknowledged that wilderness was addressed in other documents, including the 1990 Rock Springs District Final Wilderness EIS (id.). The Green River RMP FEIS (at page 34) and ROD (at page 23) state that new discretionary uses in parts of the planning area “could be reviewed to ensure they do not create conflicts with management and preservation of wilderness values.” The 2006 JMH CAP (which amended the 1997 Green River RMP) also evaluated wilderness resources in the area of the protested parcels, and stated (at page 80):

*Wilderness management recommendations and alternatives for this area are addressed in the Rock Springs District Final Wilderness EIS. Where the prescribed management in these areas is more stringent than either the Interim Management Policy or wilderness policy for designated wilderness areas, it is addressed here.*

The 2015 amendment to the approved RMP for the Rock Springs Field Office (to address conservation of Greater sage-grouse populations and their habitats on public lands) also considered potential impacts to LWCs (see FEIS at pages 4-81 – 4-88). Many of the protested parcels within the JMH area are located within designated PHMA for Greater sage-grouse (see Attachment 4). As the 2015 RMP amendment explained for the proposed land use plan amendment’s potential effects to LWCs (FEIS at page 4-87):

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Density limitations of oil and gas or mining location per 640 acres and a 5% disturbance cap within PHMs (core only) would have impacts similar to those described under Alternative D, but to a larger area. Less surface disturbance would be allowed, which would protect natural settings and values within lands with wilderness characteristics.

The RSFO has maintained an inventory of all of the lands within its jurisdiction for LWCs, evaluated the information in accordance with BLM policy, documented the rationale for its findings, and made the findings available to the public (as evidenced by TWS et al. including the BLM’s findings as exhibits to its protest; see, e.g., Exhibit 7). While the RSFO’s inventory of LWCs has been updated over time, the mere fact that an inventory of public lands has been conducted, updated, or new inventory findings have been advocated by outside groups “shall not, of itself, change or prevent change of the management or use of public lands.” (Section 201(a) of FLPMA). TWS et al. appear to argue, in part, that the BLM should reach a different conclusion about the presence or absence of LWCs based on different inventory unit boundaries, changed conditions, or because of differences in opinion warrants deferral of lease parcels. This is not required under FLPMA or NEPA, and would impair the BLM’s ability to implement its land use plans.

As the Part 2 EA explained (at pages 3-1 – 3-2), each of the parcels was additionally screened for wilderness characteristics (at Section 5.5 of the Part 2 EA), using the updated wilderness characteristics inventories. The Part 2 EA (at page 4-3) also explained that “the proposed parcels are located within areas open to leasing under the approved RMPs. Applicable lease stipulations for RMP Special Designations have been added to each parcel to ensure conformance with the approved RMPs.”

While the BLM must consider protection of wilderness characteristics under FLPMA’s multiple-use mandate (and has done so), the BLM must also (Section 102(a)(12) of FLPMA) ensure that public lands are:

...managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber...

Multiple uses (for example, protection of wilderness characteristics and making available sources of domestic minerals) have been considered in the applicable BLM EISs and lease sale EAs. While the BLM manages some lands to ensure non-impairment of wilderness characteristics (such as in the several WSAs within the vicinity of the proposed parcels), the BLM has elected not to prioritize protection of wilderness characteristics over other multiple uses for the public lands where the proposed parcels are located, and would not be precluded from eventually effecting such a change in future RMP revisions or amendments.

We find that the Part 2 EA (as modified in the DR) provides adequate information to ensure the decision-
maker is informed when considering potential impacts to wilderness characteristics, to the extent reasonably foreseeable. While TWS et al. may disagree with the BLM’s decision to not manage the LWCs within the proposed lease sale parcels to a nonimpairment standard, or otherwise prioritize the protection of wilderness characteristics over other multiple uses such as energy development, the BLM is not required to do so. In addition, if the leases are issued and future oil and gas exploration or development operations are proposed, the BLM can review the proposal to avoid or reduce the potential effects to the wilderness characteristics. This is consistent with FLPMA, NEPA, and BLM policies.

For these reasons, we deny this portion of TWS et al. ’s protest.


As we committed to doing in our response to public comments for the Part 2 EA (at pages 32-33), the BLM has re-checked its findings regarding the presence of absence of LWCs for the proposed parcels in the RSFO.

As a result of this re-review, the BLM finds that most of the parcels TWS et al. argue contain LWCs were properly identified by the RSFO and disclosed in the Part 2 EA. However, the RSFO has determined that some modification to the Part 2 EA is necessary to reflect current information. Specifically, the RSFO agrees that final parcels -296, -298, -299, and -300 contain LWCs. Changes to the EA to reflect this have been made in the addendum to the DR prepared concurrently with this protest decision.

Regardless, as our response to TWS et al.’s comments to the Part 2 EA explain (at page 33):

...the approved Green River RMP does not prioritize protection of wilderness characteristics (outside of WSAs) over other multiple uses (see RMP at pages 23-24). Offering the lands intersecting LWCs is in conformance with the approved RMP.

As BLM Washington Office IM 2018-034 states: “[i]t is BLM policy that existing land use plan decisions remain in effect until an amendment or revision is complete or approved. Therefore, the BLM will not routinely defer leasing when waiting for an RMP amendment or revision to be signed. Rather, when making leasing decisions, the BLM will exercise its discretion consistent with existing RMPs...”

As a result, and as we have explained in our response No. 8, above, the BLM need not defer proposed lease sale parcels where it has not prioritized the protection of the LWCs over other multiple uses, in accordance with the approved RMP. We deny this portion of TWS et al.’s protest.

10. “The [Part 2] EA makes no mention of the impacts that leasing will have on LWCs…” (TWS et al. Protest at page 16). “Most of the LWCs are also located on the border of Wilderness Study Areas (WSA), and leasing will have a significant impact on the wilderness character of these landscapes.” (TWS et al. Protest at page 17).

The Part 2 EA acknowledges that LWCs are present, and that (if a lease is issued, operations are proposed, and authorized by the BLM):

...lease operations can result in surface-disturbance and other impacts.

Part 2 EA at page 1-4. See also Part 2 EA at page 4-17: “Subsequent development of a lease may lead to surface disturbance from the construction of well pads, access roads, pipelines, and powerlines.” The JMH CAP and ROD also describes potential effects from oil and gas operations (e.g. at page 7, “Surface use activities create surface disturbance or disruption of areas and resources. Examples of these activities
include construction and use associated with roads, pipelines, power lines, reservoirs, staging areas, parking areas, and facility construction.”). The JMH CAP and ROD describes examples of “intensive mitigation” (at page 10) that can be used in certain areas by the BLM to avoid or reduce impacts from oil and gas operations:

- Transportation planning;
- Remote control of fluid mineral production facilities to limit travel;
- Multiple-well pads to limit surface disturbances;
- Limiting the number of pads per section in sensitive areas;
- Use of directional drilling to minimize disturbance of sensitive areas;
- Clustering or centrally locating ancillary facilities;
- Shrub reclamation (containerized stock, transplanting, etc.) to restore, rehabilitate, or replace habitat;
- Application of geotechnical material for construction; or
- Potential unitization prior to exploration and development.

More information on the types of restrictions that apply to oil and gas activities is found in the Leasable Fluid Minerals Management section of this document.

The EA, as modified through the addendum prepared concurrently with this protest decision, acknowledges that potential future oil and gas operations “could temporarily degrade wilderness characteristics values, where present, and could result in the lands no longer having the conditions that meet the wilderness characteristics criteria. Lease stipulations intended to benefit other resources, such as Greater-sage grouse cumulative surface disturbance and disturbance density limitations, may protect natural settings and values within LWCs. Specific impacts, and appropriate mitigation, would be identified at the time a site-specific proposal for lease operations is submitted to the BLM.” Further site-specific impacts to LWCs on leased lands, if future operations occur, are possible though not reasonably foreseeable.

While several of the parcels are located near or adjacent to WSAs (see Attachment 4), nominated lands within WSAs have been deleted from the sale (see Part 2 EA at pages 2-1 – 2-2, 3-1) and none of the proposed parcels are located inside of a WSA. While TWS et al. may prefer the BLM prevent or limit other multiple uses outside of the WSAs in order to buffer the WSAs from impacts due to uses such as energy development, this is not required nor consistent with the approved RMP.

For these reasons, we deny this portion of TWS et al.‘s protest.

11. “The BLM has failed to adequately respond to significant new information submitted by the public regarding wilderness resources...” (TWS et al. Protest at page 16). “There are twelve parcels... that overlap with citizen-identified LWCs in the RSFO that are not included in the BLM’s inventoried LWCs. The RSFO has yet to conduct fieldwork to accurately determine the wilderness quality of these landscapes or adequately responded to substantial data submitted by citizens.” (TWS et al. Protest at page 18).

We refer TWS et al. to our response to its protest, Nos. 8-10, above. As a preliminary matter, TWS et al.’s Table 2 on page 16 of its protest only identifies eleven, not twelve, parcels. Of the eleven parcels, the RSFO has re-reviewed its disclosure of LWCs in the Part 2 EA, and has made some minor changes to the EA to reflect changes to some of the LWCs information have been made in the addendum to the DR prepared concurrently with this protest decision (none of which alter our conclusions for these eleven parcels).

As we explained, above, the RSFO has completed and maintained a current inventory of LWCs on the public lands within its jurisdiction. For the eleven parcels challenged by TWS et al. in this argument, the RSFO has determined that final parcels -271, -272, -289, -290, -297, -301 – -303, -316, and -317 do not
contain LWCs. The Part 2 EA already acknowledged that final parcel -282 (preliminary parcel -309) contains LWCs (at page 5-124).

TWS et al. have not provided convincing, objective evidence to demonstrate that the RSFO’s conclusions are in error. As the IBLA has recognized, the BLM’s determination that lands contain or do not contain LWCs “is committed to the professional opinion of BLM’s technical experts.” (Biodiversity Conservation Alliance et al., 183 IBLA 97, 113).

For these reasons, we deny this portion of TWS et al.’s protest.

12. “The [Part 2] EA did not consider alternatives to protect LWCs.” (TWS et al. Protest at page 16). “By failing to consider how to protect LWCs and foreclosing opportunities to protect them in the ongoing Rock Spring RMP revision, the BLM is not complying with its obligations under FLPMA and NEPA.” (TWS et al. Protest at page 20).

TWS et al. argue that “alternatives to manage lands to protect LWCs, or to otherwise minimize impacts to this resource, were not considered” in the BLM’s previous RMP decisions. This is, as we have pointed out above (see response No. 8), simply incorrect. The approved RMP for the RSFO planning area, as amended through the 2006 and 2015 amendments, did consider alternatives that addressed impacts to LWCs.

As for its argument that the BLM is “foreclosing opportunities to protect them in the ongoing Rock Springs RMP revision,” the BLM has the authority to implement its approved RMP during the multi-year period the revision is being prepared (which began over 7 years ago). We have addressed similar arguments in our response to CBD et al., above (response No. 10). The IBLA has held that BLM may offer parcels for lease and issue new leases while an RMP is being revised, if the leasing decision conforms to the existing RMP (see Sierra Club Legal Defense Fund, Inc., 124 IBLA 130, 140 (1992)):42

Acceptance of appellants’ position that once BLM has decided to prepare a new land use plan for an area, it must suspend action in conformance with the prevailing plan would seriously impair BLM’s ability to perform its management responsibilities. We therefore reject this challenge to BLM’s decision.

As in Sierra Club Legal Defense Fund, Inc., the proposed 2018Q3 Sale implements the goals and objectives in the approved RMPs.

The public lands in the vicinity of the protested parcels already contain existing Federal oil and gas leases, with a number of wells drilled on the mixed-ownership Federal, State and private lands in the area (see map in Attachment 5). TWS et al. have not provided convincing, objective evidence that offering these parcels would limit the decision-maker’s ability to select from reasonable alternatives currently under development in the Rock Springs RMP revision.

We deny this portion of TWS et al.’s protest.

13. “In failing to adequately disclose impacts to mule deer from leasing, and in relying on mitigation measures that have been conclusively shown to be ineffective, the EAs cannot properly be relied on to justify the proposed leasing decision. BLM may not lawfully rely on outdated, erroneous, and incomplete environmental information presented in the EAs along with inadequate mitigation measures based on outdated science and faulty assumptions to justify its FONSI.” (TWS et al. Protest at page 23).

We refer TWS et al. to our response to its argument, respond No. 2.

42 See also Southern Utah Wilderness Alliance, 163 IBLA 14, 27 (2004).
Citing to a single scientific journal article, TWS et al. argue that the BLM’s lease stipulations that address protection of mule deer and their habitats have been “proven to be ineffective.” (TWS et al. Protest at page 21). TWS et al. cite to the research summarized in the journal article to argue that impacts to mule deer are “not fully offset through mitigation or best management practices.” (Reciting findings from the journal article at page 21 of its Protest).

However, TWS et al. overlook the extensive treatment of potential impacts to mule deer and other big game that is included in the RMP EISs to which the EAs tier. The mitigation that is applied through lease stipulations to protect mule deer and their habitats has been developed in coordination with the WGFD, who manages the big game populations in Wyoming. TWS et al. also overlook that the BLM and WGFD have opportunities to address potential impacts to mule deer at the time a future site-specific proposal for lease operations is received.

The BLM is not required to “fully offset” potential impacts to mule deer; the BLM and WGFD work cooperatively to study, evaluate, and mitigate potential impacts to big game throughout Wyoming, and the BLM manages the public lands for multiple use, and acknowledges that some adverse impacts to big game are likely from potential future site-specific lease operations (see, e.g., Part 2 EA at pages 4-19 – 4-21).

This portion of TWS et al.’s protest is denied.

14. “BLM apparently fails to appreciate that coordinating with the State of Wyoming and the WGFD on the development of a Special Lease Notice, and deferring three parcels in the Sublette mule deer migration corridor, in no way satisfies BLM’s obligations under NEPA to consider alternatives to its proposal to offer oil and gas leases encompassing these important habitats.” (TWS et al. Protest at page 24). “...we request that BLM defer all parcels offered at the September 2018 lease sale that overlap the Sublette (RD2H) mule deer migration corridor.” (TWS et al. Protest at page 26).

TWS et al. have not raised new arguments not previously addressed in our decision. We refer TWS et al. to our protest responses, above, and deny this portion of its protest.

15. “...promised [Controlled Surface Use, or CSU] stipulations are missing in the vast majority of [the Jack Morrow Hills, or JMH] leases, and there is no follow-through on this commitment for special stipulations to protect these special areas, which includes the South Pass Historic Landscape ACEC (all of which is [Visual Resource Management, or VRM] Class II) and its viewedsh, which has to be protected beyond just the trail corridor; the Steamboat Mountain Management Area (also a VRM Class II); and the Red Desert Watershed Management Area, and other lands in Area 2.” (TWS et al. Protest at page 28). “In summary – the JMH [Coordinated Activity Plan, or CAP] committed to a high standard of assessment of the need for impacts of oil and gas development in these special areas, and a very high level of mitigation and monitoring to design the proper conditions for these stipulations. This commitment is not reflected in the lease stipulations attached to the leases, nor the manner in which these are being leased.” (TWS et al. Protest at page 30).

After re-reviewing the JMH CAP and ROD, the RSFO has confirmed its application of the stipulations to parcels within the JMH area; as a result of its re-review, the RSFO recommended the addition of stipulations to several JMH parcels:

- Addition of a VRM CSU to final parcels -296 – -300, and -314 – -317 located in VRM Class II
The WSO is issues a fourth information notice on September 10, 2018, adding these stipulations to the proposed lease sale parcels. We therefore deny this portion of TWS et al.’s protest.

**DECISION**

After a careful review, the BLM has determined that the protests to the parcels in this sale will be dismissed or denied for the reasons described above. All of the protested parcels described in the September 18-20, 2018 Notice of Competitive Oil and Gas Lease Sale will be offered, as described in the Sale Notice and subsequent Information Notices.

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

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

**Standards for Obtaining a Stay**

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

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the protestor’s success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Duane Spencer
Deputy State Director
Minerals and Lands

6 – Attachments:

- Map 1 (Upper Green River Basin Ozone Nonattainment Area)
- Map 2 (Existing Active Wells – Northeast Wyoming)
- Map 3 (Wyoming Oil & Gas Potential, Existing Active Wells)
- Map 4 (Jack Morrow Hills Coordinated Activity Plan Area)
- Map 5 (Jack Morrow Hills CAP Existing Leases, Wells)
- Form 1842-1
cc: (by e-mail unless otherwise noted)
District Manager, High Plains District
Field Manager, Buffalo Field Office
Field Manager, Casper Field Office
Field Manager, Newcastle Field Office
District Manager, Wind River/Bighorn Basin District
Field Manager, Cody Field Office
Field Manager, Lander Field Office
Field Manager, Worland Field Office
District Manager, High Desert District
Field Manager, Rawlins Field Office
Field Manager, Rock Springs Field Office
Field Manager, Pinedale Field Office
Field Manager, Kemmerer Field Office
Deputy State Director, Division of Minerals and Lands (920)
Deputy State Director, Division of Resources (930)
Chief, Branch of Leasing and Adjudication (923), e-mail & final copy on letterhead
Travis Bargsten (921) e-mail & final copy on letterhead
2018Q3 Oil and Gas Lease Sale
Upper Green River Basin Ozone Nonattainment Area

Legend
- Pinedale Anticline O&G Expl and Dev Projects
- 18Q3 Parcels Intersecting the NAA
- 18Q3 Final Parcels (Updated 9/10/2018)
- Active Oil & Gas Wells
- Upper Green River Basin Ozone Non-Attainment Area
- Existing Leases - Not Held by Production
- Existing Leases - Held by Production

No warranty is made by the BLM for use of these data for purposes not intended by BLM.
No warranty is made by the BLM for use of these data for purposes not intended by BLM.
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

5353 Yellowstone Road, Cheyenne, WY 82009 or P.O. Box 1828, Cheyenne, WY 82003

WITH COPY TO SOLICITOR

U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region

755 Parfet Street #151, Lakewood, CO 80215

3. STATEMENT OF REASONS

Within 30 days after filing the Notice of Appeal, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully 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

755 Parfet Street #151, Lakewood, CO 80215

4. ADVERSE PARTIES

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

5. PROOF OF SERVICE

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

6. REQUEST FOR STAY

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

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

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

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