



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
3100 (921 Gamper)
WY201Q CLS

CERTIFIED – RETURN RECEIPT REQUESTED
Receipt No. 7019 2280 0000 9475 5041

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DECISION

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FIRST QUARTER 2020 OIL AND GAS SALE PROTEST

PROTESTS DISMISSED or DENIED 105 PARCELS WILL BE OFFERED

From January 21, 2020 to February 20, 2020, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received two protests to the offering of parcels at the First Quarter 2020 (201Q) Competitive Oil and Gas Lease Sale (CLS).

On February 19, 2020, the WSO timely received a protest to the offering of 105 parcels from the Wyoming Outdoor Council, on behalf of The Wilderness Society, the National Audubon Society, and the Wyoming Wilderness Association (collectively referred to as WOC).

On February 20, 2020, the WSO timely received a protest from WildEarth Guardians, filed on behalf of the Center for Biological Diversity, Living Rivers: Colorado Riverkeeper, Waterkeeper Alliance, and Western Watersheds Project (collectively referred to as WEG). WEG protests all 105 parcels proposed to be offered.

Consistent with previous protest decisions, if a protester did not submit written comments to the BLM during the 30-day leasing EA comment period, or otherwise could not demonstrate standing, the BLM would deny any protest subsequently filed by that protester. The record shows that WildEarth Guardians, the Wyoming Outdoor Council, the Wilderness Society, the National Audubon Society and the Wyoming Wilderness Association, all submitted written comments to the Wyoming State Office during the 201Q CLS EA comment period; the Center for Biological Diversity, Living Rivers: Colorado Riverkeeper, Waterkeeper Alliance, and Western Watersheds Project did not provide any comments or otherwise participate in the 30-day public comment period. However, the parties have included statements of general standing which the BLM declines to adjudicate in this protest.

BACKGROUND

Expressions of interest reviewed for this sale were received through December 1, 2018. This sale includes Federal fluid mineral estate located in eight of ten BLM-WY field offices (FOs). After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the field and district offices (DOs) interdisciplinary teams for new data, and to confirm that the application of stipulations are in conformance with the underlying RMPs, correcting the stipulations as appropriate. The BLM in coordination with the FO/DOs, prepared an EA and FONSI documenting National Environmental Policy Act (NEPA) compliance.

During the BLM's preliminary review of these parcels, each parcel was reviewed for conformance with the applicable RMP, coordinated with the State of Wyoming Governor's Office, the Wyoming Game and Fish Department (WGFD).

The preliminary parcel list was provided to the WGFD for review and comment, and split estate landowners were notified per Washington Office Instruction Memorandum No. 2013-117.

The EA (DOI-BLM-WY-D000-2020-0002-EA), along with the draft and unsigned Finding of No Significant Impact (FONSI) was released for a 30-calendar day comment period beginning November 13, 2019. The proposed action is to offer 105 parcels containing approximately 118,292.7¹ acres.

The subject EA is tiered to the existing field office/resource area RMPs Environmental Impact Statements in accordance with 40 CFR §1502.20:

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

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

The NEPA guides the environmental analysis process. Generally, the scope of an analysis relates to the purpose and need for the proposed action. The BLM WY 201Q CLS EA described its purpose and need as (EA at page 3):

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 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 purpose and 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.

The EA considered two alternatives in detail:

- The No Action alternative which considered not offering any of the 121 parcels that are available for lease.
- The Proposed Action alternative which considered offering 105 parcels (whole or in part).

Not considered as part of the proposed action is the deferral of 16 whole parcels and portions of 2 parcels, containing approximately 6,172.3 acres:

- Two whole parcels, and portions of four more, were deferred at the request of the Wyoming Game and Fish Department (WGFD) due to their location within the Red Desert to Hoback or Baggs Mule Deer Migration Corridors (MDC) and mapped stopover habitat. The remaining portion of two of this MDC parcels not requested by the WGFD for deferral, are deferred pending completion of tribal consultation. In sum, four whole parcels are deferred which intersect MDC's, and two parcels were partially deferred in MDC's.

¹ Following additional adjudication of the parcels proposed to be offered, the total acreage of the sale was revised from what was published in the EA (at 9). The acreage has been revised from 118,218.5 to 118,292.7.

- Twelve whole parcels were deferred in the Buffalo Field Office because they overlap pending coal Lease By Applications, in accordance with the Buffalo RMP.

As described in the FONSI, after the deferrals, 105 parcels containing approximately 118,292.7 (*see* footnote 1) acres are proposed to be offered at the 201Q CLS. All parcels proposed for offering have been determined to be available for leasing as they have been designated for multiple-use management, subject to the stipulations identified in the applicable RMP RODs.

The EA prepared for the 201Q CLS tiers to the Environmental Impact Statements prepared for the underlying RMPs and incorporates by reference a Hydraulic Fracturing White Paper contained in Attachment 6.4 of the EA. All of the associated attachments were circulated with the EA and unsigned FONSI, and subjected to public comment.

The EA considered three additional alternatives but eliminated them from detailed analysis. One alternative would offer all nominated parcels with a No Surface Occupancy stipulation (NSO); this alternative was dismissed from further review because it would not be in conformance with the applicable RMPs and would unnecessarily constrain oil and gas occupancy in areas where the applicable RMPs, as amended, have determined that less restrictive stipulations would adequately mitigate the anticipated impact. An additional alternative was considered but not analyzed in detail; this alternative would defer offering all parcels located within Greater Sage-grouse habitat management areas (PHMA/GHMA). This alternative was not analyzed in detail because it would not be in conformance with the respective RMPs as amended, and 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. A third alternative was analyzed that would offer all parcels subject to the standard lease terms and conditions only; this alternative was not analyzed in detail because it would not be in conformance with the authorizing RMP(s).

Through the analysis in the EA, the BLM also analyzed whether the proposed parcels were appropriate for leasing. In doing so, the BLM reviewed the parcels for the presence of unknown resource values and/or unresolved conflicts, including the presence of lands with wilderness characteristics and pending Citizen Proposed Wilderness Areas that have not yet been reviewed for new information (*see* Attachment 6.3), and applied appropriate stipulations controlling the surface occupancy and use of the individual parcels (*see* Attachment 6.1). Response to public comments were published by the BLM at the start of the protest period for this CLS; they have been attached to the final EA Decision Record.

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

WOC is protesting the offering of all 105 parcels published in the CLS “because these parcels are located in crucial sage-grouse habitats as well as big game migration corridors and crucial winter ranges. Moreover, the environmental assessment prepared for this lease sale includes many other flaws, including not considering a reasonable range of alternatives, not providing a hard look at environmental impacts, failing to adequately consider cumulative impacts, facilitating speculative leasing in violation of the MLA and FOGLRA, failing to meet the multiple use obligation of the Federal Land Policy and Management Act. “(Protest at 19)

Specific arguments are as follows:

1. The BLM has not met its obligations to conserve Sage-Grouse

a. An inadequate range of alternatives is considered for sage-grouse conservation.

“In particular, there was a need to consider deferring leasing in core sage-grouse habitat that was opened to leasing under the BLM’s action.” (Protest at 3)
“BLM claims in its 20 IQ BLM Comment Response Document (hereinafter simply Comment Response) that deferring these parcels would no be in conformance with the Rocky Mountain ROD and the lands at issue were open to leasing under both the 2015 and 2019 plans. Comment Response 15. But the 2015 sage-grouse plan clearly required BLM to prioritize leasing outside of sage-grouse habitat (and made many other provisions such as requirements for a net conservation gain and compensatory mitigation). BLM cannot meet that requirement when it proposes to lease 104 out of the 15 (sic) parcels in PHMA or GHMA. EA 44.”

WSO RESPONSE:

As BLM explained in our response to comment no. 15, the lands being offered in this sale are available for oil and gas development under both the 2015 plan and 2019 plan. The BLM further explained that it has considered the requirements of WO IM No. 2018-026, Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil and Gas Leasing and Development Prioritization, issued December 27, 2017.

On page 6 of their protest, WOC also claims “IM 2018-026 was effectively repealed by the decision in *Western Watersheds Project v. Schneider*. ...Moreover, even if IM No. 2018-026 had remained in effect, a mere IM cannot supersede the prioritization directive of an RMP.”

WO IM 2018-026 was issued prior to the 2019 Plan Record of Decision (March, 2019). Furthermore, the 2015 Rocky Mountain ROD specifically directed the BLM to prepare further instruction to guidance implementation of the prioritization requirement. The BLM has complied with the 2015 Rocky Mountain ROD in issuing WO IM No. 2018-026. BLM-Wyoming has complied with the directives of WO IM No. 2018-026.

As this argument does not vary significantly from our prior responses, it is subject to summary dismissal. The protester does not identify any new information in their argument, or explain why our previous decision is not adequate. See, *Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

b. The BLM has not taken a hard look at the impacts of this lease sale on sage-grouse conservation.

“The site-specific impacts to sage grouse are ‘reasonably foreseeable’ and must be analyzed now, rather than waiting until a leaseholder submits an application for permit to drill.”

“In the Comment Response [number 16] BLM claims that these issues [prioritization requirement, the net conservation gain standard, sagebrush focal areas, compensatory mitigation and other key components of the 2015 plans] are not applicable to what lands are available for leasing and do not change the stipulations that apply to the

leases. But the prioritization requirement is supplemental to leasing availability decision and the stipulations that are applied to a lease are in addition to the prioritization requirements.”²

WSO RESPONSE

The BLM has provided a reasonable analysis of the potential site-specific impacts to sage grouse from offering the subject lands, and the potential impacts from development of the subject lands, including through tiering to the EIS prepared for the 2015 Rocky Mountain ROD. The protester has not identified specific impacts that BLM has not already considered.

BLM has recognized in the EA, the requirements of WO IM No. 2018-026 as it relates to prioritization and the protester does not provide any information as to how the BLM has not complied with WO IM No. 2018-26, or the 2015 Rocky Mountain ROD. The BLM has adequately explained why it declines to further address issues that cannot be analyzed until the project stage in its response to comment no 16. The protester repeats its same comment in its protest. We incorporate our response to Issue no. 1 here, to the extent it addresses arguments regarding prioritization of leasing.

Resultantly, this protest issue is dismissed.

- c. The cumulative impacts of this lease sale on sage-grouse have not been adequately considered.**

“The BLM has not considered the cumulative impacts of this lease sale in the context of other local, state and regional development. Substantial revision to federal sage-grouse policy, and the recent reinstatement of the 2015 sage-grouse plans.”

“BLM’s NEPA analysis must consider the cumulative impacts of all the recent currently planned oil and gas auctions in which the agency has offered hundreds of leases affecting sage-grouse habitats protected under its resource management plans.

“The fact that proposed parcels in core sage grouse habitat happen to be near existing leases does not absolve BLM of its duty to analyze the cumulative impacts resulting from this lease sale in the context of other local state and regional development.”

“The BLM must consider the broader context of impacts from past, present, and reasonable foreseeable federal actions. BLM must set forth with reasonable specificity the cumulative effect of the leasing”

WSO RESPONSE

The RMP EISs to which the EA tiers have evaluated the cumulative impacts of oil and gas leasing (and potential development). As we explained in the EA, the current extent of Federal oil and gas leases in Core Population Areas is near its lowest level since before the BLM, State of Wyoming, and other partners began developing and implementing the Core Population Area strategy. The proposed lease sale is in conformance with the approved RMPs (including the sage-grouse conservation measures and

² WOC also points out on page 4, footnote 2, of their protest that page 74 of the EA says 22 of the parcels would be in PHMA and 87 parcels in GHMA for a total of 109 parcels. The BLM has corrected the information on page 74 to reflect that 19 whole parcels are in PHMA, and 4 are partially located in PHMA. Thank you for bringing this inconsistency to our attention.

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 near their 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.

We find that the BLM adequately evaluated the cumulative impacts of leasing in the RMP EISs to which the leasing EA tiers, and have satisfied NEPA's procedural requirements in this regard. WOC has not provided objective evidence that conclusively refutes this or that demonstrates the assumptions and analyses in the RMP EISs or the lease sale EA are incorrect. For the reasons described above, this protest issue is dismissed.

d. The BLM has not met the requirements of the 2015 sage-grouse RMP.

WSO RESPONSE

WOC, as it relates to this issue, largely repeats its arguments from Issue No. 1. As such, we incorporate our response to Issue No. 1 here. This issue is dismissed.

2. The BLM must abide by the Mineral Leasing Act requirement to not lease low development potential lands.

a. The agency should prioritize the leasing of lands with high potential for development.

“The BLM should focus on areas with known potential for development while discouraging speculative leasing of low-potential lands.”

WSO RESPONSE

The BLM is not encouraging speculative leasing, it is responding to externally driven Expressions of Interest. Receipt of an Expression of Interest indicates that there is interest in those lands. Lands that are not considered by companies to have potential are not likely to be bid on at auction.

Furthermore, the BLM has considered their potential through the underlying RMPs, as acknowledged by the protester (Protest at 9). Actual development of a lease is driven by internal business decisions that the BLM does not control. Standard Terms and Conditions of the Lease, and regulations at 43 CFR 3100, require that if a lessee takes no action on the lease, or fails to produce economic quantities of gas, the lease will terminate by operation of law.

Low potential lands, as identified through a BLM Reasonably Foreseeable Development analysis, still indicates that some lease development could occur.

In consideration of the above, this protest issue is dismissed.

b. This sale continues a long-existing trend of leasing lands with little or no potential for productive mineral development, which encourages speculative leasing and creates administrative waste.

“A study by Taxpayers for Common Sense shows that these speculative, noncompetitive sales have surged to the highest level in over a decade. This has led to “major drops in the price companies pay per acre in certain states, like Montana, where the average bid has fallen by 80 percent compared to the final years of the Obama administration” (internal citations omitted). “This is cutting taxpayers out of the royalties they should be getting, often leaving them with only trivial rent payments.”

WSO RESPONSE

The BLM undertakes competitive and non-competitive lease sales in accordance with the Federal Onshore Oil and Gas Leasing Reform Act (1987). Arguments put forth by the protester are related to matters of law that are outside the scope of this lease sale EA. As such, this protest issue is denied.

- c. The lease sale would eliminate important option values by hamstringing decisional flexibility in future management.**

“[B]efore moving forward with this lease sale, the BLM must evaluate ‘option value’- the economic benefits that could arise from delaying leasing, or exploration and development, based on improvements in technology, additional benefits that could come from management these lands for other uses, and additional information on the impacts of climate change and ways to avoid or mitigate impacts on the environment. This is essential, in particular, for lands with low or nonexistent development potential.”

WSO RESPONSE

The BLM has considered multiple use, and the impacts associated with offering the subject lands for lease in the underlying RMPs, and the subject EA has tiered to the underlying EIS’s prepared for those RMPs, including analysis of socioeconomic values.

Offering lands for lease does not authorize development and is contingent upon complying with the stipulations attached to said lease; stipulations are put in place to address those potential future conflicts. Should development be proposed at some point in the initial 10-year term of the lease, conditions which exist at the time that development is proposed will be considered, and additional mitigation would be identified at that time if considered necessary. This protest issue is dismissed.

- d. Parcels located in the Rock Springs Field Office should be deferred to preserve “decision space” in the RMP revision process.**

“A new draft plan is being developed for this region [Rock Springs Field Office], including alternatives that may place new restrictions on oil and gas leases. Leasing within this field office during a land-use plan revision unnecessarily shrinks the BLM’s decision space to use updated analysis and determine where or how leasing is now appropriate”

“More importantly, because the public has not been able to weigh in on where or how to offer oil and gas leases in this region for a decade or more, leasing now severely limits public engagement in the draft plan...action erodes public trust.”

“The BLM has already set a precedent for not leasing during this land-use plan revision by deferring all leases offered in the Greater Little Mountain area. It is arbitrary to do so for one region in the field office and not defer all leases. The BLM must provide an explanation for this selective deferral and can rectify the issue by deferring all leases in the Rock Springs Field Office until a new RMP is completed.”

“Until this new inventory data [wilderness characteristics], updated management precedents, and current public values can be taken into account, leases should be deferred in this area. We specifically ask that the Rock Springs Field Office portion of parcels WY-201Q-72, -73, -75 be deferred along with the entirety of parcels -85 through -92 and -96 through -101.”

WSO RESPONSE

We refer the protester to our response to comment no. 21:

As discussed in our response to similar comments made during the public comment period for the 4th Quarter 2018-supplemental February sale (comment response 9), deferring leasing within the GLM was specifically requested by the former Governor of Wyoming, and agreed to by the former WY BLM State Director, until the RS RMP revision was completed. BLM Wyoming's current State Director and Wyoming Governor Gordon, support this previous agreement. The RSFO has reviewed the subject parcels and has not identified any potential conflicts with alternatives being considered in the RMP revision process.

The protester has raised no new information and this protest issue is dismissed.

3. **The EA has not adequately addressed lands with Wilderness Characteristics, in violation of NEPA and FLPMA**
 - a. **The EA incorrectly identifies parcels that overlap lands with wilderness characteristics.**

The BLM initially overlooked two parcels with wilderness characteristics that have been identified by Rock Springs field Office inventories. Parcels WY-201Q-98 and -101 are within the Bear Creek Trail LWC unit, inventoried by the BLM and found to have wilderness characteristics. See Exhibit 2: Lease parcels in LWCs. Although the BLM has responded to public comment and acknowledged that these parcels contain LWCs, the BLM must defer these two parcels until after the Rock Springs RMP has determined how to manage for this new information. As a draft RMP revision has yet to be release, the public cannot confirm that management of these parcels will conform to the revised RMP.

In past lease sales, BLM has deferred parcels found to have LWC that have not had management determined for them within this Field Office.

WSO RESPONSE

We refer the protester to our response to comment no. 22:

Thank you for your comment. BLM has correctly identified these two parcels as having Lands with Wilderness Characteristics as determined by BLM inventory in accordance with BLM policy (at 140). However, the text associated with parcels 98 and 101 is incorrect and has been fixed to

correctly identify these as having LWC based on inventories prepared in 2011 and 2016. The EA (at 14) has also been corrected to include parcels 98 and 101. Managing Lands found to have Wilderness Characteristics in accordance with existing RMP management decisions is in accordance with BLM policy found in Manual 6310 (page 2, .06 Policy) which specifies: "preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of public lands." The Rock Springs field office has reviewed the parcels for potential conflicts with the RS RMP revision; no conflicts were identified.

The BLM has corrected the EA in response to the comment received. BLM has determined that offering the parcels is in conformance with the existing RMP, and BLM policy. In past sales, the BLM has deferred parcels where the Field Office has not responded to a Citizen's Wilderness Proposal in accordance with guidance found in Manual 6310; the BLM is not in receipt of any Citizen Wilderness Proposals for the subject lands that we have not evaluated. We disclosed in Section 4.2.1 of the EA that "Future oil and gas operations occurring on the proposed parcels 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." This protest issue is dismissed.

b. The EA does not recognize BLM's own guidance for Lands with Wilderness Management

The EA presupposes that all parcels found to have LWC shall not be managed, per their land-use plans, to maintain LWC characteristics. This is incorrect. The BLM has not made such a management" determination for parcels -98 and -101. These parcels should be deferred until the agency has made such a determination through rigorous analysis and inclusion of public comment. Additionally, by not evaluating a reasonable range of alternatives for the parcels that do have LWC, BLM violates NEPA. Current policies confirm the manner in which the alternatives requirement applies to wilderness characteristics, providing that BLM must fully "consider" wilderness characteristics during planning actions and evaluate a range of measures to protect wilderness characteristics during the leasing process, including measures not contained in existing RMPs. See IM 2011-154 at Att. 2; IM 2010-117 at III. E., F.

WSO RESPONSE

The BLM policy relating to Lands with Wilderness Characteristics is found in Manual 6310 and 6320 as correctly noted by the protester. Reference to Instruction Memorandums 2011-154 and Instruction Memorandum No. 2010-117 have been superseded by the subject manuals and are no longer controlling BLM policy. We further incorporate our response to Issue No. 3(a) here. This protest issue is dismissed.

4. BLM has not adequately considered impacts to mule deer migration corridors and crucial winter range.

a. BLM has not taken a hard look at impacts to mule deer.

The BLM has not taken a hard look at the impacts to mule deer from oil and gas leasing within designated mule deer migration corridors (MDCs) and crucial winter range. Instead, the agency has unreasonably relied on the Wyoming Game and Fish Department's (WGFD) admittedly unscientific "90% strategy," in the face of significant and widespread mule deer population declines.

BLM must rigorously consider the adverse impacts of leasing parcels in vital mule deer habitat, disclose potential impacts to the public, and avoid or mitigate adverse impacts to mule deer with legally enforceable stipulations.

WSO RESPONSE

The BLM has adequately considered the potential impacts to mule deer from potential leasing and development within designated mule deer migration corridors and crucial winter range. We refer the protester to pages 45-48, 75-77, and 82-84, of the subject EA. In accordance with our existing Memorandum of Understanding with the Wyoming Game and Fish Department (WGFD), and because the WGFD manages population objectives for mule deer, it is not unreasonable that BLM accepts their requests for deferral. Use of a 90 percent strategy by the WGFD in making their determinations of what parcels to defer, is outside the scope of this EA. BLM provided the following explanation in our response to comment no. 24:

BLM has the authority through Onshore Order No. 1 to require reasonable measures which includes, at a minimum, moving a location up to 200 meters. Several IBLA decisions have also affirmed BLM's authority to require reasonable measures where supported by site-specific NEPA analysis (For example, see William P. Maycock 177 IBLA 1, (2009); Yates Petroleum, 176 IBLA 144 (2008). As long as BLM does not require an operator to site their facilities outside of the lease boundaries, approval would be considered consistent with lease rights granted. At the request of the WGFD, BLM has deferred several parcels within the Mule Deer migration corridors, which is consistent with the State's current strategy, and FLPMA.

The BLM's analysis in the EA (at 83-84) discloses that the Green River FEIS, at 462, predicted that "the capability of habitat to meet herd unit objective levels would likely be significantly affected" in the Sublette HU. The EA appropriately discloses that "development of parcels in combination with other existing and/or future development could contribute to these already identified significant impacts. The EA concludes that impacts are not expected to be significant due to where most activity is currently occurring, and that an increase in activity in the High Desert District is likely low. The EA specifically finds that "New development would be consistent with current projections in the RMPs and are not expected to be at a level that would result in significant impacts beyond those reflected in the RMP EIS's. All future projects will be subject to State of Wyoming rules, in addition to Federal requirements, and will require review by the WGFD. In consideration of the above, this protest issue is dismissed.

b. Impacts to mule deer corridors are not adequately disclosed.

In order to act as consistently as possible with Wyoming's Ungulate Migration Corridor Strategy-as is required under FLPMA's mandate to coordinate with state land-use planning and management programs- the BLM must maintain corridor functionality to support population objectives established by WGFD. See 43 U.S.C. § 171 2(c)(9). Yet today, the Sublette herd is 38% below WGFD's target. EA at 45. The BLM's continued leasing within this corridor threatens its continued functionality and could lead to further declines or even extirpation of this iconic herd. This is both inconsistent with Wyoming's state strategy in violation of FLPMA and is based on an inadequate analysis of the affected environment and potential impacts in violation of NEPA.

The BLM has arbitrarily disregarded the best available science in this EA. Before moving forward with the lease sale, the agency must acknowledge and assess the increased risk to Wyoming's herds that these studies document.

This research suggests that development within corridors could lead to complete and permanent destruction of migration corridors. The underlying RMPs, cited extensively by the BLM in this and other lease sales, do not consider the potential for loss of corridor functionality across our migration corridors, and the resulting extirpation of our herds. BLM has not informed the public of the extent of this risk, nor has the agency taken affirmative steps to mitigate this risk.

BLM must do better and should defer all leasing in mule deer migration corridors and crucial winter range until legally binding stipulations are in place to ensure development does not lead to new and significant impacts, possibly even the total destruction, of Wyoming's mule deer herds.

On February 13, 2020, Wyoming Governor Mark Gordon signed the Migration Corridor Executive Order to manage big game migration corridors. As Wyoming works to craft a state strategy to manage our wildlife informed by diverse stakeholders and thorough public input, BLM should defer leasing in vital mule deer habitat to ensure the federal government does not undermine the state's efforts.

WSO RESPONSE

We incorporate our response to Issue no. 4(b) from above. During preparation of the EA and parcel review process the BLM coordinated with the WGFD and representatives from the Wyoming Governor's Office. At their request, prior to signing of the Governor's Executive Order on Migration Corridors, the BLM deferred several parcels intersecting portions of two migration corridors and associated stopover habitat (see EA at 8).

The BLM has disclosed in the EA, at 73, that "subsequent exploration and development operations are proposed, the operations could result in surface-disturbing and disruptive activities. The operations could result in population impacts and habitat fragmentation and loss." At the time operations are proposed, additional review will be required, including the current status of resources in existence at that time. This protest issue is dismissed.

c. Impacts to crucial winter range are not adequately disclosed.

The EA omitted a relevant study cited in previous lease sales, which acknowledged that on the Pinedale Anticline 'mule deer are not habituating even as large parts of the field are being reclaimed.'" See, e.g. BLM WY Third Quarter September 2019 EA at 52. The fact that mule deer do not habituate to oil-and-gas development within their winter range, even after reclamation, is significant information that should have been addressed in the environmental assessment. Without this analysis, the BLM could not adequately disclose the impacts to crucial winter range that could be caused by the lease sale.

Moreover, the BLM should not be leasing in crucial winter range while the WGFD is in the process of updating their 2010 oil and gas recommendations.

WSO RESPONSE

The BLM has edited the EA to include the relevant cited information; we caution the reader however that data is out of high intensity development field that authorized year-round drilling through the granting of

exceptions to Timing Limitations, including those for Big Game. None of the subject parcels proposed to be offered are located in that development field.

We refer the protester to our response to comment no. 25 as it relates to concerns regarding WGFD's 2010 Oil and Gas Recommendations. This protest issue is dismissed.

ISSUES – WildEarth Guardians

Pursuant to 43 C.F.R. § 3 120.1-3, WildEarth Guardians, the Center for Biological Diversity, Sierra Club, and Western Watersheds Project (hereinafter "Conservation Groups") submit the following protest of the U.S. Bureau of Land Management's ("BLM's") decision to move forward with its June 25- 26, 2019 competitive oil and gas lease sale. The agency is offering for lease 160 publicly-owned land and mineral parcels comprising 205,167.23 acres across the state of Wyoming and within every Wyoming BLM field office except the Cody Field Office.

Specific arguments are as follows:

1. The BLM Fails to Comply with the Clean Air Act and FLPMA.

The BLM Fails to Conduct a Conformity Analysis; BLM must revise the Pinedale RMP to Ensure Compliance with the Clean Air Act and FLPMA.

Yet the BLM summarily concludes that the emissions from the lease sale are not reasonably foreseeable. BLM's failure to conduct an applicability analysis to determine conformity with the CAA also violates the plain language of FLPMA: the BLM must "provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards.

WSO RESPONSE

The BLM complies with Federal regulations for demonstrating conformity at the appropriate stage should a lease be issued and if, or when, a lessee's development proposal is submitted for review and approval to the appropriate office. Once the BLM makes a decision on development, a request for formal review of that decision may be submitted consistent with regulations at 43 CFR 3162.5. But until that time, there is no obligation for the BLM to undertake conformity analysis for this lease sale.

Based on our review of the record, it does not appear that WEG's protest arguments vary significantly from those raised during the 30-day public comment period for the 201Q lease sale EA and we refer WEG to comment response numbers 4 and 5 which provided the following response:

See EA at pages 3-9 through 3-10, including: "[i]n accordance with the Federal and State Conformity regulations, the General Conformity requirement does not apply to actions where the emissions are not reasonably foreseeable such as lease sales..." The action alternatives contemplated in the EA are exempted from the requirement for a conformity analysis under 40 CFR 93.153(c) (3). The well-specific emissions from any potential future lease development operations are uncertain since the following aspects of potential development are not reasonably foreseeable at the lease sale stage: 1) the timing and overall pace of development for any particular parcel; 2) the type and amount of equipment that might be proposed for both mobile (e.g., a Tier II or Tier IV rig) and stationary sources, (e.g., flare or vapor recovery units); 3) how

*proposed wells will be developed (e.g. will they be hydraulically fractured or not, will they be vertical or horizontal wellbores); and 4) the mineral resources a well might target (oil vs. gas proportions and production rates). These factors will affect the estimates in ways that makes a conformity analysis impractical and speculative at the leasing stage. Conformity regulations at 40 CFR 93.153(c)(2) do not require a conformity analysis for: "[t]ransfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer," such as when the BLM conveys rights to develop Federal minerals under an oil and gas lease. In addition, a regulatory exemption provides that conformity determinations are not required for actions that will be subject to specific permitting requirements under other provisions of the Clean Air Act. A significant portion of anticipated emissions from oil and gas development on leased parcels are associated with storage tanks and other equipment that likely will be authorized by the State of Wyoming under their administration of Clean Air Act programs. A Federal oil and gas lessee is subject to the terms of lease, which is conditioned upon compliance with applicable Federal laws. Subsequent development proposals by the lessee or their operator(s) must comply with the law, including the Clean Air Act. The BLM has determined that this lease sale complies with the requirements of 40 CFR 93.153 concerning ozone. Finally, we refer the WEG to *WildEarth Guardians v. United States BLM*, 2018 U.S. Dist. LEXIS 67869, 2018 WL 1905145 (April 23, 2018).*

A finding that a proposed action would exceed a de minimus level requires that BLM impose additional emission controls on the specific action after removing from consideration those emissions that have been permitted by the State of Wyoming through issuance of an air quality permit. Without a specific proposal, this is an unreasonable request and would be a spurious exercise.

Because the WEG raises arguments previously addressed without showing how those arguments remain viable in light of previous protest decisions including but not limited to January 2019 and March 2019, we incorporate by reference our previous responses in full. The arguments made by WEG are subject to summary disposition *See, Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

For the above reasons, this protest issue is denied.

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

a. The BLM's Proposal to Lease Parcels in the Buffalo Field Office Violates FLPMA and NEPA.

Although the BLM issued the final Buffalo RMP SEIS on October 4, 2019, is as indicated in a protest signed by Guardians, BLM did not address many of the judge's concerns with regard to coal alternatives and the global warming potential of methane. Moreover, the BLM does not even cite to this final RMP SEIS to support its lease sale. The BLM must address these errors.

In response to this, the BLM claims that Guardians' arguments regarding the sufficiency of the Buffalo RMP-EIS are outside the scope of EA. Not so. Because BLM has chosen to continue to rely on the outdated RMP-EIS while it is being updated, the agency has an obligation to ensure that its underlying NEPA analyses address the gaps. 43 C.F.R. § 46.140 ("To the extent that any relevant analysis in the broader NEPA document is not sufficiently comprehensive or adequate to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis."). Thus, the BLM must address this gap before moving forward.

WSO RESPONSE

Based on our review of the record, it does not appear that WEG's protest arguments vary significantly from those raised during the 30-day public comment period for the 201Q lease sale EA. Resultantly, we refer WEG to comment response no 6 which provided the following response:

At the time of publication for public comment, November 13, 2019, a ROD for the RMP amendment had not been published and an FEIS cannot be final until such time as a decision is rendered. On November 22, 2019 the Wyoming acting State Director signed the ROD and the EA will be updated to include this new decision prior to signing a DR for this sale's NEPA documents.

The BLM has made this correction to the EA at page 3.

Prior to release of a ROD, the BLM appropriately complied with NEPA in the EA, and with the decision in *Western Org. of Resource Councils v. U.S. Bureau of Land Mgmt.*, CV 16-21-GF-BMM (D. Mont. July 31, 2018) (WORC).³ Specifically, in the WORC litigation, the parties argued the BLM had to provide GHG emissions that would result from combustion of the expected mineral development activities within the Buffalo (and Miles City) planning area. Within the EA that was subjected to public comment, the BLM had included downstream emissions based on projected production for the full Reasonably Foreseeable Development scenario analyzed in the Buffalo RMP.

The BLM has provided an estimate of direct GHG emissions that could occur from the full development of the projected Reasonably Foreseeable Development (RFD) scenario as identified in the Bighorn, Buffalo or Lander RMP EISs', or the 2015 Greater Sage-grouse RMP amendment EIS; the parcels in this sale were included in the analysis of the RFD. The EA also includes an estimate of the indirect GHG emissions from the downstream use of the projected RFD production estimates for the year 2020. Cumulative direct greenhouse gas emissions were also calculated in the underlying RMPs from all GHG emitting actions expected during the life of the plan. We refer the commenter to page 4-9 of the subject EA which provides projected impacts from climate change in the Mountain West and Great Plains region as identified by the United States Environmental Protection Agency Region 8 through the Intergovernmental Panel on Climate Change, the US Global Change Research Program, the National Center for Atmospheric Research, the Rocky Mountain Climate Organization and the National Oceanic Atmospheric Administration. The subject EA also discloses information from the Rapid Ecological Assessment for the WY Basin that includes portions of Idaho, Montana, Utah and Colorado (EA, page 4-9). Finally, the EA at page 4-10 has disclosed relevant projections of CO₂ and CH₄ from the US fossil fuel industry as a whole.

For the above reasons, this protest point is denied.

b. The BLM Must Prepare an EIS

[A]lthough the BLM provide a "Hydraulic Fracturing White Paper" in section 5.6 of the EA, this document is generalized and does not assess the impacts of fracking

³ WORC pg 19, Motion for Summary Judgement: BLM has previously determined that it can estimate the amount of greenhouse gases indirectly emitted by use of Powder River Basin coal on the basis of the amount of coal delivered to market and a "conversion factor" expressing the known amount of CO₂ emitted from burning a ton of coal. SOF ¶48. BLM could similarly estimate greenhouse gas emissions from downstream use of oil and gas based, principally, on expected levels of production, as explained in a report submitted by Conservation Groups.

the specific lease parcels, especially the parcels within the Pinedale and Rock Springs area where increased emissions from fracking will likely worsen the ozone nonattainment area.

Because of this gap (ozone), the BLM's conclusion in the FONSI that "public health or safety would be addressed by following lease stipulations and health and safety regulations, and through conditions of approval imposed as required following site specific analysis," is suspect. FONSI at #2. If BLM does not know what impacts may occur, it is questionable whether the agency will be able to remedy these at the APD stage.

WSO RESPONSE

The BLM has adequately considered the potential for site-specific impacts resulting from the use of Hydraulic Fracturing; as noted by the protester these are disclosed in the White Paper which was incorporated by reference into the subject EA. The protester has not identified any impacts that BLM has not considered.

Projected emissions from all emission generating activities, were included in each of the air quality inventories used in the air quality analysis in the EAs. This is sufficient under NEPA. When, and if a proposal is received, an air quality permit will be required from the State of Wyoming in accordance with the state's SIP. Once that occurs, the BLM will review those remaining emissions not covered by a state permit and perform a conformity analysis to determine whether those emission levels are de minimus or require additional emissions reducing actions, before it can be approved. This is also consistent with the finding of the court in *Amigos Bravos v. United States BLM*, No. 6:09-cv-00037-RB-LFG, 2011 U.S. Dist. LEXIS 95717 (D.N.M. Aug. 3, 2011). In that case the court found that:

*The EAs/FONSIs for the quarterly lease sales address the reasonably foreseeable environmental impacts of the agency's actions. The primary environmental threat of which Plaintiffs complain—increased ozone air pollution—cannot be fully addressed at the leasing stage because there is no way for BLM to accurately predict the emissions that will ultimately result from the lease sales. As Plaintiffs reiterate numerous times in their memoranda, it is oil and gas production, and particularly the wellhead compressors, that emit high levels of ozone precursors and lead to increased ozone concentrations in the San Juan Basin. (Doc. 79 at 11, 15.) The sale of a lease, however, does not authorize the lessee to drill a well or extract any oil and gas. Most of the time, production is simply not feasible or economically profitable, and an APD is never pursued. Accordingly, to require BLM to perform a detailed EIS analyzing air quality at the leasing [*71] stage would constitute a waste of resources. Consequently, BLM's decision to defer additional analysis until the APD stage was not arbitrary and capricious..."*

For the above reasons, this protest issue is dismissed.

- c. Based on the proximity of the March 2020 lease sale parcels to Yellowstone National Park, Big Horn Canyon National Recreation Area, and numerous wilderness study areas, there is no doubt that significant environmental impacts and threats to natural resources, recreational opportunities, and public health and safety could occur.**

WSO RESPONSE

Preliminary parcel -105 is approximately 40 straight-line miles from Yellowstone National Park and the Big Horn Canyon National Recreation Area, and is located on split estate lands. The Bighorn Basin RMP (2015) considered impacts to recreation during preparation of that EIS; the lease sale EA tiers to the Final EIS prepared for that RMP. The presence of Wilderness Study Areas has been disclosed in the EA and the impacts have also been analyzed in the underlying RMP EISs. The protester has submitted a general statement of disagreement but has not identified any new information, or impacts that BLM has not already considered. While the protester argues that significant effects could occur at some point in the future, they have not shown that leasing the subject parcels will cause significant effects. The EA has adequately considered the potential impacts to recreation, wilderness study areas, and public health and safety (EA Sections 4.2.10, 4.2.12.3, 4.2.1). For these reasons, this protest issue is dismissed.

- d. [B]ecause the March 2020 lease parcels are directly adjacent to many other BLM lease sales occurring in 2019 and early 2020 in Wyoming, Colorado, Montana, and Utah, the fourth intensity factor, cumulative impacts, is also implicated by the lease sale... the BLM must study the cumulative impacts of these similar actions occurring within the same area through an EIS for the lease sale and a programmatic EIS for the BLM's leasing program.**

WSO RESPONSE

Lease sales in adjacent states, are not considered to be connected actions under NEPA. While the sales in other areas involve leasing, they are not similar actions because each separate State's sales are in different and distinct ecological and geographical areas and are unrelated. Further, BLM is aware of no rule or regulation that requires such an analysis.

For the above reasons, this protest issue is dismissed.

3. The BLM Improperly Defers Its Site-Specific NEPA Analyses to the Application for Permit to Drill Stage.

On a similar note, throughout the EAs for the lease sale, the BLM attempts to segment its analyses by claiming that it will conduct site-specific NEPA analyses at the Application Permit to Drill ("APD") stage. See, e.g., EA at 1-3 (detailing the agency's intent to defer site-specific impacts analysis), EA at 3-18 (deferring a site specific analysis of GHG emissions), EA at 4-2 (deferring a site specific analysis of impacts to wilderness), EA at 4-19 (deferring a site specific analysis of impacts to visual resource management). However, the BLM's deferral of comprehensive NEPA analysis at the lease sale stage ignores a crucial distinction—the scope of the action approved at the leasing stage (opening up almost 800,000 acres for oil and gas development) is much broader than the scope of the action approved at the APD stage (a single well). This approach also ignores relevant case law.

When a lease constitutes an irretrievable commitment of resources and impacts at the lease sale stage are reasonably foreseeable, an agency is required to analyze the site-specific impacts of a lease before its issuance.

In sum, unless the BLM actually commits, through the imposition of a lease stipulation or stipulations, to conduct additional NEPA analysis at the drilling stage, it more often than not does not happen.

This means that any commitment to address the impacts development of the proposed leases through subsequent NEPA is, at best, hollow, and at worst, a deliberate attempt to avoid accountability to addressing potentially significant, connected environmental impacts under NEPA.

WSO RESPONSE

Based on our review of the record, it does not appear that WEG's protest argument varies significantly from those raised during the 30-day public comment period for the 2nd, 3rd and 4th Quarter 2019 lease sale EA and we refer WEG to comment response no. 8 which provided the following response:

While the commenter claims that BLM has failed, or rather refuses, to consider sufficiently site-specific impacts in the EA, nowhere does the commenter identify what specific site-specific impacts that BLM has not analyzed or excluded from analysis. The decision in question, was specific to emissions of greenhouse gas emissions. The BLM has provided a site-specific analysis of the leases proposed to be offered under the Proposed Action to the extent they are reasonably foreseeable. BLM has stated that it cannot conduct a more precise analysis of site-specific impacts until a discrete proposal for surface occupancy is submitted. BLM considered the effects of reasonably foreseeable development in connection with the parcels, leaving more specific analysis to the consideration of APDs and plans for field development. Such an approach complies with NEPA. See State of New Mexico v. BLM, 565 F.3d 683, 718 (10th Cir. 2009) ("[A]n agency's failure to conduct site-specific analysis at the leasing stage may be challenged, but . . . a 'particular challenge' lacked merit when environmental impacts were unidentifiable until exploration narrowed the range of likely drilling sites," citing Northern Alaska Environmental Center v. Kempthorne, 457 F.3d 969, 973, 977- 78 (9th Cir. 2006)); e.g., EA at 1-3, 3- 18, 4-2 ("Often, where environmental impacts remain unidentifiable until exploration narrows the range of likely well locations, filing of an Application for Permit to Drill (APD) may be the first useful point at which a site-specific environmental appraisal can be undertaken.").

To the extent possible, the BLM has identified the impacts associated with oil and gas operations, and in a manner that is site-specific. As described in the EA, for the BLM to provide a more site-specific and detailed analysis of the impacts from lease development activities would require the BLM to speculate on the density of drilling locations, the number, characteristics, and specifications of related production equipment, and the rate at which the leases would be developed.

The requirement to prepare environmental documentation, either under NEPA or through a statutory categorical exclusion is law that the BLM is bound to adhere to. Lease stipulations are put in place to ensure resource protection and are not binding upon the BLM, but on the lessee of record.

Because the WEG raises arguments previously addressed without showing how those arguments remain viable in light of previous protest decisions including but not limited to June 2018, August 2018, February 2019, 1st, 2nd, 3rd and 4th Quarter 2019, we incorporate by reference our previous responses in full. The arguments made by WEG are subject to summary disposition *See, Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012). For the above reasons, this protest issue is denied.

4. The BLM fails to Analyze a Range of Reasonable Alternatives

Here, similar to the *Western Organization of Resource Councils* case, the BLM has failed to consider any alternatives that significantly reduce the permitted development in order to address other resource concerns such as air quality or climate change.

In response to this, the BLM notes that it has analyzed a no action alternative and that this is sufficient. The Conservation Groups are requesting that BLM consider alternatives that reduce the level of development based on the impacts from fossil fuels.

Perhaps more importantly, the BLM also fails to explain to why it did not consider an alternative that would eliminate leasing the Upper Green River ozone nonattainment area or an alternative that would reduce greenhouse gas emissions from deeper, more emission-heavy wells despite requests from Guardians. As noted above, consideration of such an alternative is well within the BLM's statutory mandate. *Western Org. of Resource Councils*, 2018 WL 1475470, at *7.

WSO RESPONSE

Based on our review of the record, it does not appear that WEG's protest argument varies significantly from those raised during the 30-day public comment period for the 201Q lease sale EA and we refer WEG to comment response no. 9 which provided the following response:

An alternative that would eliminate leasing in the ozone non-attainment zone would not be in conformance with the underlying RMP. Further, a "no leasing" alternative is inherent within the No Action alternative. Approving operations within an ozone nonattainment area, as BLM has previously explained, is an implementation issue that will be considered at the time an emissions-emitting project is received by the BLM for consideration. See our response to comment no. 4. Further, an alternative which would reduce GHG emissions, is also imbedded in the No Action alternative. An alternative crafted whose purpose and need is to consider reducing GHG emissions, is outside the scope of this EA and its stated purpose and need.

While the protester appears to disagree that that No action does not sufficiently act as a proxy for a reduced level of development or as a reduced greenhouse gas emissions analysis, it provides no reason why.

In the subject WORC decision, the arguments made there regarding the obligation to analyze an alternative that would minimize emissions, were specific to coal⁴, not oil and gas.

Furthermore, the plaintiffs in that case argued: "In the EISs for the Miles City and Buffalo RMPs, Federal Defendants violated NEPA by failing to consider an alternative requiring reasonable and cost effective mitigation measures to reduce methane and other air emissions from oil and gas development, as detailed by Citizen Groups in comments. Such measures could include, but are not limited to: centralized liquid gathering systems and liquid transport pipelines; reduced emission completions/ recompletions (green completions); low-bleed/no-bleed pneumatic devices on all new wells; dehydrator emissions controls; replace high-bleed pneumatics with low-bleed/no-bleed or air driven pneumatic devices on all existing

⁴ WORC Complaint, page 34 (106): "In the EISs for the Miles City and Buffalo RMPs, Federal Defendants considered alternatives that were identical with respect to the amount of coal made available for leasing, and failed to consider any reasonable alternatives that would allow for a lesser amount of coal leasing. The existence of reasonable but unexamined alternatives renders a NEPA analysis inadequate."

wells; and electric compression—all of which have been adopted as mitigation requirements by other BLM Field Offices, including, for example, the Tres Rios Field Office in Colorado.” BLM refers the protester to pages 56-57 of the EA, which lists multiple mitigation measures that could be employed by the BLM at the development stage, should that ever occur. The BLM will also consider its obligations under the General Conformity regulations (see response to Issue no. 1 above) at the time a project proposal is received.

FLPMA requires that the BLM manage for multiple-use; in preparing its RMPs, which have made these lands available for oil and gas leasing and development, the BLM has complied with FLPMA and has adequately balanced the competing uses for the BLM lands.

Because the WEG raises arguments previously addressed without showing how those arguments remain viable in light of previous protest decisions including but not limited to February 2019, and March 2019, we incorporate by reference our previous responses in full. The arguments made by WEG are subject to summary disposition *See, Powder River Basin Resources Council*, 183 IBLA 83, 89-93 (December 21, 2012).

For the foregoing reasons, this protest issue is denied.

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

At a minimum, the use of multi-stage fracking coupled with horizontal drilling constitutes a new, intensified or changed use on public land. The BLM cannot move forward with leasing until it either completes an amendment to the RMP or includes a full analysis of the impacts of fracking and horizontal drilling in an EIS for the lease sale.

WSO RESPONSE

Based on our review of the record, it does not appear that WEG's protest argument varies significantly from those raised during the 30-day public comment period for the 2nd, 3rd, or 4th Quarter 2019 lease sale EAs.

As BLM has previously explained:

*BLM has supported the analysis within the NFO RMP EIS with the information contained in the White Paper found in Attachment 6.4 to the EA. The information in this White Paper was incorporated by reference into the EA as well. Use of such an approach is compliant with NEPA. As well, emissions from completion operations, are included within the air emission inventories prepared for each RMP EIS, including the EIS which supports the 2015 GSG LUP Amendment which is still a valid analysis since the 2019 GSG LUP ROD did not amend any of the constraints or decision associated with oil and gas to the extent that the overall oil and gas well RFD under that plan would change. As discussed further in the FONSI, until there is a specific application that provides more detailed information regarding the proposed development of the Federal mineral estate, more precise analysis is not feasible. Such an approach (use of a White Paper) was recently affirmed in: *Ctr. for Biological Diversity v. United States BLM*, No. 3:17-CV-553-LRH-WGC, 2019 U.S. Dist. LEXIS 7525 (D. Nev. Jan. 15, 2019): "As the Court stated in the previous section, BLM was not required to conduct a site-by-site analysis of the impacts of fracking at the leasing stage because at the time the leases were sold, BLM did not know what parcels would be sold, what type of ground development the lessees would choose to pursue, and if fracking would even take place."*

And as explained in our response to comment no. 7:

In the White Paper, the BLM has adequately explained the potential for the types of impacts that are identified by the commenter; the commenter has not shown how the information provided would result in impacts that BLM has not already considered. The BLM has explained in the FONSI that until a development proposal is received, more specific analysis cannot occur. Emissions from completion operations were included in the air quality analysis performed in the RMPs (see EA at 56-57).

For the foregoing reasons, this protest issue is dismissed.

6. The BLM fails to properly analyze the direct and indirect impacts of greenhouse gas emissions that would result from issuing the proposed lease parcels in violation of NEPA.

In reality, certain areas in established oil and gas basins will produce many more wells per acre than others. For example, as noted in the Pinedale RMPs, a township in high development areas could produce 100 to 500 wells. But, other more exploratory lease parcels may produce many few wells. Thus, not all parcels are created equal. To remedy this, we request that BLM Wyoming take the approach that other State Offices have used where the agency estimates the number of wells per parcel based on location of the well above specific formations. If the BLM were to do this, the agency would be able to parse speculative lease parcels from those in established fields, instead of considering the entire lease sale as one block.

BLM's current approach is inaccurate and not useful to assess impacts from differing parcels. BLM has additional tools to ensure the accuracy of its greenhouse gas emissions analysis, and we request that the BLM use these to better inform the public and better inform its ultimate decision.

WSO RESPONSE

In the subject case, the Court rejected Plaintiffs' claim that NEPA requires a site-specific analysis of environmental impacts at the lease sale stage because "[a]t the leasing stage, the BLM could not reasonably foresee the projects to be undertaken on specific leased parcels, nor could it evaluate the impacts of those projects on a parcel-by-parcel basis." *WildEarth*, 368 F. Supp. 3d at 66. *See also id.* ("NEPA does not require an agency to issue these types of wholly speculative assessments at the leasing stage, even assuming an irretrievable commitment of resources.").

The Court further explained that the administrative record was "replete with information on oil and gas development and GHG emissions" as well as "studies quantifying and categorizing GHG emission more generally" that BLM reasonably could use to forecast future emissions on the proposed leases as a whole. *Id.* at 68. *See also id.* at 69 (noting "the volume of information available to BLM"). Specifically, "BLM had at its disposal estimates of (1) the number of wells to be developed; (2) the GHG emissions produced by each well; (3) the GHG emissions produced by all wells overseen by certain field offices; and (4) the GHG emissions produced by all wells in the state." *Id.* "With this data, BLM could have reasonably forecasted, by multiple methods, the GHG emissions to be produced by wells on the leased parcels" in the aggregate. *Id.*

The BLM included in the EA, at pages 60 and 62, expected emissions from the parcels should they be sold, leases issued, and if development proceeds consistent with the local FO RFDs (and their associated projections of Greenhouse Gases and production from those lands based on the selected alternatives

RFD). See pages 56-59 of the EA for a full discussion of how BLM calculated the resultant lease sale emissions and the data that it used (including footnote 36 on page 59).

The BLM considered using other methodologies as is evidenced by the following excerpt from page 59 of the EA:

BLM Wyoming considered estimating emissions based on estimates of numbers of new wells that could potentially be installed on the Proposed Action lease parcels, but concluded that this approach would duplicate the analysis that was used to develop the RFDs. Moreover, in consideration of the variability in well types, depths, specific drilling technology, and the rate of well development in Wyoming (See Table 12), development of specific well-emission estimates for lease parcels is problematic because it would require untenable assumptions (e.g. different well types can't be "averaged" together). By contrast, the total emissions estimate for a planning area, which accounts for differences in emissions among well types expected across the planning area, can readily be averaged across the area and pro-rated to lease parcels. This step-down, planning-area-based analysis provides greater consistency and continuity with previous analyses and utilizes existing data, including the RFD reports prepared for the RMP EISs by BLM Wyoming's Reservoir Management Group (RMG), as previously described.

The BLM ultimately found that, "these RFDs represent the best available data about the potential future oil and gas activity on BLM administered mineral estates in Wyoming."

We further refer the protester to our response to comment no. 11:

By assigning equal productivity to all lands in the project area, BLM has accounted for all potential emissions, especially as BLM has explained that most of the current activity in the area under consideration for leasing is exploratory in nature. To do otherwise could potentially underestimate future GHG emissions from the parcels. See EA at 63-64 for a discussion of uncertainty regarding the projection of GHG emissions for the proposed action alternative. See also EA at 58, 84

For the above reasons, this protest issue is dismissed.

7. The BLM Fails to Fully Analyze the Cumulative Impacts that Will Occur as a Result of Greenhouse Gas Emissions from the Lease Sale.

Although, here, the BLM includes some information on the cumulative impacts from the BLM lease sales occurring in Wyoming and 2014 emissions data from surrounding states, the BLM's analysis contains a number of arbitrary assumptions and data gaps.

First BLM arbitrarily limits its cumulative impacts analysis of reasonably foreseeable federal lease sales in Wyoming. EA at 85. This approach is directly contrary to the plain language of NEPA, which defines cumulative impacts as "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7. This is also directly contrary to the decision in *WildEarth Guardians v. Zinke* where the Judge plainly required a cumulative impacts analysis of the greenhouse gas emissions from other BLM lease sales in the region and nation. 368 F. Supp. 3d 41, 77 (D.D.C. 2019). Including this information would more appropriately capture the context of the Wyoming March 2020 lease sale and would also provide a basis for comparison of significance of the lease sale instead of comparing emissions from the sale as compared to global emissions.

Second, the BLM's reliance on stale data fails to reflect the reality of the climate crisis. First, by relying on emissions data from 2014 for other states, the BLM omits the drastic increase in leasing that has occurred under the Trump Administration. BLM also ignores recent data demonstrating, that U.S. greenhouse gas emissions increased in 2018 and that these increases were driven largely by oil and gas- natural gas and ultimately replaced any emissions reductions from the decline of the coal industry. The BLM must rectify these errors before moving forward with the proposed lease parcels.

WSO RESPONSE

The protester overlooks the fact that BLM has disclosed all future potential direct and indirect emissions by including all reasonably foreseeable direct and indirect emissions from the statewide projected RFD as analyzed in the 2015 Greater Sage-Grouse Amendment EIS, the Buffalo 2015 RMP, the Bighorn Basin 2015 RMP and the Lander 2014 RMP (EA at 86, 91). BLM also accounted for all existing leased acreage through 2019 and all pending leases undergoing current review in Wyoming (EA at 86, 91).

The protester also overlooks that fact that BLM updated the 2014 USGS direct (EA at 87) and indirect emissions (EA at 92) estimates for the Rocky Mountain and Northern Great Plains regions by projecting emissions through 2018 based on what was currently under lease. See EA at 92.

Finally, Figure 8 in the EA (at 90) shows that leasing activity since 2008 has steadily declined across the United States and Figure 4 (at 32) shows leasing statistics for Wyoming for the years 2008-2019). Leasing activity in Wyoming is discussed on page 31 of the EA and discussion regarding US greenhouse gas emissions according to EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2017 is disclosed on page 38. BLM is aware that EPA published a draft of its 1990-2018 report in February, during the time that this EA was in protest period, and that a final report is not expected until April. The information in this final report will be reviewed and incorporated as necessary, when it becomes available.

For these reasons, this protest issue is dismissed.

8. The BLM Fails to Consider the Significance of the Proposed Action Using Carbon Budgeting

Simply providing GHG emissions in the abstract, or comparing lease sale emissions to regional and national totals, fails to inform the decision-maker and the public of the significance of the impacts. While the court in WildEarth Guardians v. Zinke noted that the challenged EAs were not required to utilize global carbon budgeting to quantify climate impacts "at least at the time they were issued," BLM is, however, still required to assess whether this tool is useful and required to properly explain the significance of GHG emissions from the lease sales in conjunction with other regional and national BLM actions, and in the context of the global climate crisis.

BLM must, at a minimum, disclose the world's and the U.S.'s meager remaining carbon budgets and assess the significance of the proposed APDs within the context of these estimates and within the context of carbon emissions that stand to be released from already leased federal fossil fuels.

WSO RESPONSE

In the EA, the BLM reasonably considered the state of global emissions including the disclosure of existing information on global temperatures, emissions from development of the federal mineral estate in Wyoming, and United States emissions, within the context of global emissions levels. BLM further

discussed projected changes in energy demand and its potential to affect global emissions. The BLM also considered the state of the global climate budget as defined by the IPCC, projected global emissions growth and projections of further fossil fuel development. (EA at 26, 87, 91, 94-99) BLM ultimately found that “Despite the uncertainty about the ultimate production of minerals from leased lands under the proposed action, the precise quantities of direct and indirect CO₂e emissions that may result from development of those lands, and the emissions that may result from other regional and national activities, the data presented above show BLM Wyoming's limited potential contribution to global emissions, and its minor potential to affect the rate of climate change relative to the latest iteration of the carbon budget projections.” (EA at 99)

We find that the protester’s arguments do not vary significantly to their comments on the EA and we refer them to our response to comment no. 13:

BLM has provided analysis which compared the total projected emissions from existing leases and leases expected to result from reasonably foreseeable lease sales to annual statewide (Federal and “all lands”), regional Federal, and national emission levels. BLM took the extra step of discussing emissions from the cumulative Federal actions in Wyoming in consideration of global emission levels.

The BLM has concluded that the projected direct and indirect emissions from the Proposed Action, and their incremental (cumulative) addition to emissions from other lease sales and activities considered at various scales, will not result in significant impacts in terms of changes in the expected effects of climate change, the timing of those changes, or the magnitude of those effects. The commenter has not provided information contrary to this determination.

For the above reasons, the BLM declines to undertake further detailed analysis of a global climate budget and this protest issue is dismissed.

9. The BLM Fails to Analyze the Costs of Reasonably Foreseeable Carbon Emissions Using Well-Accepted, Credible, GAO-Endorsed, Interagency Methods for Assessing Carbon Costs

In addition to failing to seriously consider carbon budgeting. BLM omits serious consideration of another tool for assessing significance the social cost of-carbon protocol: a valid, well-accepted, credible, and interagency-endorsed method of calculating the costs of greenhouse gas emissions. Failure to use this best available science in the EA violates NEPA's hard look mandate. See Wild Earth Guardians v. Zinke, 368 F. Supp. 3d 41, 79 n.31 (D.D.C. 2019) (finding that "on remand, BLM must reassess whether the social cost of carbon or another methodology for quantifying climate change may contribute to informed decision making.

WSO RESPONSE

The BLM discussed the social cost of carbon in the EA (at 95-96). Based on the analysis EA, the BLM also found that the information provided effectively informs the decision-maker and the public of the potential for GHG emissions and the potential implications of climate change. The EA at 96 concludes that “[t]his approach presents the data and information in a manner that follows many of the guidelines for effective climate change communication developed by the National Academy of Sciences (National Research Council 2010) by making the information more readily understood and relatable to the decision-maker and the general public.” As such, the BLM has considered the use of the social cost of carbon protocol advocated for by the protests but respectfully declines based on the aforementioned. This protest issue is dismissed.

10. The BLM Must Assess the Significant of Its Action Within the Context of the Widening Production Gap.

BLM must assess the significant of the -proposed action within the context of the widening- production gap or emissions gap between current fossil fuel production and where our world needs to be in order to meet climate goals limiting warming.

[T]he United Nations Environmental Programme ("UNEP") just released its Emissions Gap Report in November 2019. The report has a number of significant, relevant findings regarding current emissions levels versus emissions levels needed to limit warming.

The Stockholm Environment Institute ("SEI") released a report soon after the UNEP report on the production gap, or the action needed to wind down the world 's fossil fuels in order to meet climate goals.

BLM must consider these new, relevant reports which indicate an imperative to transition away from fossil fuels rapidly using supply side policies.

WSO RESPONSE

The BLM appreciates the protester sharing these reports. However, the BLM has adequately considered the proposed and action and cumulative impacts in consideration of global GHG emissions and projected global climate change effects. A more detailed analysis of global climate emissions in the context of a global climate budget is outside the scope of this EA. The BLM is unaware of any statutory requirement to undertake an analysis of global climate budgets. This protest issue is dismissed.

11. The BLM Should Use Its Discretion Not to Lease the Proposed Parcels

WSO RESPONSE

There are no additional actions that BLM is awaiting, and there is no new information that the BLM has not considered. Offering the subject lands is in conformance with the underlying RMPs which provide for compliance with FLPMA's multiple-use mandate and responds to the Mineral Leasing Act of 1920 (as amended). The BLM has retained significant regulatory authority and has placed all necessary stipulations on the parcels proposed to be offered, to minimize anticipated impacts. All future lease operations will require separate authorization at which time the public, including WEG, can participate in the decision-making process. This protest issue is dismissed.

DECISION:

The protests received from WOC et al., and WEG et al., are dismissed or denied for the reasons discussed within. We affirm that the parcels to be offered are in conformance with the underlying RMPs, and are compliant with NEPA and FLPMA in regards to Hydraulic Fracturing, GHG emissions, Big Game Migration Corridors, and Greater Sage-grouse and the 105 parcels that are proposed to be offered, will be offered for sale at the First Quarter 2020 competitive lease sale.

Appeal Information

This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (copy attached).

If an appeal is taken, your notice of appeal must be filed in this office within 30 days from your receipt of this Decision. The protestor has the burden of showing that the Decision appealed from is in error.

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

Standards for Obtaining a Stay

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

- (1) The relative harm to parties if the stay is granted or denied,
- (2) The likelihood of the protesters' success on the merits,
- (3) The likelihood of the immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Timothy Wilson

A handwritten signature in blue ink, appearing to read "Timothy Wilson", written over a horizontal line.

Acting Deputy State Director
Minerals and Lands

Attachments:
Appeal Form (1842-1)

cc:
All District and Field Offices
DSD (920)
M.Gamper (921) e-mail of final and a letterhead copy

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF
APPEAL.....

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

2. WHERE TO FILE

NOTICE OF APPEAL.....

Bureau of Land Management

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 stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO
SOLICITOR.....

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

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.

43 CFR SUBPART 1821—GENERAL INFORMATION

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

STATE OFFICES AND AREAS OF JURISDICTION:

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

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

(Form 1842-1, September 2006)