



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
Idaho State Office  
1387 South Vinnell Way  
Boise, Idaho 83709-1657



In Reply Refer To:  
3120 (933 KP)

JUN 10 2015

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**DECISION**

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**PROTEST DENIED**

On March 31, 2015, the Bureau of Land Management (BLM) received via fax WildLands Defense's revised protest to the BLM's Notice of Competitive Oil and Gas Lease Sale (Enclosure 1), filed on behalf of Wildlands Defense, Brett Nelson and ICARE. The three protesting parties will hereafter be referred to collectively as WLD. The WLD protests the BLM's May 28, 2015, competitive oil and gas lease sale of five parcels (A, B, C, D, and E) in Payette County, Idaho, alleging violations of the National Environmental Policy Act (NEPA), 42 USC 4321 et seq; the Federal Land Policy and Management Act (FLPMA), 43 USC 1701 et seq; the Migratory Bird Treaty Act (16 U.S.C. 703-712; and Executive Order 13186); the Clean Air Act (42 USC 7401 et seq); and the Clean Water Act (33 USC 1251 et seq); and the regulations and policies that implement these laws. The WLD requested that all of the parcels be withdrawn from the BLM's May 28, 2015, competitive oil and gas lease sale. On May 28, 2015, the BLM held a competitive oil and gas lease sale in which all five parcels (A, B, C, D, and E) were auctioned off to the highest bidder.

The Idaho State Office has considered the allegations made by WLD, and for the reasons further detailed below, find the allegations to be without merit. The WLD's protest is therefore denied.

## SUMMARY

The BLM is offering five parcels for lease, subject to No Surface Occupancy (NSO) and No Sub-Surface Occupancy (NSSO) stipulations. The BLM is leasing in this limited area of the Four Rivers Field Office because Federal mineral resources are threatened by uncompensated drainage, as a result of the current development of and eventual production from a small natural gas field, named the Willow Field, which is currently occurring on private lands adjacent to lands with Federal mineral estate. Some of the wells drilled or proposed are located in government sections that have Federal minerals. In the Willow Field, well spacing for natural gas is currently one well per government section. The State of Idaho is currently being asked by the developer to omit Federal lands from a drilling unit, thus allowing uncompensated drainage of Federal resources. Moreover, Idaho state law now allows the Idaho Oil and Gas Conservation Commission (IOGCC) to omit Federal lands from a drilling unit. Protecting the Federal mineral estate from uncompensated drainage is one of the BLM's basic functions. The BLM accomplishes this either through an agreement with the operator, or through leasing the lands. Once the lands are leased, it is the lessee's responsibility to protect the lease from drainage.

The BLM analyzed three alternatives in the Little Willow Creek Protective Oil and Gas Leasing Environmental Assessment (EA), dated February 10, 2015, and selected the alternative (B) that allows the BLM to offer the parcels for lease, subject to No Surface Occupancy (NSO) and No Sub-Surface Occupancy (NSSO) stipulations, until completion of the Four Rivers Resource Management Plan (FRRMP). This action meets the EA's purpose and need to prevent uncompensated drainage, and allows the BLM to retain its full authority to protect or mitigate effects on other resources, while the land use plan is being revised. Leasing with NSO and NSSO stipulations does not constitute an irretrievable commitment of resources.

## BACKGROUND

### Purpose and Need

The purpose for the leasing proposal is described in Section 1.1 of the EA as follows:

*"The purpose of this proposal is to protect the Federal mineral resource from uncompensated drainage, and surface resources from potential damage, in and near the Willow Field, Payette County, Idaho" ...*

The need for the proposal is described in the same section:

*"This action is needed because natural gas wells have been or are proposed to be drilled on private land adjacent to BLM-administered lands and/or adjacent to lands where BLM owns only the subsurface mineral estate (referred to as split estate). The current and proposed wells in and north of the Willow Field constitute a threat, or potential threat, of uncompensated drainage to the Federal mineral estate. Drilling has resulted in the discovery of commercial quantities of natural gas and natural gas condensate in the Willow and Hamilton fields, and those areas are being developed for commercial production. According to the current Idaho well spacing order, only one well can be drilled per 640-acre governmental section (IDAPA 20.07.02.330.02; IOGCC 2013a). The Idaho*

*Department of Lands has approved drilling permit applications for several wells on private lands which would drain minerals reserved to the United States within the well spacing unit designated by the State of Idaho (IOGCC 2014).*

*In a September 4, 2014 IOGCC hearing, the commission voted 4-1 to reconsider a request by Alta Mesa to omit Federal mineral resources. If Federal minerals are omitted from a drilling unit, BLM would be unable to collect the royalties it is due for its proportionate share of production from the drilling unit; therefore, the BLM considers these resources threatened by uncompensated drainage. While 43 CFR 3162.2-2 offers several protective measures BLM may take to avoid uncompensated drainage on unleased lands besides leasing, they require the cooperation of the owner-of-interest in the producing well. BLM has offered several times to enter into a communitization or compensatory royalty agreement; however, Alta Mesa has refused to do so, leaving leasing as the only alternative to address drainage.”*

The EA analyzed the effects of three alternatives:

#### ***Alternative A***

The five parcels proposed for leasing in Payette County (997 BLM surface acres and 5,352 split estate within the 15,644-acre proposed lease area) would not be offered for lease (Map 1 of the EA).

#### ***Alternative B***

The BLM would offer the five parcels of Federal mineral estate, each subject to the following stipulations and lease notices:

No Surface Occupancy (NSO) –1: Surface occupancy and use on BLM-administered and split estate lands would be prohibited until the Four Rivers Resource Management Plan (FRMP) is finalized.

No Sub-surface Occupancy (NSSO) –1: Subsurface occupancy and use on Federal mineral estate lands would be prohibited until the FRMP is finalized.

The following two stipulations would also be included, as they are mandatory for every lease the BLM offers, and are not be subject to exception, modification, or waiver:

#### **Endangered Species**

Stipulation (S) –1: The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened, endangered, or other special status species. The BLM may recommend modifications to exploration and development proposals to further its conservation and management objective to avoid the BLM-approved activity that will contribute to a need to list such a species or their habitat. The BLM may require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species or result in the destruction or adverse modification of a designated or proposed critical habitat. The BLM will not approve any ground-disturbing activity that may affect any such species or

critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act as amended, 16 U.S.C. § 1531 et seq., including completion of any required procedure for conference or consultation.

#### Cultural Resources

S-2: This lease may be found to contain historic properties and/or resources protected under the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, E.O. 13007, or other statutes and executive orders. The BLM would not approve any ground disturbing activities that may affect any such properties or resources until it completes its obligations under applicable requirements of the NHP A and other authorities. These obligations may include a requirement that you provide a cultural resources survey conducted by a professional archaeologist approved by the State Historic Preservation Office (SHPO). If currently unknown burial sites are discovered during development activities associated with this lease, these activities must cease immediately, applicable law on unknown burials will be followed and, if necessary, consultation with the appropriate tribe/group of federally recognized Native Americans will take place. The BLM may require modification to exploration or development proposals to protect such properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated.

In addition to the above stipulations, each parcel would be subject to the following two lease notices:

#### Drainage

LN-A: Parts of this lease may potentially be subject to drainage by wells located on adjacent private lands. The lessee shall, within 6 months of the drilling and completion of any productive well on the adjacent private lands, submit for approval by the authorized officer:

1. Plans for protecting the lease from drainage (43 CFR § 3162.2-3). The plan must include either (a) a completed Application for Permit to Drill for each of the necessary protective wells, or (b) a proposal for inclusion in a unitization or communitization agreement for the affected portion of the lease. Any agreement should provide for an appropriate share of the production from the offending well to be allocated to the lease; or
2. Engineering, geologic and economic data to demonstrate to the authorized officer's satisfaction that no drainage has occurred or is occurring and/or that a new protective well(s) would have little or no chance of production sufficient to yield a reasonable rate of return in excess of the costs of drilling, completing and operating the well.

If no plan, agreement, or data is submitted and drainage is determined to be occurring, compensatory royalty will be assessed. Compensatory royalty will be assessed on the first day following expiration of the 6-month period, and shall

continue until a protective well has been drilled and placed into production status, or until the offending well ceases production, whichever occurs first. The lessee shall be obligated to pay compensatory royalty to the Office of Natural Resources Revenue (ONRR) at a rate to be determined by the BLM authorized officer.

#### Split Estate

LN-B: Portions of the surface estate of this lease are privately owned (i.e. split estate lands). While the Federal mineral lessee has the right to enter the property for necessary purposes related to lease development, the lessee is responsible for making arrangements, formalized in a Surface Use Agreement, with the surface owner prior to entry upon the lands. Lessee is hereby informed that the United States will not participate as a third party in negotiations between the lessee and the surface owner. Any agreement reached between the lessee and the surface owner(s) will not be binding on the United States.

Prior to submitting an Application for Permit to Drill (APD) for BLM's approval, lessee is required to submit the name, address, and phone number of the surface owner, if known, in its APD. The lessee must also make a good faith effort to provide a copy of their Surface Use Plan of Operations to the surface owner. After the APD is approved, the operator must make a good faith effort to provide a copy of the Conditions of Approval to the surface owner.

The lessee will be required to certify to the BLM in writing that: (1) It made a good faith effort to notify the surface owner before entry; and (2) That a Surface Use Agreement with the surface owner has been reached, or that a good faith effort to reach an agreement failed. If no agreement can be reached with the surface owner, the lessee must submit an adequate bond (minimum of \$1,000) to the BLM, for the benefit of the surface owner, sufficient to pay for loss or damages. The surface owner has the right to appeal the sufficiency of the bond.

#### *Alternative C*

The five parcels proposed for leasing in Payette County would be offered for lease, subject to the following stipulations derived from the Cascade RMP, and additional lease notices developed for sensitive resources not addressed in the Cascade RMP, as described in Section 2.3 Alternative C of the EA. Appendix 3 of the EA contained the following table, which shows the applicability of stipulations and lease notices by parcel:

Stipulation/Lease Notice	Parcel <sup>1</sup>				
	A	B	C	D	E
Freshwater Aquatic Habitat CSU-1: 500' buffer from surface waters	Y	N	N	Y	Y
Freshwater Aquatic Habitat CSU-2: 100' buffer from surface waters	Y	N	N	Y	Y
Special Status Plants CSU -3: Types 1-4	P	Y	P	P	P
Big Game Range CSU-4: No surface use December 1 – March 31 any species; May 1 – June 30 antelope	Y	Y	Y	Y	Y
Sensitive Wildlife Species CSU-5: No surface use ≤0.75 miles of ferruginous and Swainson's hawk nests March 15 – June 30	P	P	P	P	P

Stipulation/Lease Notice	Parcel <sup>1</sup>				
	A	B	C	D	E
Sensitive Wildlife Species CSU-6: No surface use $\leq 0.75$ miles of osprey nests April 15 – August 31	P	P	P	P	P
Sensitive Wildlife Species CSU-7: No surface use $\leq 0.25$ miles of burrowing owl nests March 15 – June 30	P	P	P	P	P
Wildlife Species of Concern CSU-8: No surface use $\leq 0.75$ miles of golden eagle nests February 1 – June 30	P	P	P	P	P
Wildlife Species of Concern CSU-9: No surface use $\leq 0.75$ miles of prairie falcon nests March 15 – June 30	P	P	P	P	P
Wildlife Species of Concern CSU -10: No surface use $\leq 0.5$ miles of heron rookery	P	P	P	P	P
Fragile Soils LN-1: Minimize adverse impacts to fragile soils	Y	Y	Y	Y	Y
Floodplain Management LN-2: Minimize adverse impacts to 100-year floodplain	Y	Y	N	N	N
Endangered Species S-1: Consultation and mitigation to protect listed species and critical habitat.	Y	Y	Y	Y	Y
Special Status Mammals LN-3: Minimize adverse impacts to SIDGS and pygmy rabbits.	P	P	P	P	P
Migratory Birds and Raptors LN-4: Compliance with MBTA by minimizing adverse impacts to migratory birds.	P	P	P	P	P
Migratory Birds and Raptors CSU-11: No surface use $\leq 1$ mile of active bald eagle or peregrine falcon nest. No surface use December 1 – March 31 where wintering bald eagles or peregrine falcons are present.	P	P	P	P	P
Water Quality LN-5: Reduce impacts on water quality and quantity.	Y	Y	Y	Y	Y
Cultural Resources S-2: Comply with applicable statutes and executive orders.	Y	Y	Y	Y	Y
Cultural Resources LN-6: Cultural resource survey.	Y	Y	Y	Y	Y
Lands and Realty LN-7: Existing authorizations.	Y	Y	Y	Y	Y
Drainage LN-A: Wells on adjacent private lands.	Y	Y	Y	Y	Y
Split Estate LN-B: Surface use agreement required on split-estate.	Y	Y	Y	Y	Y
Paleontological Resources CSU-12: No surface use on identified resources.	Y	Y	Y	Y	Y
Paleontological Resources LN-7: Paleontological resource survey.	Y	Y	Y	Y	Y

<sup>1</sup> Y – applies to at least a portion of the parcel. P – potentially applies based on subsequent survey work. N – would not apply to that parcel.

The following stipulations and lease notices would apply where appropriate, based on the table above:

Freshwater Aquatic Habitat

Controlled Surface Use (CSU) -1: Surface occupancy and use would be prohibited within 500 feet from the edge of reservoirs, ponds, streams, wetlands, and riparian habitat. Introduction of chemical toxicants or sediments to riparian areas as a result of exploration or production would not be allowed.

CSU-2: A minimum 100 foot riparian buffer zone would be provided from the edge of any riparian habitat to protect riparian vegetation, fisheries, and water quality. The following activities would be generally excluded: new road construction that parallels streams. Best management practices would be used when construction cannot be avoided.

#### Special Status Plant Species

CSU-3: Occupancy and use, including surface and subsurface rights-of-way, would be prohibited in Type 1-4 special status plant element occurrences.

#### Big Game Range<sup>1</sup>

CSU-4: No surface use would be allowed in crucial winter range from November 15 to May 15 or crucial antelope fawning range between May 1 and June 30.

#### Sensitive Wildlife Species

CSU-5: No surface use would be allowed within a 0.75 mile radius of ferruginous hawk or Swainson's hawk nests from March 15 to June 30.

CSU-6: No surface use would be allowed within a 0.75 mile radius of an osprey nest from April 15 to August 31.

CSU-7: No surface use would be allowed within a 0.25 mile radius of a burrowing owl nest from March 15 to June 30.

#### Wildlife Species of Concern

CSU-8: No surface use would be allowed within a 0.75 mile radius of a golden eagle nest from February 1 to June 30.

CSU-9: No surface use would be allowed within a 0.75 mile radius of a prairie falcon nest from March 15 to June 30.

CSU-10: No surface occupancy would be allowed within a 0.5 mile radius of a heron rookery.

#### Fragile Soils

Lease Notice (LN) -1: The lessee is hereby notified that special location, design and construction mitigation measures may be required to minimize, to the extent possible, the potential long-term and short-term adverse impacts of oil and gas operations within fragile soils, and to avoid them wherever there is a practicable alternative.

Fragile soil areas, in which the performance objective would be enforced, are defined as follows:

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<sup>1</sup> From the CRMP: "Those areas where big game animals have demonstrated a definite pattern of use each year or an area where animals tend to concentrate in significant numbers (from Interagency Guidelines for Big Game Range Investigation-Idaho Department of Fish & Game, Bureau of Land Management, U.S. Forest Service)." For the purposes of this action, the BLM worked in cooperation with IDFG to delineate winter ranges using current animal distribution data.

- 1) Areas rated as highly or severely erodible by wind or water, as described by the National Cooperative Soil Survey for Payette County or as described by on-site inspection.
- 2) Areas with slopes  $\geq 30\%$ , if they also have one of the following soil characteristics:
  - a. a surface texture that is sand, loamy sand, very fine sandy loam, fine sandy loam, silty clay or clay;
  - b. a depth to bedrock  $< 20$  inches;
  - c. an erosion condition that is rated as poor; or
  - d. a K-factor  $> 0.32$ .

#### Floodplain Management

LN-2: The lessee is hereby notified that special location, design and construction mitigation measures may be required to minimize, to the extent possible, the potential long-term and short-term adverse impacts of oil and gas operations within the 100-year floodplain associated with occupancy and modification of the floodplain, and to avoid direct and indirect floodplain development wherever there is a practicable alternative. Under Executive Order 11988: Floodplain Management; the BLM is required to restore and preserve the natural and beneficial values served by floodplains for actions related to Federal activities and programs affecting land use.

#### Endangered Species (Mandatory)

Stipulation (S) –1: The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened, endangered, or other special status species. the BLM may recommend modifications to exploration and development proposals to further its conservation and management objective to avoid BLM-approved activity that will contribute to a need to list such a species or their habitat. The BLM may require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species or result in the destruction or adverse modification of a designated or proposed critical habitat. The BLM will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act as amended, 16 U.S.C. § 1531 et seq., including completion of any required procedure for conference or consultation.

#### Special Status Mammals

LN-3: The lease may, in part or in total, contain important southern Idaho ground squirrel (SIDGS), a candidate species, and pygmy rabbit habitats as identified by the BLM, either currently or prospectively. The operator may be required to implement specific measures to reduce impacts of oil and gas operations on SIDGS populations and habitat quality. Such measures shall be developed during the application for permit to drill on-site and environmental review process and will be consistent with the lease rights granted. Measures may include (in order of priority):

1. Avoid areas occupied by SIDGS and pygmy rabbits.
2. When oil and gas facilities are deemed necessary within unoccupied SIDGS or pygmy rabbit habitat, minimize pad size, road width, and the size of other disturbed areas.



3. New construction of roads, pipelines, and rights-of-way would be planned to minimize the effects of fragmenting wildlife habitat.
4. Restore unneeded areas to native or other appropriate vegetation (shrubs, perennial grasses, and forbs as identified by the SIDGS Working Group) immediately upon vacancy of temporary use sites or permanent closure of well sites to provide forage for nearby SIDGS.
5. Construct power transmission lines outside of SIDGS occupied habitat (including a 0.25-mile buffer) whenever possible. If transmission lines are deemed necessary through or within 0.25 miles of SIDGS colonies, locate poles outside of active burrow systems and consider 1) burying transmission lines, or 2) installing raptor anti-perching devices on transmission lines.

#### Migratory Birds and Raptors

LN-4: The Operator is responsible for compliance with provisions of the Migratory Bird Treaty Act by implementing one of the following measures: a) avoidance by timing - ground disturbing activities would not occur from April 15 to July 15; b) habitat manipulation - render proposed project footprints unsuitable for nesting prior to the arrival of migratory birds (blading or pre-clearing vegetation must occur prior to April 15 within the year and area scheduled for activities between April 15 and July 15 of that year to deter nesting; or c) survey-buffer-monitor surveys would be conducted by a BLM approved biologist within the area of the proposed action and a 300 foot buffer from the proposed project footprint between April 15 to July 15 if activities are proposed within this timeframe. If nesting birds are found, activities would not be allowed within 0.1 miles of nests until after the birds have fledged. If active nests are not found, construction activities must occur within 7 days of the survey. If this does not occur, new surveys must be conducted. Survey reports would be submitted to the appropriate BLM Office.

CSU-11: No surface occupancy would be allowed within 1 mile of an active bald eagle or peregrine falcon nest. No surface use would be allowed from December 1 and March 31 where wintering bald eagles or peregrine falcons occur.

#### Water Quality

LN-5: The operator may be required to implement specific measures to reduce impacts of oil and gas operations on water quality and quantity. Such measures shall be developed during the application for permit to drill on-site and environmental review process and will be consistent with the lease rights granted.

#### Cultural Resources (Mandatory)

S-2: This lease may be found to contain historic properties and/or resources protected under the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, E.O. 13007, or other statutes and executive orders. The BLM would not approve any ground disturbing activities that may affect any such properties or resources until it completes its obligations under applicable requirements of the NHPA and other authorities. These obligations may include a requirement that you provide a cultural resources survey conducted by a professional archaeologist approved by the State

Historic Preservation Office (SHPO). If currently unknown burial sites are discovered during development activities associated with this lease, these activities must cease immediately, applicable law on unknown burials will be followed and, if necessary, consultation with the appropriate tribe/group of Federally recognized Native Americans will take place. The BLM may require modification to exploration or development proposals to protect such properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated.

LN-6: The Surface Management Agency is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures.

#### Lands and Realty

LN-7: Land Use Authorizations incorporate specific surface land uses allowed on BLM-administered lands by authorized officers and those surface uses acquired by the BLM on lands administered by other entities. These BLM authorizations include rights-of-way, leases, permits, conservation easements, and recreation and public purpose leases and patents.

#### Paleontological Resources

CSU-12: No surface occupancy would be allowed on sites with known paleontological values. Surface rights-of-way would be routed to avoid paleontological resources.

LN-7: This lease has is located in geologic units rated as being moderate to very high potential for containing significant paleontological resources. The locations meet the criteria for Class 3, 4 and/or 5 as set forth in the Potential Fossil Yield Classification System, Washington Office (WO) Instruction Memorandum (IM) 2008-009, Attachment 2-2. The BLM is responsible for assuring that the leased lands are examined to determine if paleontological resources are present and to specify mitigation measures. Guidance for application of this requirement can be found in WO IM 2008-009 dated October 15, 2007, and WO IM 2009-011 dated October 10, 2008. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or project proponent shall contact the BLM to determine if a paleontological resource inventory is required. If an inventory is required, the lessee or project proponent will complete the inventory subject to the following:

- The project proponent must engage the services of a qualified paleontologist, acceptable to the BLM, to conduct the inventory.
- The project proponent will, at a minimum, inventory a 10-acre area or larger to incorporate possible project relocation which may result from environmental or other resource considerations.

A paleontological inventory may identify resources that may require mitigation to the satisfaction of the BLM as directed by WO IM 2009-011 including possible project relocation which may result from environmental or other resource considerations.

## **ENVIRONMENTAL EFFECTS**

The environmental consequences of each of the three alternatives are analyzed in Chapter 3 of the EA. In Section 3.1.2, the Reasonably Foreseeable Development Scenario (RFDS) is summarized (the RFDS is included as Appendix 1 of the EA). Table 2 (page 18) shows the number of potential wells that could be drilled in the project area and the acres potentially disturbed as a result of the BLM leasing, by alternative. The potential number of wells varies from 2 for Alternative A (No Federal leasing), and 25 for Alternative C (leasing with stipulations). Alternative B is predicted to result in the drilling of 22 wells, all of which would be drilled on private (fee) lands.

## **UPDATE TO RFDS CONCERNING ALTERNATIVE A**

The RFDS written for the EA (included in the EA as Appendix 1) did not make any assumptions or predictions as to any actions that the IOGCC may take, if Alternative A was selected and BLM does not lease the Federal minerals in the project area. The BLM predicted only 2 wells would be drilled in the project area, based on the fact that there are only two sections in the project area with no Federally owned minerals. BLM only predicted two wells because, at the time the EA was written, there was no legislation specifically allowing the IOGCC to approve the omission of Federal lands from a drilling unit. Since that time however, the Idaho Legislature, during its 2015 session, passed a bill amending Idaho Code § 47-321, to provide for the exclusion of Federal mineral acreage from unit operations upon application to the IOGCC, should the Federal government fail to lease.

Given this recent change in State law, the BLM finds it reasonable and prudent to update the predictions in the RFDS as to Alternative A (described in the EA as not leasing the Federal mineral estate in the project area). Assuming the IOGCC would continue to receive applications to omit Federal lands from a drilling unit, the BLM predicts that implementing Alternative A (the No Action alternative) could result in the drilling of as many as 24 wells in the project area. The BLM reaches this conclusion based on the fact that, of the 25 sections included in the project area, only one section (T. 9 N., R. 4 W., section 25) has Federal mineral estate reserved in the entire section. The IOGCC now has the authority to approve the omission of the Federal mineral estate from a drilling unit in all sections within the project area except this one, potentially resulting in the drilling of up to 24 wells. If Alternative A is selected and the BLM does not lease, uncompensated drainage of the Federal mineral estate would occur, resulting in the loss of potentially significant royalties to the United States and to the State. Since half the royalties collected go into the Federal Treasury and the other half is dispensed to the State of Idaho, the American taxpayer and Idaho taxpayer, presumably including WLD and its members, would be financially harmed by such an action. The BLM would be shirking its duties under the Mineral Leasing Act to not lease Federal lands threatened by drainage.

## **FIELD MANAGER'S RECOMMENDATION**

On February 27, 2015, the Four Rivers Field Manager recommended that the Idaho State Office offer the parcels for lease by implementing Alternative B, leasing subject to NSO/NSSO stipulations until completion of the Four Rivers RMP, for each of the five parcels. In the Decision Record and Leasing Recommendation, the Field Office Manager provides the following rationale for his decision:

*My decision to approve Alternative B, leasing of five parcels with NSO and NSSO stipulations until implementation of the imminent Four Rivers RMP, is based on the need to protect the Federal mineral resource from uncompensated drainage*

*and surface resources from potential damage. Leasing of these parcels is consistent with national policy and agency statutory requirements, and is in conformance with the 1988 CRMP. The BLM may issue leases to protect the public interest when uncompensated drainage is occurring or may occur (43 CFR 3100.2-1), provided the lease does not convey an irreversible or irretrievable commitment of resources (Conor v. Burford, 848 F.2d 1441, 1444, (9<sup>th</sup> Cir. 1998)). The NSO and NSSO stipulations preclude an irreversible or irretrievable commitment of resources. The CRMP EIS did not include a reasonably foreseeable development scenario (RFDS) and provided only limited analyses of NSO (e.g., special management areas such as areas of critical environmental concern that are outside the proposed lease area). Therefore, an RFDS was developed for and analyzed in the EA to describe impacts from NSO.*

*While the NSSO stipulation was not analyzed in the CRMP EIS, it was analyzed in the EA due to the rapid development of oil and gas interests in the area, to address continuing industry interests and in order to ensure preservation of all mineral rights until implementation of the Four Rivers RMP (anticipated draft publication June 2015). Additionally, completion of an EA at this time was applicable based on recent Idaho Oil and Gas Commission rulings to offer parcels for lease sale.*

*Based on this rationale, I recommend that each of the five parcels in the Little Willow Field, as depicted in the EA, be offered for lease sale with NSO and NSSO stipulations (per Alternative B) and described in the aforementioned decision.*

### **LEASE SALE OFFER**

Based on the Field Manager's recommendation and in accordance with 43 CFR 3120.4, the BLM prepared a Notice of Competitive Oil and Gas Lease Sale (Notice) and posted it in the Idaho State Office public room on February 27, 2015, announcing the offering of the parcels at a competitive lease sale to be held on May 28, 2015. The Notice informs the public about the sale and how to participate in the bidding process; describes how to file a protest for the land offered in the Notice; and explains the effect of the BLM receiving a protest on the lease sale process.

### **CONSIDERATION OF WLD PROTEST**

The WLD is protesting the offering of all the parcels, under the lease terms, conditions, and NSO/NSSO stipulations as described in the Notice, in the lease sale. The WLD participated in the public review of the EA and provided comments, to which the Four Rivers Field Office responded in Section 8 of the Final EA.

A description of each substantive contention alleged in WLD's protest of the May 2015 Lease Sale is provided below, followed by the BLM's response and conclusion as to the allegation:

## ISSUES

### 1. Alleged violations of FLPMA

The WLD alleges that leasing the contested parcels violates FLPMA, because existing planning documents (presumably referring to the Cascade RMP) do not address impacts of fracking; aquifer depletion and ruination; development right next door to a population center with potentially very serious health impacts, and “many other effects.” The WLD refers to its Statement of Reasons to show how leasing violates the protective measures found in the Cascade RMP, and violates sensitive species policy. The BLM infers the WLD is referring to the 12<sup>th</sup> page of the protest, which has a heading in bold entitled “1988 Cascade RMP is outdated, yet even its own very modest environmental protections and promises are being violated by this leasing scheme.”

The WLD describes how the new RMP is stalled and how the BLM has acknowledged a need for new land management allocations to balance current demands on resources that have undergone declines in conditions, new listed species and new issues, and new mitigation measures are needed. How the current oil “boom” by Payette extends across a bi-state region, including lands to the north across SIDGS habitat and Greater Sage Grouse habitat, and that this was not imagined and was not properly evaluated in the Cascade RMP. The WLD believes the Cascade RMP promised sustainable wildlife, including an increase in sage-grouse and Columbia sharp-tailed grouse; vegetation, and other resources, and that those promises have not been fulfilled by the BLM, resulting in expansion of exotic flammable invasive species and degradation of habitat.

The WLD alleges that the allocations in the Cascade RMP are outdated, and the BLM has not effectively protected wildlife and other resources it said it would. The Cascade RMP leaves 94% of the (lands covered) open to oil and gas leasing, and stipulations are minimal and full of loopholes, according to WLD. Moreover, WLD believes wildlife occupancy restrictions are outdated (Cascade RMP page 49) and not based on actual site conditions. According to WLD, the Cascade RMP fails to provide for proper studies of the local human population; fails to implement proper monitoring, and does not provide for effective responses to public complaints or environmental impacts and damage that may exceed levels promised by the BLM in the Record of Decision (ROD).

#### **BLM Response:**

Section 202 of the FLPMA requires the Secretary of the Interior to develop, maintain, and, when appropriate, revise land use plans which provide for the use of the public lands. The BLM’s Resource Management Plans (RMPs) form the basis for every action and approved use on the public lands. The BLM Land Use Planning Handbook (H-1601-1) 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.

As stated in section 1.5 of the EA, leasing the subject lands is in conformance with the 1988 Cascade RMP (CRMP). The CRMP states that “Approval of an application for lease is subject to an environmental analysis and may include stipulations to protect other resources.”

Section I.1 of the EA explains the current status of leasing in the Four Rivers Field Office, and the status of its land use plan:

While parcels totaling over 180,000 acres of Federal land in southwest Idaho have been nominated for competitive oil and gas leasing, the BLM has to-date deferred leasing any lands until completion of the FRRMP. Currently, there are no Federal oil and gas leases in the field office. The FRMP will replace the CRMP, which currently addresses leasing in the western portion of the Four Rivers Field Office. The BLM is considering leasing in this isolated circumstance because of the Federal mineral reserve drainage that may occur if existing wells are put into production in sections with Federal minerals in the Willow Field or on private lands in the proposed leasing area.

Section VII.E of the BLM Handbook H-1601-1 provides guidance to the BLM concerning the status of existing land use plan decisions during the RMP amendment or revision process. On page 47, the Handbook states “During the amendment or revision process, the BLM should review all proposed implementation actions through the NEPA process to determine whether approval of a proposed action would harm resource values so as to limit the choice of reasonable alternative actions relative to the land use plan decisions being reexamined. Even though the current land use plan may allow an action, the BLM manager has the discretion to ... modify proposed implementation-level actions and require appropriate ... stipulations ... to reduce the effect of the action on the values being considered through the ... revision process.” Further, WO IM No. 2004-110, titled “Fluid Mineral Leasing and Related Planning and National Environmental Policy Act (NEPA) Processes,” dated February 23, 2004, provides guidance for determining when existing NEPA documentation is sufficient to support continued implementation of an existing land use plan: “Documentation would be considered sufficient to support leasing when the State Director has determined there is adequate analysis of the impacts of the action detailed enough to identify types of stipulations to be attached to leases so as to retain the BLM’s full authority to protect or mitigate effects on other resources.”

The BLM developed three alternatives in the EA, including Alternative C, which considered leasing consistent with the direction found in the CRMP. It was found that, while numerous resource concerns were addressed in the CRMP and the BLM could apply 10 different stipulations from the CRMP to mitigate impacts to them, there were several issues that were not addressed in the CRMP. As part of Alternative C, the BLM developed Lease Notices to address potential impacts to resources that were not addressed in the CRMP. Lease Notices were developed for the following resources: Fragile Soils, Floodplain Management, special status mammals including SIDGS and pygmy rabbit; migratory birds and raptors; water quality; and paleontological resources.

The BLM took the requisite “hard look” at these and other issues, and found that the CRMP did not fully address all of them. For this reason, the BLM is not proposing leasing under Alternative C, but is selecting Alternative B (leasing subject to NSO/NSSO stipulations until completion of the FRRMP) instead. By including an alternative that considered leasing with stipulations derived from the CRMP, the BLM is complying with its policy concerning how to handle an implementation action during the land use plan revision process, in compliance with Section VII.E of BLM Handbook H-1601-1, cited above. By selecting Alternative B (leasing the

five parcels subject to NSO and NSSO stipulations), the BLM is complying with its policy in the Handbook to not limit the choice of reasonable alternative actions relative to the land use plan decisions being reexamined in the FRRMP. In addition, leasing with NSO/NSSO allows the BLM to retain its full authority to protect or mitigate effects on other resources while the RMP is being revised, in accordance with guidance from WO IM No. 2004-110.

These actions are consistent with FLPMA and the BLM's policy concerning how to handle existing land use plan decisions during the RMP amendment or revision process. In conclusion, the BLM finds no violations of FLPMA by offering the five parcels for lease with NSO/NSSO stipulations until completion of the FRRMP.

## 2. Alleged Violations of the National Environmental Policy Act

In its protest letter, WLD has alleged that offering the protested parcels for lease would violate NEPA because the EA, which the Four Rivers Field Office prepared in anticipation of the May 28 Lease Sale and upon which the BLM based the leasing proposal contained in the Notice of Competitive Lease Sale, had an inadequate range of alternatives and mitigation actions. The WLD believes the BLM should have prepared an EIS, because oil and gas leasing is an irretrievable commitment of resources. The WLD believes the BLM failed to adequately analyze the potential impacts of protective leasing and oil and gas development on SIDGS, migratory bird habitat, groundwater and the Payette River system watershed, Greater Sage Grouse habitat, air quality, vegetation, fish, and wildlife, and human population areas.

### BLM Response:

Pursuant to section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C), Federal agencies must consider the potential impacts of a proposed action in an EIS if it is a "major Federal action[s] significantly affecting the quality of the human environment." *See also* 40 CFR § 1502.3. NEPA, the statute itself, does not further define the term "major Federal action[s] significantly affecting the quality of the human environment," but guidance regarding this term has been provided in the Council on Environmental Quality ("CEQ") regulations implementing NEPA, 40 CFR Part 1500 to 1508, and, for BLM, in the BLM's NEPA Handbook. *See* 40 CFR § 1508.27; *see also* BLM NEPA Handbook H-1790-1 § 7.3. Thus, an initial question for Federal agencies considering a proposed action is whether that action is one that would "significantly affect" the "human environment"<sup>3</sup> under NEPA. If it does, the agency must prepare an EIS. If the agency believes that the proposed action is unlikely to significantly impact the environment or if it is uncertain as to whether the action will have significant impacts, in most instances, the agency will prepare an EA. *See* 40 CFR § 1501.4.

The preparation of an EA will typically lead to one of two determinations. One possible determination is that a proposed action is not likely to result in significant impacts to the environment, in which case a Finding of No Significant Impacts ("FONSI") may be prepared to document the rationale for that determination. The other potential determination from an EA is that a

<sup>2</sup> The terms "affect", "effect" and "impact" are used interchangeably and are considered synonymous by the CEQ regulations implementing NEPA. *See* 40 CFR § 1508.8.

<sup>3</sup> The term "human environment" has been defined as a broad term that includes "the natural and physical environment and the relationship of people with that environment." 40 CFR § 1508.14.

proposed action is likely to significantly impact the human environment, in which case the agency must prepare an EIS if it is to proceed in considering the proposed action.

In the instant case, the BLM is proposing to lease five parcels of Federal mineral estate, subject to stipulations preventing surface occupancy (SO) and sub-surface occupancy (SSO) until completion of the FRRMP and the associated EIS. The NEPA requirements for the sale of an NSO lease in which the NSO stipulation may be modified after lease issuance, have already been established through case law. The following excerpt is from *Conner v. Burford*, 848 F.2d 1441 (9<sup>th</sup> Cir 1988):

*"We disagree with the district court's ruling that the sale of an NSO lease is an irreversible commitment of resources requiring the preparation of an EIS. In ruling that the NSO stipulation could be modified without the preparation of an EIS, the district court evidently relied on a provision in the NSO stipulation which reads: "The [NSO stipulation] may be modified when specifically approved in writing by the District Engineer, Geological Survey with concurrence of the authorized officer of the surface management agency." The mere inclusion of such a clause in the lease has no effect, however, on the obligation of the surface management agency to comply with NEPA. Modification or removal of an NSO stipulation would have the same effect as the sale of a non-NSO lease, which, as discussed below, would constitute an irretrievable commitment of resources requiring the preparation of an EIS. Contrary to the assumptions of the district court, NSO provisions cannot be freely altered without an EIS. We cannot assume that government agencies will not comply with their NEPA obligations in later stages of development. Thus, we believe that piecemeal invasion of the forests will be avoided because, as the Federal appellants concede, government evaluation of surface-disturbing activity on NSO leases must include consideration of the potential for further connected development and cumulative impacts from all oil and gas development activities pursuant to the Federal leases. See *Thomas v. Peterson*, 753 F.2d 754, 757-61 (9th Cir.1985); 40 C.F.R. Secs. 1508.7, 1508.8, 1508.25(a)(1), (2) (1985).*

*In sum, we hold that the sale of an NSO lease cannot be considered the go/no go point of commitment at which an EIS is required. What the lessee really acquires with an NSO lease is a right of first refusal. This does not constitute an irretrievable commitment of resources."*

An EIS is currently being prepared in support of the FRRMP revision process (see Notice of Intent to Prepare a Resource Management Plan for the Four Rivers Field Office, Idaho, and Associated Environmental Impact Statement, 75 FR 18298 (April 3, 2008)). A draft EIS is anticipated to be released in 2015, and a final EIS released in 2016. The EIS will analyze the impacts of Federal oil and gas leasing; reexamine allocation decisions made in the Cascade RMP; and reexamine lease stipulations to be applied to future leases when offered. Public comments will be solicited, as required by NEPA. Once the EIS is finalized and the FRRMP is available to implement, a lessee will be able to request the NSO/NSSO stipulations on his or her



lease be modified. The BLM will modify the stipulations only to the extent that they are consistent with stipulations appropriate for the conditions on that lease.

Consistent with the precedent set in *Conner v. Burford*, the BLM concludes that leasing the five parcels subject to NSO/NSSO stipulations until completion of the FRRMP does not constitute an irretrievable commitment of resources, and does not require preparation of an EIS.

## **OTHER PROTEST POINTS**

The discussion that follows will address the specific resources/items where WLD has alleged NEPA inadequacies in the Little Willow Creek Protective Leasing EA. Since the BLM has selected to offer the parcels subject to NSO/NSSO stipulations, no immediate impacts to natural resources will occur on the Federal lands such that the BLM would be unable to retain its full authority to protect or mitigate effects on those resources while the RMP is being revised. Also it is important to note that, even if the BLM were to select Alternative A and not lease, the impacts to the environment will occur on private lands in the area.

**WLD Protest Point #1 -the BLM has not conducted baseline surveys and population inventories for southern Idaho ground squirrels (9<sup>th</sup> page of protest), has not undertaken analysis to develop a conservation and restoration plan for SIDGS.**

**BLM Response-** SIDGS are discussed in the Final EA in the Wildlife/Special Status Animals section (Section 3.6), under the heading “Burrowing Mammals.” The affected environment is described on Pages 54-55 of the EA, while the impacts of each alternative are described on pages 57-61. On page 61, mitigation measures are discussed, and a lease notice for burrowing mammals is discussed. Operational measures to reduce wildlife impacts are also discussed on page 61. Cumulative impacts to wildlife, including SIDGS, are discussed in Section 3.6.4 of the EA.

The BLM responded to comments on the Draft EA concerning SIDGS, including comments received from WLD, in the Final EA on pages 117-118. Those responses related to SIDGS are provided below:

“The BLM used the field visits, 2014 Idaho Fish and Wildlife Information System (which includes the referenced SIDGS data), and other data sources to determine presence of special status species in the proposed lease area. Impacts from the proposed actions are discussed in Section 3.6.2. Sections 2.2, 2.3, 2.4 and 3.6.3 describe measures that would be taken to reduce or avoid impacts. Section 6 of the Lease Terms on the Offer to Lease and Lease for Oil and Gas (Form 3100-11) provide for requiring inventories of resources prior to ground disturbing activities. Lease specific stipulations (S1) and notices (LN-3 and LN-4) also provide for inventory and subsequent mitigation measures. The inventories would occur before and during the APD process and potential impacts would be analyzed in a subsequent EA.” (response to WLD comment #20 and State of Idaho comment #1)

“SIDGS are the most prevalent special status species in the proposed lease area. Although development and production activities could degrade habitat, they

would not preclude habitat restoration activities once disturbance factors have been stabilized and restoration could be a requirement during the abandonment phase. Efforts to maintain or enhance SIDGS habitat would likely benefit most other special status species.” (response to WLD comment #6)

“Impacts to representative special status species, including SIDGS and sagebrush obligates, are discussed in Sections 3.3.2 and 3.6.2 and Appendix 4. The proposed lease area would affect approximately 4% of the current distribution of SIDGS (based on minimum convex polygon of current and historic locations, assuming 66% of the polygon is suitable habitat). Shrub-dominated communities occur on up to 25% of the lease area, but typically occur in isolated stands (see Figure 1 and Figure 2” (response to WEG comment #4)

In conclusion, the BLM finds that WLD’s comments about SIDGS are general in nature and are not specific to any particular parcel. The BLM finds that WLD’s concerns about potential impacts to SIDGS were adequately addressed in the Final EA. Since the BLM has selected to offer the parcels subject to NSO/NSSO stipulations, no immediate impacts to SIDGS habitat will occur on the Federal lands such that the BLM is unable to retain its full authority to protect or mitigate effects on SIDGS while the RMP is being revised. Impacts to SIDGS from oil and gas leasing and development activity will be analyzed in the FRRMP, and stipulations will be developed to mitigate impacts. If the stipulations are modified and an APD is eventually filed for the BLM’s approval, more detailed, site-specific NEPA analysis will be conducted and additional constraints, in the form of Conditions of Approval, will be applied, to ensure that impacts are adequately mitigated.

**WLD Protest Point #2- The BLM has not conducted baseline surveys and population inventories for migratory birds (9th, 15th page of protest), stipulation/CSIs are inadequate (page 21, 33), leasing would “take” nests and eggs (page 33).**

**BLM response:** Migratory birds are discussed in the Final EA in the Wildlife/Special Status Animals section (Section 3.6), under the heading “Migratory Birds and Raptors.” The affected environment is described on Pages 53-54 of the EA, while the impacts of each alternative are described on pages 56-61. On page 61, mitigation measures are discussed, and a Controlled Surface Use stipulation for migratory birds and raptors is discussed. The following lease notice would be applied under Alternative C:

LN-4: The Operator is responsible for compliance with provisions of the Migratory Bird Treaty Act by implementing one of the following measures: a) avoidance by timing - ground disturbing activities would not occur from April 15 to July 15; b) habitat manipulation - render proposed project footprints unsuitable for nesting prior to the arrival of migratory birds (blading or pre-clearing vegetation must occur prior to April 15 within the year and area scheduled for activities between April 15 and July 15 of that year to deter nesting; or c) survey-buffer-monitor surveys would be conducted by a BLM-approved biologist within the area of the proposed action and a 300-foot buffer from the proposed project footprint between April 15 to July 15 if activities are proposed within this timeframe. If nesting birds are found, activities would not be allowed within 0.1

mile of nests until after the birds have fledged. If active nests are not found, construction activities must occur within 7 days of the survey. If this does not occur, new surveys must be conducted. Survey reports would be submitted to the appropriate BLM Office.

Operational measures to reduce wildlife impacts are also discussed on page 61. Cumulative impacts to wildlife, including migratory birds, are discussed in Section 3.6.4 of the EA.

The BLM responded to comments on the Draft EA, including comments from WLD, concerning migratory birds, in the Final EA on pages 117-118. Those responses related to migratory birds are provided below:

“The winter range avoidance period (November 15 to May 15), which affects 94% of the Federal mineral reserve lands, would provide more widespread protections during early breeding and nesting periods for periods not addressed by migratory bird and raptor nesting protections.” (response to WLD comment #16)

“Impacts to representative special status species, including SIDGS and sagebrush obligates, are discussed in Sections 3.3.2 and 3.6.2 and Appendix 4. The proposed lease area would affect approximately 4% of the current distribution of SIDGS (based on minimum convex polygon of current and historic locations, assuming 66% of the polygon is suitable habitat). Shrub-dominated communities occur on up to 25% of the lease area, but typically occur in isolated stands (see Figure 1 and Figure 2).” (response to WEG #4)

The WLD’s comments about migratory birds are general in nature and are not specific to any particular parcel. The BLM finds that WLD concerns about potential impacts to migratory birds were adequately addressed in the Final EA. Since the BLM has selected to offer the parcels subject to NSO/NSSO stipulations, no immediate impacts to migratory birds will occur on the Federal lands such that the BLM is unable to retain its full authority to protect or mitigate effects on migratory birds while the RMP is being revised. Impacts to migratory birds from oil and gas leasing and development activity will be analyzed in the Four Rivers RMP, and stipulations will be developed to mitigate impacts. As discussed above, when oil and gas activities are proposed on a lease, more detailed, site-specific NEPA analysis will be conducted and additional constraints, in the form of Conditions of Approval, will be applied, to ensure that impacts are adequately mitigated. In conclusion, the BLM finds no violation of the Migratory Bird Treaty Act by implementing Alternative B.

**WLD Protest Point #3- As leasing, exploration, and development proceeds and expands in the FO, it will doom an already struggling population of Greater Sage Grouse... (5<sup>th</sup> page of protest).**

**BLM response:** As stated in the Final EA in the footnote on page 53, the closest active lek is 9.5 miles from the leasing area, based on 2014 habitat maps. This distance is well outside the cumulative impacts analysis area of 3 miles from the outer boundaries of the leasing area. This distance was selected because it corresponds to typical foraging or dispersal movements or disturbance response distances for a variety of species, including sage grouse.

The comment concerning expansion of oil and gas development goes beyond the scope of the proposed action being considered in the Little Willow Creek Protective Leasing EA. The comment is better directed towards the Four Rivers RMP effort.

**WLD Protest #4- Impacts to surface/groundwater quality and quantity are not adequately addressed. Protections are minimal and deficient.**

**BLM Response:** Water resources are discussed in Section 3.5 of the Final EA. On page 45, the existing surface water hydrology and water quality are discussed, while available information concerning the existing groundwater aquifer is discussed. Environmental consequences of leasing under each of the three alternatives to water resources are discussed in section 3.5.2, beginning on page 47. Mitigation measures are discussed in section 3.5.3.

The BLM responded to comments concerning water resources in the Final EA on pages 116 and 117. The BLM's responses are provided below:

“The EA provides what is publicly known about water quality in the area (Section 3.5.1). The BLM is not aware of any further pesticide or other chemical testing of ground or surface waters in the area. Water quality in Little Willow Creek especially is variable because of agricultural influences (dewatering for irrigation and potential pollutants in return flows). Until more specific information at the APD phase is available, the current analysis can only provide a broad range of impacts (Sections 3.5.2 and 3.5.4).” (response to WLD comments #3 and 24)

“Information, primarily from IDWR and IDEQ, and analyses concerning aquifers are presented in Water Resources (Section 3.5) under the heading “Ground Water.” Aquatic habitat impacts are discussed Section 3.6.2. Stipulations concerning freshwater aquatic habitat are included as part of Alternative C.” (response to WLD comment #15)

Since the BLM has selected to offer the parcels subject to NSO/NSSO stipulations, no immediate impacts to water resources will occur on the Federal lands such that the BLM is unable to retain its full authority to protect or mitigate effects to water resources while the RMP is being revised. Impacts to water resources from oil and gas leasing and development activity will be analyzed in the Four Rivers RMP, and stipulations will be developed to mitigate impacts. As discussed above, when oil and gas activities are proposed on a lease, more detailed, project- and site-specific NEPA analysis will be conducted and additional constraints, in the form of Conditions of Approval, will be applied, to ensure that impacts are adequately mitigated. It is during that NEPA analysis that impacts from hydraulic fracturing, if proposed, would be analyzed. The BLM concludes it will not violate the Clean Water Act by offering the five parcels for lease subject to NSO/NSSO stipulations until modified by the Four Rivers RMP.

**WLD Protest #5- Impacts to air quality are not adequately addressed. Information on baseline levels of pollution in the area is inadequate.**

**BLM response:** Air resources are discussed in section 3.4 of the Final EA. An air quality index report is summarized in Table 5; Annual emissions of typical pollutants are disclosed in Table 6, and visibility trends are shown in Figure 3. Climate change and Greenhouse gases are discussed on pages 36-40, and a graph of the National Oceanic and Atmospheric Administration's (NOAA's) regional climate summary of spring temperatures for Idaho southwestern valleys, from 1994 to 2014, is shown on page 40. Environmental consequences of leasing under each alternative is analyzed in section 3.4.2, beginning on page 40 of the Final EA.

The BLM responded to WLD's comments concerning Air Resources in the Final EA, beginning on page 113. The BLM disclosed that Table 6 in the Draft EA incorrectly used oxides of nitrogen values rather than nitrous oxides values for calculating greenhouse gas production. The nitrous oxides and consequently carbon dioxide equivalent (CO<sub>2</sub> eq) values in the Final EA were adjusted accordingly. The BLM's responses are provided below:

The BLM contracted the Kleinfelder Report to evaluate air quality impacts associated with oil and gas development activities for the Four Rivers RMP. The report provides detailed emission estimates of criteria pollutants, greenhouse gases (GHG), and key hazardous air pollutants (HAPs) anticipated to be released during each phase of oil and gas development for a representative oil and gas well in the western United States. The report acknowledges that defining a "representative" oil and gas well for the entire western U.S. is extremely challenging as there are numerous variables that can materially affect the emissions. Such variables include oil and gas composition, difficulty drilling the geologic formation, oil and gas production rate, equipment at the well site, emission controls, and the amount of produced water that may be associated with oil and gas production, among many others. Five well types (three natural gas wells and two oil wells), representative of different oil and gas basins in the western U.S., were evaluated.

The three types of natural gas wells were summarized as:

1. Uinta/Piceance Basin represents deep (15,000 feet) wells which may be drilled into shale with dry gas. These wells produce a moderate amount of condensate (420 gal/day) and 168,000 gal/yr of produced water. Methane emissions are estimated at 12.2 tons/yr (Table 13) and the Global Warming Potential (GWP) is estimated at 2,825 tons of CO<sub>2</sub> eq/yr.
2. San Juan Basin represents shallow (2,500-7,000 feet) wells with dry gas. These wells produce little to no condensate (210 gal/day) and 33,600 gal/yr of produced water. Other equipment included in the emissions inventory includes a pumpjack engine (to remove water) and a condensate tank. Average gas production per well, over the life of the well is estimated to be 27.8 MMscf/day

(million cubic feet/day). Methane emissions estimated at 6.1 tons per year. GWP is estimated at 791 tons of CO<sub>2</sub> equivalent.

3. Upper Green River Basin represents deep wells drilled into non-shale formations with wet gas, and higher condensate production (1,260 gal/day) and 126,000 gal/yr of produced water. More water vapor is present in the gas at this well, so each well site contains a dehydrator, separator, and line heater. The wells are drilled at relatively high density. Average gas production per well, over the life of the well is estimated to be 4.0 million standard cubic feet per day (MMscf/day). Methane emissions estimated at 14.1 tons per year (Table 13). Global Warming Potential (GWP) is estimated at 3,194 tons of CO<sub>2</sub> equivalent.

Table 13. Total GHG emissions (tons/year) for two wells, Kleinfelder Report.

	Upper Green River Basin			San Juan Basin		
	CO <sub>2</sub>	CH <sub>4</sub>	N <sub>2</sub> O	CO <sub>2</sub>	CH <sub>4</sub>	N <sub>2</sub> O
Construction Phase	33.84	0.001	0.0003	33.84	0.001	0.0003
Development Phase	1900.27	1.11	0.0498	561.61	1.05	0.0389
Operation Phase	947.96	12.99	0.0018	56.44	4.99	0.0004
Total	2882.07	14.10	0.0519	651.89	6.05	0.0396

For the Upper Green River Basin well, the following methane emissions (tons/year) are estimated, broken out by the development stage of the well:

**Construction Phase** 0.001 tons/yr

Sources: tailpipe of construction equipment, trucks

**Development Phase** (i.e. drilling and well treatment)

Sources:

Drill rig engine	0.03	(18 days, 24 hrs)
Well frac engine	0.04	(7 days, 24 hrs)
Frac flowback venting	0.94	(100 hrs)
Workover venting	0.094	(once, 5000 Scf)
<b>TOTAL</b>	<b>1.104</b>	<b>tons methane/yr</b>

**Operational Phase** (i.e. Production activities)

Sources:

Fugitive emissions	3.16	(97 valves, 348 connectors, 12 OE lines, 6 PR valves)
Process heaters	0.0178	
Wellsite tank flashing	0.552	
Pneumatic devices:		
Dump valves	8.896	four (4) valves, intermittent bleed
Pneumatic controller	0.229	(low bleed)
Pneumatic pumps	0.131	(chemical sandpiper, glycol)
<b>TOTAL</b>	<b>12.99</b>	<b>tons methane/yr</b>

The construction and development (drilling) phases of oil and gas development are not major sources of methane emissions; however, methane releases during the development phase can occur, resulting mainly from actuation of gas-operated valves during well operations and from fugitive gas leaks along the infrastructure required for the production and transmission of gas.

Several pneumatic devices are used at the wellhead to control the amount of fluid in the product. Raw natural gas must be free of oil and water before it is piped to a processing plant. This liquid removal takes place in a vessel called a separator, located at or near the wellhead. A pneumatic controller regulates the fluid level in the separator. When the fluid reaches a certain level, the controller's pilot directs gas to a diaphragm valve, which opens and dumps the liquid into a storage tank. Liquid separators at most older well sites have pneumatic controllers with dump valves that vent natural gas continuously. Newer valves (intermittent) vent only when fluid levels are actively being controlled, and emit only so much gas as is needed to open the dump valve so it can close again at the end of the dump cycle (from Devon Energy Corp. website "Tiny Valve- Big Difference").

The number of pneumatic devices used on a well is presumably determined by the amount of condensate (oil) and water produced. Since this information is not known, it is difficult to determine which gas well in the Kleinfelder Report is representative of conditions in the Little Willow Field. Because many of the input parameters for drilling and operations on the Little Willow Creek wells are unknown, the BLM used the pollutant values for the Upper Green River Basin well in Table 6 of the EA. This represents a worst-case scenario for emissions at a natural gas well. A review of emissions inventories that have been conducted by other BLM offices in areas with more densely spaced wells than in Idaho (where spacing is limited to one well per 640 acres) reveals that the Kleinfelder Report used by the BLM for this EA is conservative. It is likely that actual emissions at a Willow Field well head would be lower than the Upper Green River well (i.e., other inventories reported lower emissions values for GHG than what was used in this EA).

Implementation of mitigation measures (Section 3.4.3) at the APD processing stage could markedly reduce these emission values. The potential increases are substantial for Payette County, which currently produces limited amounts of Greenhouse Gases; however, when considered at larger scales [e.g., the four-county CIAA where they could account for a 1.7% increase over current levels or 0.001% of the 2012 US CO<sub>2</sub> eq production of 7,195 million tons (EPA: <http://www.epa.gov/climatechange/ghgemissions/gases.html>)], they represent negligible to minor increases. At the time an APD is submitted, additional NEPA analysis would be conducted, and a Condition of Approval can be attached to the APD that requires methane emissions not exceed a certain threshold, based on the best available information and analysis at that time.

The BLM is currently working at the national level to adopt new standards regarding venting and flaring to reduce natural gas waste and methane pollution.

According to a DOI news release dated January 23, 2015, the new draft standards are scheduled to be put out for public comment this spring. According to the standard lease terms, the Willow Creek leases would be subject to those new standards, even if the leases are issued prior to adoption of the new standards.” (response to WLD comments #19, 22, and ICL comment #2)

“Air and water quality impacts are discussed in Sections 3.4.2 and 3.5.2, respectively. While there would be no impacts associated with issuing leases, post-lease activities could be proposed that would result in impacts as discussed in those sections. Potential mitigation measures are identified in Sections 3.4.3 and 3.5.3. For air quality, these measures would be further refined based on site- and project-specific circumstances and would be imposed as APD Conditions of Approval, described in Section 3.4.3, as appropriate.

Section 2.3 of the EA provides lease stipulations and notices designed to protect water resources under Alternative C. For example, Freshwater Aquatic Habitat stipulations (CSU 1 and CSU 2) protect surface water quality in sensitive areas. Lease notices to inform the lessee that protective measures may be required if post-lease activities are proposed to minimize impacts within the 100-year floodplain (LN-2) and to minimize impacts to water quality and quantity (LN-5). Additionally, the BLM is currently working at the national level to adopt new regulations regarding hydraulic fracturing. A final rule is anticipated in spring 2015. According to the standard lease terms, the Willow Creek leases would be subject to those new standards, even if the leases are issued prior to adoption of the new standards.” (response to State of Idaho comment #3)

“The analysis areas include Payette County for localized impacts and a four county area (Ada, Canyon, and Payette Counties in Idaho and Baker County in Oregon) for CIAA. The analyses were conducted at county levels because the EPA provides information at that scale. These counties largely address the area you expressed concerns about (Treasure Valley) and the likely area pollutants would spread from the proposed lease. They include parts of two airsheds identified in Idaho; however, the EPA does not provide data by airsheds. The proposed lease area is 65 (Eagle Cap Wilderness), 67 (Hells Canyon Wilderness), or 72 (Sawtooth Wilderness) miles from the nearest Class 1 airshed areas. With the exception of GHG, which would affect resources at a much larger scale, pollutants from the development and production phase would typically not travel that far. North Ada County is a nonattainment zone for CO and PM10. Maintenance plans are in place to address these issues (EPA 2015, Idaho nonattainment area plans, <http://yosemite.epa.gov/r10/airpage.nsf/283d45bd5bb068e68825650f0064cdc2/e2ab2cc6df433b8688256b2f00800ff8?OpenDocument>). Ada and Canyon counties are also considered areas of concern for PM2.5 and O3. There are no nonattainment areas in eastern Oregon, but La Grande (in Union County) has a PM10 maintenance plan in place. Without mitigation measures, the maximum RFDS of 25 wells add 0.1% and 0.7% respectively to CO and PM10 pollutants in the CIAA.” (response to WLD comment #4 and #23).



Since the BLM has selected to offer the parcels subject to NSO/NSSO stipulations, no immediate impacts to air resources will occur on the Federal lands such that BLM is unable to retain its full authority to protect or mitigate effects to air resources while the RMP is being revised. Regardless of whether the BLM leases, the oil and gas resources underlying the Willow Field will get developed and processed, and impacts to air quality will occur.

Impacts to air resources from Federal oil and gas leasing and development activity will be analyzed in the Four Rivers RMP, and stipulations will be developed to mitigate impacts. As discussed above, when oil and gas activities are proposed on a lease, more detailed, project- and site-specific NEPA analysis will be conducted and additional constraints, in the form of Conditions of Approval, will be applied, to ensure that impacts are adequately mitigated. The BLM concludes there is no violation of the Clean Air Act by the BLM's offering of the five parcels for lease subject to NSO/NSSO stipulations until modified by the Four Rivers RMP.

**WLD Protest Point #6 Economic analysis is inadequate, as it doesn't include the value of natural resources lost, private property values lost, and costs to local residents from health impacts.**

**BLM response:** The BLM asserts that NEPA does not require an analysis of the value of natural resources lost. The BLM doesn't have a way to conduct such an analysis, nor does WLD offer such a method, neither in its comments on the EA nor in its protest. The BLM asserts that the cost to resources is described qualitatively through the NEPA analysis.

Social and economic effects are discussed in section 3.14 of the Final EA. This section discusses social and environmental justice, economics in Payette County and Idaho, oil and gas leasing and production, and the local economic contribution of oil and gas leasing and development. The impacts to social and economic considerations under each alternative is discussed in section 3.14.2, beginning on page 80.

The BLM responded to comments on the Draft EA concerning social and economic impacts in the Final EA on pages 119-120. Those responses are provided below:

“Social and economic impacts, including land values and use, are addressed in Sections 3.5, 3.13, and 3.14. Private landowners in and adjacent to the proposed lease area have been involved in this process. The concerns raised during the July 20144 scoping period were addressed in the EA. One landowner commented on the EA regarding how parcels were delineated. Analyses during the APD phase will provide more in-depth assessment of these issues.” (response to Idaho Conservation League comment #3)

“The social cost of carbon is addressed in Air Resources and Social and Economic sections 3.4.2 and 3.14.2, respectively.” (response to Wild Earth Guardians comment #8)

The BLM finds WLD's comments concerning the analysis of economic effects of the proposed action to be adequately addressed in the EA. Regardless of whether the BLM leases, the oil and gas resources underlying the Willow Field will be developed and economic impacts will occur.

However, by the BLM leasing the Federal minerals, royalties can be collected and the U.S. taxpayers' correlative rights would be protected.

The BLM concludes that no violations of NEPA have occurred in the preparation of the EA.

## CONCLUSION AND APPEAL RIGHTS

The Idaho State Office has reviewed WLD's protest of the BLM's May 28, 2015, offering of five parcels of lands with minerals reserved to the U.S., subject to NSO/NSSO stipulations, and has found it to be without merit. We find the field office's recommendation to lease under these conditions to be sound, prudent, and justified, in light of the threat of drainage from development and imminent production of adjoining private lands in the project area. Such leasing meets the BLM's purpose and need, which is to prevent uncompensated drainage of oil and gas from the Federal mineral estate. No surface disturbance would be realized on these lands, so alternatives developed in the upcoming Four Rivers RMP will be preserved. Moreover, any impacts associated with production will occur whether the BLM leases or not. Thus, there is no irretrievable or irreversible commitment of resources; the action is not arbitrary or capricious, nor is it an abuse of discretion, as protecting the American taxpayer from uncompensated drainage through leasing is a basic responsibility of the BLM. The WLD's allegations that the BLM violated NEPA, FLPMA, the Migratory Bird Treaty Act, the Clean Air Act, and the Clean Water Act, are found to be without merit. The WLD's protest as to the leasing of the five parcels subject to NSO and NSSO stipulations, is therefore denied.

### Appeal Rights

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

If you wish to file a petition (pursuant to regulation 43 CFR § 4.21(a)) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, 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 also be submitted to each party named in this decision and to the IBLA 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 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.

If you have any questions, please call Karen Porter, Leasable Minerals Program Lead, at (208) 373-3884, or write to the address in our letterhead.

Sincerely,



Jeffrey L. Foss  
Acting State Director

2 Enclosures

- 1- WLD revised protest, dated March 31, 2015 (37 pp)
- 2 -Form 1842-1 (2 pp)

## FAX COVER SHEET

TO	tim murphy
COMPANY	bureau of land management
FAX NUMBER	12083733899
FROM	katie fite
DATE	2015-03-31 21:29:20 GMT
RE	payette oil and gas protest

## COVER MESSAGE

wildLands defense et al. revised protest of payette little willow oil and gas lease



# WILDLANDS DEFENSE

Katie Fite  
PO Box 125  
Boise, ID 83701  
208.871.5738  
katie@wildlandsdefense.org

March 30, 2015

Mr. Timothy Murphy  
Idaho State Director BLM  
1387 South Vinnell Way  
Boise, ID 83709  
Fax: 208-373-3899

Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale Concerning Sale of Five Parcels for Oil and Gas Leasing in Payette Idaho, Parcels A, B, C, D, E (LNs-A through -E). Protest of Decision Record & Leasing Recommendation Environmental Assessment (EA) DOI-BLM-ID-B010-2014-0036-EA Little Willow Creek Protective Oil and Gas Leasing, Draft FONSI and all associated documents.

Dear Director Murphy,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3 and any other applicable regulations, WildLands Defense (WLD), Brett Nelson and ICARE hereby protest the May 28, 2015 oil and gas lease sale offering, in Boise of the five parcels (A, B, C, D, E) in Payette County, Idaho.

As explained below, in offering these parcels for lease, the Bureau of Land Management ("BLM") is violating the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq ("NEPA"), the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 et seq. ("FLPMA"), the Migratory Bird Treaty Act, the Clean Air Act, the Clean Water Act, and the regulations and policies that implement these laws.

Accordingly, WildLands Defense, Brett Nelson and ICARE request that Idaho BLM withdraw these lease parcels from sale until the agency has fully complied with the aforementioned laws and regulations.

The action is described by BLM as follows:

[wildlandsdefense.org](http://wildlandsdefense.org)

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*WildLands Defense is a 501(c)3 nonprofit corporation dedicated to protecting and improving the ecological and aesthetic qualities of wildlands and wildlife communities in the Western United States*

*The BLM Boise District, Four Rivers Field Office recommends to implement the actions as described in Alternative B of Environmental Assessment DOI-BLM-ID-B010-2014-0036-EA (EA). The BLM will offer five parcels of federal mineral estate totaling 6,349 acres at a spring 2015 competitive oil and gas lease sale. The parcels include 997 acres of BLM-administered lands (surface) and 5,352 acres of split estate (private surface with BLM-managed subsurface) within a 15,644-acre area in Payette County, Idaho (Table 1, Map 2 and Appendix of the EA). The following stipulations and lease notices will be applied to all BLM-administered surface and subsurface in the lease area:*

- No Surface Occupancy (NSO) –1: Surface occupancy and use on BLM-administered and split estate lands would be prohibited until the Four Rivers Resource Management Plan (FRMP) is finalized.*
- No Sub-surface Occupancy (NSSO) –1: Subsurface occupancy and use on federal mineral estate lands would be prohibited until the FRMP is finalized.*

*Once the FRMP is final, the leases will be modified replacing the NSO-1 and NSSO-1 with stipulations consistent with the FRMP. Development of State and private leases will continue as before; however, drainage of the federal mineral estate may be allowed and typical royalties will be applied.*

Four Rivers Field Office Manager Tate Fischer signed a Decision Record and Recommendation and issued a Draft FONSI for the Little Willow Leasing EA on February 27, 2015.

The parcels are labeled A through E on BLM documents and mapping. We cannot determine the specific numbers from the lease sale notice, and assume the letters A, B, C, D, E are used by BLM in place of numbers (LN-A through-E).

BLM finalized a Notice of Lease Sale on February 27, to take place on May 28 in Boise, Idaho.

The parcels to be leased are Listed as Parcels A through E on Page 9 of the Lease Notice, and are depicted on the Map of "Little Willow Proposed Oil and Gas Leasing Area" that accompanies the Notice of Lease Sale at page 10. All parcels appear to contain some pieces of BLM land. The parcels are located in Townships 8 and 9 North, and 3 and 4 West near Payette Idaho, Little Willow Creek, Big Willow Creek and the Payette River and their watersheds, and the town of Payette.

## **OUR INTEREST IN THESE LANDS AND RESOURCES**

WildLands Defense works to inspire and empower the preservation of wild lands and wildlife in the West. WildLands Defense's activists and supporters have an on-the-ground presence, and work to protect public lands values and open space including wildlife, watersheds and ecosystems and the irreplaceable values they provide to citizens. Species like the southern Idaho ground squirrel, a rare Idaho endemic species found

nowhere else on the planet, are of great value to our members. BLM's failure in the Little Willow leasing process to conduct the necessary upfront systematic biological inventories across this landscape significantly threatens the sustainability of habitats and populations of southern Idaho ground squirrel and many other important, rare and sensitive native animal and plant species including very important migratory birds and native raptors.

WLD members live, work, and recreate in the airshed that will be polluted by emissions from oil and gas development, including "flaring" and other substantial air pollution that will be released into an airshed that already has very significant air pollution problems. The more oil and gas that is "produced", the more pollution and there is no valid assessment whatsoever in the EA of just how much pollution will be produced, what will be in the emissions pollutant plumes, and the cumulative impacts of the emissions in the local area and across the region.

Brett Nelson is an Idaho citizen whose family used to own land within the lease area, and who has spent considerable time hiking, enjoying nature, contemplating wildlife, cultural and other values within the lease area and its surroundings.

Idaho Concerned Area Residents for the Environment (ICARE) is a grassroots organization that works on behalf of Idaho citizens affected by poor land use decisions. Many of ICARE's members and supporters are already being significantly impacted and their health and well-being and property is being harmed by the ill-controlled oil and gas activity "boom" that is already taking place in the area.

## **STATEMENT OF REASONS IN SUPPORT OF PROTEST**

### **Summary of Concerns: BLM Is Issuing Leases Despite: Lack of Baseline Studies, High Degree of Uncertainty of Effects, and Highly Controversial Nature of this Action**

BLM has no obligation to issue these leases. In fact, the Cascade RMP expressly states that BLM does not have to lease the lands that the RMP itself identifies for leasing. Issuing the leases represents an irreversible and irretrievable commitment of resources by BLM.

BLM is required to comply with environmental laws and regulations. Once leases are issued, energy companies can apply to develop them, and there is no turning back.

BLM in this case proposes to go ahead and issue the leases without preparing an EIS to assess all the very significant adverse direct, indirect and cumulative effects on natural resources and the safety and well-being of the large human population that will suffer increased pollution exposure in air and water, potential loss of water sources and flows, and other harms. BLM also fails to consider an adequate range of environmental alternatives and mitigation actions.

BLM tries to rely on woefully deficient baseline information. BLM fails to take a hard look at the site-specific resources based on thorough and systematic on-the-ground surveys. The EA does not take the hard look required under NEPA, and it does not accurately portray the effects of the development at the local and site-specific level, including the close proximity of a human population center and the welter of threats facing local air quality, water quantity and quality, open space and quality of life for the area's human residents, human health and well-being and baseline cancer and other illness rates. There are similar failures with lack of data on wildlife species and their habitats and populations, migratory birds, raptors, big game, aquatic species, sensitive species, paleontological resources, cultural sites, and many other values. The bottom line is that crucial local and site-specific baseline studies and analyses have never been conducted by BLM or any other party.

BLM has not even bothered to conduct intensive site-specific surveys for the southern Idaho ground squirrel across all lands within both "Fields" and the surrounding landscape, including BLM lands that are contiguous and that we fear will be the next to be leased in a piecemeal manner. A site-specific landscape study on southern Idaho ground squirrel, long-billed curlew, burrowing owl, sage sparrow, loggerhead shrike and other rare and impacted species is essential to understand the current habitat quality and quantity for the endemic Idaho ground squirrel, and for all these other rare and sensitive species, to ensure conservation of habitats and populations, and to ensure compliance with BLM's sensitive species policy, and compliance with FLPMA and the RMP.

There is no basis provided for understanding why BLM is leasing these parcels and not others immediately adjacent to the north. BLM refers to two Fields, but why they are delineated in this manner is not clear. BLM certainly does not provide information sufficient to understand how they were delineated, and the geological, underlying aquifers and other characteristics of the Fields. It also does not identify just how many "Fields" there may be, and how much total leasing is foreseeable, and all direct indirect and cumulative effects. The EA lacks a current, valid and honest Reasonably Foreseeable Development Scenario.

These leases are the industry foot in the door. BLM issuing the leases will green light that it is acceptable for the oil and gas industry, in league with local politicians, to tear apart the western portion of the Four Rivers FO, the southern Idaho ground squirrel and migratory bird habitat and the Payette River system watershed. It will signal that BLM, too, will allow the industry to run roughshod over the residents of the area, and that Oil and Gas exploitation will ultimately be allowed to storm north, to exploit the last remaining greater sage-grouse and Columbian sharp-tailed grouse habitats in western Idaho.

There is no adequate control of impacts and care for the environment at the local and state level. Citizen's basic legal rights are being violated in association with oil and gas industry attempts to run roughshod over very important Idaho lands and resources.



See

<http://www.boiseweekly.com/CityDesk/archives/2014/10/13/video-idaho-anti-fracing-activist-jailed-in-payette-county> .

This describes the highly illegal incarceration of a local resident who has spoken out against the impacts of Oil and Gas development in the area.

The leases set a huge precedent. It is highly likely and highly foreseeable that as soon as the ink is dry on these leases, BLM will then proceed to lease contiguous parcels to the north and other larger areas of public lands – destroying open space, big game winter range and sustainable big game herds; and destroying the habitat space and connectivity needed for viable populations of southern Idaho ground squirrel and other rare species. The leasing will then incrementally spread northward into currently occupied sage-grouse habitats and habitats necessary for restoration.

Issuing these leases, whether ultimately developed as SO or NSO, contributes cumulatively to the amount of surface disturbance of many kinds that will be required.

*The Draft FONSI states: The Leasing Federal Mineral Estate with No Surface or Subsurface Occupancy Stipulations Alternative would offer five parcels (6,349.20 total acres) for lease with the ability to drain the federal mineral reserve; however, surface and subsurface occupancy of the parcels would not be allowed until completion of the Four Rivers Field Office RMP ...*

There is no valid analysis of the status and condition of the mineral resources (water in shallow and deeper aquifers, geological strata, fossils/paleontological resources, etc). Modern day oil and gas and all the associated activity and disturbance is highly likely to potentially cause large-scale pollution and depletion of shrinking water supplies including drinking water wells.

As leasing, exploration and development proceeds and expands in the FO, it will doom an already greatly struggling population of Greater sage-grouse with very tentative connections to a similarly very low GRSG population in eastern Oregon. The progressive and piecemeal leasing of Oil and Gas will also significantly impact an isolated population of Columbia sharp-tailed grouse.

BLM issuing these leases, prematurely and in advance of integrated land use planning in a long-promised new RMP, and also in advance of BLM's own Greater sage-grouse EIS process where a final decision has not yet been made on whether federal agencies will abandon the GRSG population in the region to development. This action will set in motion incremental piecemeal leasing and development that will doom the entire population of GRSG.

If BLM abandons this GRSG population, there will be a significant permanent range contraction – revealing the hollowness of BLM's claims to be conserving the species. You do not conserve a species that has already been found to be Warranted to be Listed under the ESA by planning in a manner that diminishes protections – thus ensuring that extant populations go extinct. USFWS March 2010 Warranted But Precluded Finding.

As described in the comments on the still uncompleted GRSG EIS that I prepared when I was with WWP, and that are part of the public record and included herein on cd, BLM's GRSG DEIS alternative is on a path of slashing habitat protections for the Weiser area (western Four Rivers FO) population in western Idaho, apparently caving into the state of Idaho's politically tainted habitat mapping and categorization. The Idaho state plan was "developed" by a very small hand-picked group comprised mainly of state and local politicians (some with vested interests in the outcome), and extractive and ranching interests. Mapping is tailored to enable Oil and Gas development on top of the last sage-grouse inhabiting this area.

Thus, the action to lease these five parcels sets a highly significant precedent, and is highly controversial. For all of these reasons, we Protest the leases and the underlying BLM documents upon which they are based.

#### **Highly Controversial Due to Local Politicians Tied to Oil and Gas Industry**

BLM authorization of leasing of these parcels is highly controversial due to the involvement of politicians in promoting the leasing and development (including some who may personally be profiting from oil and gas) and their efforts to repress local citizens concerned about the impacts, such as ICARE member Alma Hasse.

#### **Highly Controversial Due to Politically Shackled and Greatly Inadequate State Oversight**

The project is highly controversial due to the inadequate regulatory oversight in Idaho, and increasing politicization of state agencies, as we describe below.

#### **Basic Information on Oil Fields and Underground and Aboveground Development that May be Pending, Underway and/or Foreseeable and Connected to Leasing or Other Processes Is Absent**

BLM does not explain how it will make sure that no drilling takes place under these lands until the RMP is finished, or how BLM will ensure that no efforts are made by industry to design and undertake activity on adjacent parcels to purposefully try to drain the BLM lands.

There is reference made to pipelines, and we are very concerned that pipelines may be

placed under or right by these lands – perhaps under a separate and segmented, piecemeal process. How, when and where might pipeline or other types of rights-of-ways be issued? Rights-of-way for pipelines, roads, other energy-related facilities and infrastructure, and other activities are not adequately examined. There is no range of alternative and mitigation actions to control them.

BLM has not provided sufficient baseline studies on geological formations, stratigraphy, oil-bearing formations and formation extent, and the foreseeable “field” extent across the formation – with news reports showing formations also extend in to eastern Oregon. There is not adequate information and scientific analysis of the footprint of the scale of foreseeable exploitation, and the engineering features, design and massive disturbance, pollution and depletion if the formations are exploited. This must be provided to allow the agency to develop a suitable range of alternative and mitigation actions, and make an informed decision on whether to lease, or not, and the nature of protective stipulations necessary for any leasing that does occur.

It appears BLM is putting blind trust in the state of Idaho Oil and Gas Board and what the Oil developers states, rather than doing its own due diligence in actually understanding what is present underground, how development would take place, the adverse environmental footprint of local and regional development, and the level of monitoring and safeguards necessary to protect the public and public resources during all phases of Oil and Gas activity. This is all necessary to understand the short, mid and long term effects of the leasing and linked exploration and development.

There is not full and substantive information provided on the extent of these and other fields, and the overall exploitation footprint underway and foreseeable. HOW many lands where BLM controls SO and/or NSO have already been Recommended/Nominated? Leased? Where? What fields? What is the very foreseeable leasing scenario across the western Four Rivers FO? Across adjacent eastern Oregon? It is impossible to understand the magnitude and severity of threats, and to conduct a valid NEPA analysis that takes a hard look at all direct, indirect and cumulative effects unless BLM really understands what actually is present, and what is very likely to transpire.

Further, review of the information at the state of Idaho website raises more questions than it answers. BLM must thoroughly analyze all of the uncertainty. At the same time that Idaho is claiming fracking has been around a long time, it claims fracking won't take place, and then goes on to say some degree will occur – to clean out drilling mud. There is NOTHING to prevent it from occurring, and the state of Idaho process is inadequate to protect the public and public resources from the welter of above and below ground disturbance and pollution. See for example: [http://www.idl.idaho.gov/oil-gas/regulatory/2015-01\\_faq-hydraulic-fracturing.pdf](http://www.idl.idaho.gov/oil-gas/regulatory/2015-01_faq-hydraulic-fracturing.pdf)

<http://www.nakedcapitalism.com/2015/03/frackings-new-nemesis-earthquake->

[lawsuits.html](#)

Note the latter news article describes fracturing occurring for fluid disposal.

*However, a more fundamental threat to the industry looms: that of costly earthquake litigation. Oklahoma is ground zero. In the last year, the state has had more earthquakes of magnitude 3.0 or greater than in the previous 30, including a 5.6 magnitude tremblor, the strongest in recorded state history. Two different geology journals attributed the quake to fracking activity in the immediate vicinity. The earthquake risk apparently does not result from the fracking (the fracturing of geological structures) per se **but fluid disposal ...***

*[R]esearchers say the most serious seismic risk comes from a separate process: disposal of toxic fluids left over from fracking and drilling by putting it in wells deep underground. Geologists concluded decades ago that injecting fluid into a geologic fault can lubricate giant slabs of rock, causing them to slip. Scientists say disposal wells are sometimes bored into unmapped faults. The practice isn't new, but has proliferated with the U.S. drilling boom.*

This Oil and Gas Commission info alone describes a vast degree of disturbance and activity impacting the environment, and much of it is cloaked in secrecy. For example:

*Why can't industry be required to list all ingredients rather than it being a systems approach of reporting?*

*A: Idaho Code (Title 9) protects specific formulations under proprietary information. A systems approach is a decoupling of trade names and percentages to allow for full disclosure of chemical ingredients, without the possibility of reverse engineering the proprietary blend.*

BLM simply cannot issue leases for these parcels under the current opaque and inadequate oversight of the state of Idaho including for toxic and hazardous substances that can and will harm the public health and pollute environment.

The Idaho state government has undergone many recent scandals due to inadequate regulatory control and oversight from the Otter administration. These scandals range from prison scandals to juvenile detention scandals to education network and broadband scandals. There is NO assurance of adequate regulatory oversight in Idaho at present. See

for example:

[http://www.idahostatesman.com/2014/11/16/3489397\\_contract-scandals-trouble-for.html?rh=1](http://www.idahostatesman.com/2014/11/16/3489397_contract-scandals-trouble-for.html?rh=1)

Thus, at a minimum, BLM must prepare an EIS prior to issuing any leases in the Field Office, and this must thoroughly scrutinize the environmental impacts of all aspects of this highly controversial and highly politicized Oil and Gas activity. The EA merely relies on stale and inadequate reports from other parts of the country, old info, and info from the political appointees of the Oil and Gas Commission –which itself points to state agencies to monitor, and then enforce minimal state laws and regulations. For example, Idaho DEQ is supposed to deal with pollution, but there is no valid and candid assessment by BLM on the capability of DEQ to do so – including due to being politically hamstrung by the administration.

#### **Baseline Ecological and Environmental Surveys Must Be Undertaken So BLM Can Look Before It Leaps And Develop Suitable Alternatives and Mitigations**

BLM has not conducted baseline ecological surveys, including biological surveys and population inventories for aquatic and terrestrial biota across the landscape inhabited by the southern Idaho ground squirrel and other rare animals including migratory birds, raptors, aquatic and riparian species, and rare plants - spanning the Big Willow, little Willow, and Payette River watersheds.

These upfront thorough systematic baseline surveys are necessary so that the agency can determine the intensity and magnitude of the direct, indirect and cumulative impacts of Oil and Gas leasing in the area and region, where a host of threats already abound. These threats include: extensive livestock grazing disturbance and depletion, irreversible weed invasion often linked to grazing and other disturbances including livestock facilities and roading, the cheatgrass-fire cycle and increased risk of fire with intensive oil and gas activity, human population expansion and housing development, and overall severity of habitat loss and fragmentation.

BLM has not undertaken analysis necessary to develop an adequate and effective conservation and restoration plan for southern Idaho ground squirrel habitat, yet is plowing ahead with lease issuance and committing resources irreversibly to industry. If these leases are issued, this is setting the stage for industry to sue BLM if the new RMP would attempt to stop exploration and development under the leases. So BLM in issuing these leases is basically writing off the ground squirrels and other biota and resources across the project area.

Moreover, even if there is ultimately NSO, that does not mean that extracting, handling, and other operations on adjacent and nearby lands, including where SO activity may be taking place on private, state or other lands --- will not adversely impact SIDGs and other

species (including such things as vehicle mortality on top of habitat loss, destruction, weed proliferation, exposure to polluted soils, etc.). Similar impacts will occur to all other resources at stake here. These activities would be more intensive and there will be a need for more infrastructure, operational disturbance, vehicle use, etc. as more acres are leased and developed – including underground.

These same concerns apply to all other rare, imperiled, sensitive and important species as well as the very significant adverse impacts on the human population, watershed, and airshed.

And of course, NSO on the parcels does not prevent the air pollution and toxic pollutants, flaring, and use of toxic, carcinogenic, and even radioactive chemicals in fracturing and other processes used to extract every drop of oil from beneath the earth, and then re-inject water and pollutants underground.

NSO on the five parcels does not prevent extensive, permanent and irreversible damage to aquifers and ground water including water and irrigation wells and other supplies and in the area. In fact, leasing will cause even more damage due to allowing more underground and/or aboveground oil field area (that of the five lease parcels) to be frack-able, blast-able, drill-able, re-injectable, and otherwise exploitable in just about any manner industry desires.

Plus, this is the precedent-setting start of a massive push by industry (and politicians some of whom are lining their own pockets from the oil boom) to exploit the public resources across the entire region.

Adverse direct, indirect and cumulative impacts to native vegetation communities, fish and wildlife during the explo/drilling/development phase of these and surrounding fields are not adequately assessed. These include:

1. Soil Erosion and runoff;
2. Dust;
3. Noise;
4. Introduction and spread of invasive nonnative vegetation;
5. Modification, fragmentation, and reduction of habitat;
6. Mortality of animals;
7. Exposure to contaminants;
8. Interference with animal behavioral activities; and
9. Increased human harassment and/or poaching.

All of these were laid out as concerns in one of the BLMs own references – the TEEIC document – yet BLM ignored necessary upfront site-specific studies and analysis. The leasing EA is highly programmatic.

### **BLM Should Not Decide on Issuing Leases Until A New RMP with Modern Day Planning and A Full Public Process for Modern Day Planning Takes Place**

BLM proposes to issue the leases, but wait until the long-delayed new RMP is finalized to determine if SO/NSO should be allowed. This is wrong. Issuing the leases commits BLM to allowing development, no matter what the RMP says -- because the energy company will already have a lease and then can turn around and sue BLM.

BLM must wait until the long-promised RMP has taken broad public input and has effectively (we hope for the sake of the people that live in these airsheds and watersheds) balanced competing values and allocated resources in a modern day context that limits pollution, protects human health and open space, sustains and conserves wildlife, aquatic biota and other rare animals and rare plants, and other very important values including paleontological and cultural values.

The RMP must be finalized to properly identify leasable lands in a modern day context. Many years ago (well over 5 years and maybe even 10), BLM recognized that its 1988 Cascade RMP was woefully outdated. BLM began the RMP process, which has been interminably stalled -- including by actions of grazing and extractive interests who prefer having minimally fettered access to exploit public resources for private gain that is allowed by BLM under the minimal, deficient and outdated Cascade RMP.

FLPMA requires the Secretary of the Interior to develop land use plans (called resource management plans). The plans are to be evaluated for potential revision at least every 5 years. The RMP identifies areas that will be available for oil and gas development. The environmental impact statement associated with a resource management plan analyzes the potential impacts that may result from the decisions and management actions the agency makes in the plan. To estimate what cumulative impacts may be expected from decisions in the plan, BLM uses a "reasonably foreseeable development scenario" for oil and gas development. These scenarios estimate outcomes, such as the number of wells and likely surface disturbance for analysis purposes, as well as establish monitoring protocols and right-of-way corridors, among other things. Consistent with the resource management plans, BLM can accept bids from private companies and operators to lease BLM land for access to and extraction of oil and gas resources. Before approving an oil and gas lease, BLM determines if any restrictions (called stipulations) need to be added, among other reasons, to mitigate the environmental effects of expected oil and gas production on that lease. As provided by BLM regulations, if stipulations are necessary, they are incorporated into the lease.

Here the problem is that no one (including BLM) ever envisioned scorched earth large-scale Oil and Gas development to be taking place in western Idaho at the time of the RMP -- right next to heavily populated areas, in close proximity to streams and rivers, and extending north into remnant sage-grouse habitats.

There was also no real awareness in the public (or Idaho BLM) at the time of the Cascade RMP of the horror show of impacts associated with fracking and other current oil and gas development activities.

Southern Idaho ground squirrels were being shot as "varmints" at the time of the old RMP preparation.

The "reasonably foreseeable development" including the location for development and the impacts of resources that served as the basis of allocations in the Cascade RMP is woefully outdated, as are claims made in the current EA.

**1988 Cascade RMP Is Outdated, Yet Even Its Own Very Modest Environmental Protections and Promises Are Being Violated By this Leasing Scheme**

BLM's Land Use Plan, the Cascade RMP, is very old. The RMP was finalized in 1988. It is based on much environmental data that is even older. As the current case of the new RMP that has long been promised is showing, processes get stalled for political reasons for protracted periods - so often the plans may be outdated by the time the Decision Record is signed.

A new RMP has long been delayed, and the process stalled. In justifying funding and scoping for preparing the new RMP, BLM has acknowledged the pressing need for new land management allocations to balance current demands on resources many of which have undergone significant and often devastating declines in environmental conditions, new sensitive species, new federal candidate species, threats from climate change, myriad threats to sagebrush vegetation communities including continued expansion of annual invasive grasses and noxious weeds, etc. In essence, new protections are needed, new balancing of uses and efforts to resolve conflicts, firm conservation requirements, and new mitigations are all desperately needed.

The current oil "boom" by the town of Payette extends across a larger bi-state region including lands to the north across southern Idaho ground squirrel habitat and across still-occupied greater sage-grouse habitat that is absolutely vital to a very threatened local population. This was not even imagined and certainly never properly evaluated in the RMP (in particular the conflicts with southern Idaho ground squirrels, air quality, water impacts, a near-extinct sage-grouse population, etc).

See:

[http://www.argusobserver.com/opinion/natural-gas-boom-possible/article\\_2dfc953c-b510-11e2-b3f5-0019bb2963f4.html](http://www.argusobserver.com/opinion/natural-gas-boom-possible/article_2dfc953c-b510-11e2-b3f5-0019bb2963f4.html)

The Cascade RMP is found at:

<https://www.blm.gov/epl-front->



[office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=46227](http://office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=46227)

We stress that the RMP does promise the public sustainable wildlife, vegetation and other resources under its watch/management. Sadly, that has not turned out to be the case. The promises of the Cascade RMP have not been fulfilled by BLM (largely because of the document's general weakness, focus on full bore extractive use, high levels of grazing and other disturbance allowed under the RMP). This has resulted in large-scale expansion of exotic flammable invasive species that destroy sagebrush habitat qualities and the high levels of disturbance and development it allow to take place. BLM has not provided detailed analysis of how it has failed to bring about the sustained wildlife and other resources and populations promised under the RMP. How calamitous have sage-grouse declines been between the late 1980s and the present in this very region? Loss of sagebrush habitat – such as in the Squaw Butte and other fires? How much has medusahead expanded, and where is it currently now dominant?

The 1988 RMP page iv promised an **INCREASE** in sage-grouse and Columbia sharp-tailed grouse! Instead, the exact opposite is true and there have been drastic declines in recent years under the RMP's mis-management. See for example, population discussion in Knick and Connelly 2009/2011 Garton et al. Chapter, and USFWS COT Report Summary of GRSG Populations. Declines in the local population are a cause for much concern. In fact, the population is so low that IDFG proposed a highly controversial raven killing scheme for this very low population in 2014 – rather than request BLM to control livestock degradation to habitat.

A glaring failure of the little Willow Oil and Gas EA is its failure to take a full and hard look at the current site-specific conditions of habitat and populations for species and resources, and all the threats they face. How much have all sensitive and important species declined since the RMP?

A good summary of threats that sagebrush species which inhabit the sagebrush ecosystem here face is described in Connelly et al. 2004, *GRSG Conservation Assessment*, Knick and Connelly 2009/2011 *Studies in Avian Biology*, USFWS March 2010 Warranted But Precluded Finding for Greater sage-grouse. This information, and all the information BLM has in its files about species declines and rarity, must be compared to what the RMP had promised. The bottom line is that the ecosystem and wildlife and often rare plant populations, too, in the Four Rivers FO are seriously at risk and/or declining and collapsing. There is no longer any freeboard for mistakes, or expanded disturbance, in the FO. Restoration is drastically needed.

**Allocations of the Old RMP Are Woefully Outdated, and BLM Has Not Effectively Protected Wildlife and other Resources It Said It Would**

Shockingly, the old RMP leaves a full 94% of the project area completely open to oil and

gas exploitation. Plus, its so-called mitigations and "avoidances" (which can also be readily waived and this ability to be waived continues under the 2015 EA stipulations) are minimal.

There is no certainty to avoidances in the RMP and/or in the EA and the draft FONSI and leasing proposal. Their language is loose, full of loopholes, and supposed protections are able to be waived. Plus, from our review of the lease sale information, it appears there is no certainty that the parcels may not be leased later, too, even if no one bids on them at the sale.

The Cascade RMPs wildlife "occupancy" restrictions (CRMP p.49) are drastically outdated and not based on the reality of the low elevation, hot, dry sites being leased. See also WLD discussion in comments and our follow-up e-mails submitted to BLM on the Little Willow OG process and new RMP on this and other matters.

The RMP fails to provide for proper studies of the local human population, fails to put in place proper monitoring of animals, plants, waters, air and human health, and it does not provide for effective responses to public complaints or environmental impacts and damage that may immediately exceed levels promised by BLM in any ROD.

#### **BLM and other Livestock Disturbance and Impacts, and Other Cumulative Threats and Stresses**

BLM has failed to properly assess the significant adverse direct, indirect and cumulative effects of allocations under the RMP, and the current manner and degree of livestock grazing disturbance and facilities/infrastructure in the Sand Hollow, Dahnke, Gulch, Rock Quarry and surrounding allotments in adjacent "fields" in the local and regional area threatened with development. BLM has failed to provide any current Rangeland Health and other information necessary to understand current grazing effects on the environment, levels of use, time periods, of use, actual use, monitoring data, etc. There is also not adequate assessment of the existing adverse footprint of livestock facilities.

Southern Idaho ground squirrel face significant competition from cattle and sheep grazing – especially in increasingly drought-prone years in landscape being converted to exotic invasive species. Plus, trampling may damage burrows and otherwise impair habitats. Trampling may also destroy ground nests, such as those of long-billed curlew and other migratory birds. These species also face a plethora of above-ground activity from Oil and gas that heightens threats to their habitats and population viability.

#### **Stipulations/Mitigations/Restrictions Do Not Minimize Threats to Public Lands and Biota, and Do Not Protect Citizens Exposed to Oil and Gas Pollution, Disturbance and Disruption**

WLD incorporates all the concerns raised in our 2/13/15 and other follow-up e-mails related to the inadequacy of the EA, proposed stipulations, and claimed mitigations.

These concerns include, but are not limited to:

Need for upfront comprehensive biological and other surveys, need for much more protective and certain monitoring of a wide variety of environmental parameters and potential pollution concerns, with triggered effective responses, and other measures. We listed numerous concerns with the inadequate protections for long-billed curlew, southern Idaho ground squirrel, burrowing owl, migratory birds, etc. We provided BLM with a copy of the 2005 WORC report which found a much greater need for effective and timely monitoring and action by agencies, such as monitoring of the health of human residents exposed to the carcinogens, noise, vile odors, bright lights, transmission lines and other related impacts and infrastructure involved with oil and gas activity. BLM even ignores fair analysis of issues raised in BLM's own TEEIC document.

It is simply appalling, for example, that BLM refuses to even change the migratory bird avoidance period. And that BLM fails to provide baseline ground squirrel, curlew and other information so it can establish the current level of the use and occupancy by these and other rare species, and then set thresholds that would trigger immediate changes, or cessation, in the Oil and Gas activity.

BLM provides a mere list of many sensitive and rare species, yet fails to provide sufficient protections for even the "management considerations" that BLM itself recognizes exist. These species nests, eggs and young will be destroyed, breeding behavior will be disrupted, and other "take" will occur under the biologically indefensible "avoidance" period that starts long after these activities have commenced – at the very late date of April 15 in these low elevation hot, dry, lands.

We also provided BLM with evidence that other Field Offices conduct a review of proposed leases and do not lease lands with conflicts. For example, southern Idaho ground squirrel habitat is on a par with Battle Mountain BLM sage-grouse habitat, and there BLM is removing grouse habitat from leasing. Not so in the maximally destructive Idaho Four Rivers process, which is taking place in an atmosphere of political intimidation and citizen repression.

Similarly, the so-called water and riparian protections are utterly minimal and deficient, and there are no site-specific studies to even determine what protections are needed.

In fact, it is very difficult to determine just what the stipulations actually are. See Mgr. Fischer Decision Record and Leasing recommendation, referencing:

1. Terms / Conditions / Stipulations:

Standard lease terms, conditions, and operating procedures (43 CFR 3101 and 3162), NSO and NSSO stipulations, and BLM lease notices (LN-A and LN-B) will apply to all parcels. Refer to sections 2.2 Alternative B and Section 3.4 Additional Considerations for Alternatives B-C of the EA.

This is very unclear.

This also demonstrates that BLM ignored all public comment on the inadequacies of its protections for animals, plants, water, air, and people.

#### **Old RMP Never Addressed and Allocated Resources Faced with Climate Change Threats**

Climate change, and the stress it exerts on native sagebrush communities and biota, are not even considered. As an example of this stress, please review Comer et al. 2012, Great Basin REA, Beschta et al. 2012. There is no analysis whatsoever of climate change stress on sagebrush vegetation communities and the species that inhabit them, or of fossil fuel contribution to greenhouse gas emissions.

Climate change is causing ecological perturbation, and lack of resiliency especially in the Payette landscape that has become so degraded by invasive species under the harmful grazing management, proliferation of facilities and roading, lack of restoration efforts, and minimal controls of the old RMP.

#### **No Evidence that "Yield" Promised in the RMP Has Been Sustained**

Despite RMP promises of multiple use and "sustained yield" in the old RMP, it is clear the Four Rivers FO and the Payette/Little Willow area wildlife, water and other resources are not being sustained, and "yield" is now almost nil in many areas.

BLM has not provided population and habitat quality and quantity information for all sensitive species and other species of concern in the Little Willow landscape. This is crucial, especially since the RMP made glowing promises about sustaining and even expanding habitats and populations.

There is no "equitable" and balanced use – when 94% of the project areas is Open to Oil and Gas with minimal protections, and no analysis was undertaken taking into account fracing impacts, proximity of large human populations, ground water pollution, air pollution and many other factors.

The Cascade RMP promised the public that BLM would "meet or exceed the populations goals for wildlife"; and that BLM would maintain curlew habitat outside the ACEC and otherwise protect curlews, migratory birds, and other sensitive species.

Yet here BLM is proposing actions to further degrade, fragment and destroy occupied

and potential restoration habitat for southern Idaho ground squirrel, long-billed curlew, burrowing owl, sage sparrow, loggerhead shrike, Brewer's sparrow and many other rare and imperiled species.

#### Cascade RMP 2-4, Wildlife

##### *Objectives*

*Protect crucial habitat of federal and state listed "endangered, threatened or sensitive" species.*

*Protect crucial habitat of big game and upland game bird species. Actions*

*Allow no disturbance during crucial time periods (see special stipulations). [These are woefully outdated].*

*Initiate special management for crucial habitat areas.*

There have been no land use plan allocations or other sufficient planning protections put in place for southern Idaho ground squirrel or any other rare plant and animal species, and we are unaware of any special management being put in place for ongoing activities. Neither at the Plan level, nor in what is proposed in this Little Willow process. It is greatly insufficient given the very low levels populations are at, and their degraded and already highly fragmented habitats. In fact, BLM did not even consider even its own current 2015 sensitive species and federal candidate species worthy of site-specific surveys across all areas of this landscape (BLM, state and private where possible) prior to finalizing this Little Willow EA.

So when BLM was developing the inadequate alternatives and mitigations, and finalizing its NEPA glance, the agency had no idea if there was one southern Idaho ground squirrel or one thousand that would be impacted by the project, or if there was one burrowing owl or 20 burrowing owls that would be impacted. These species face potential road building, pipeline building, toxic substances poisoning the soil, direct "Take" of mortality and injury from traffic, seismic exploration, construction and operational activities, and from toxic and stagnant water pools and noxious substances from oil and gas.

The Cascade RMP water and riparian area protections are also utterly minimal. 2-4, Riparian, Water

##### *Riparian and Aquatic*

*Objectives Protect stream, lake and reservoir banks from disturbance, erosion or pollution.*

*Actions Provide buffer zones along stream banks and implement guidelines for activities occurring within this zone.*

The RMP is completely ineffective for controlling the serious adverse impacts of potential pollution of Little Willow Creek, Big Willow Creek, the Payette River, springs and other riparian areas and wells from pollutants from Oil and Gas expo and development blasted, fracked, drilled, injected, pipelined and otherwise modified underlying strata. Plus there is all manner of linked surface disturbance on SO and/or private with no split estate uplands taking place. These are cumulative impact and connected/linked impacts – as more NSO leases will result in more need for facilities and infrastructure aboveground.

The EA is devoid of necessary studies to determine the degree of aquifer connectivity between waters underlying the leased parcels and wells, as well as riparian areas. The impacts of blasting, fracing, drilling, injection, subsidence, fracing-triggered earthquakes, etc. are not assessed. There is no proper baseline provided on how polluted and degraded water quality currently is. Full consideration of potential yellow-billed cuckoo habitat must be undertaken as water is so depleted, there may be a reduced area capable of supporting woody riparian vegetation that the cuckoo requires.

There is no adequate assurance of protection of the local residents drinking water and irrigation wells from pollution and depletion in the RMP and EA. There is nothing to protect aquifers from pollution and drawdown from Oil and Gas activity, including in combination with other uses such as irrigation demands. The intensive site-specific studies necessary to understand the aquifer status and level, changes in the aquifer over time, connectivity between groundwater sources and riparian systems and wells in the area and the region have not been undertaken.

Perhaps BLM, the state of Idaho, and industry are afraid of what they might find – so are purposefully proceeding in the dark.

There is no assurance that irreversible adverse impacts and harm will not occur to water resources, human residents water supplies and health, and water-dependent aquatic species including fish and amphibians, and riparian biota including migratory birds that rely on diverse riparian vegetation communities.

The RMP never addresses ground and surface water depletion and loss, or the water pollution potential of modern day oil and gas, and fracing.

RMP 2-5 barely mentions cultural resource impacts and concerns and BLM has not done studies with this leasing proposal (note that Brett Nelson raised the issue of very abundant obsidian he had personally observed in this area in years past at a meeting with BLM on this Little Willow leasing). Certainly the location of the leasing activity near important water resources and on elevated benches above them, with connecting

drainages and draws going down to primary waters is a setting that is highly likely to have very significant cultural values. The bulldozing, roads, pipelines, wells, etc. all have significant potential to damage and destroy cultural artifacts and the integrity of cultural sites, and promote extensive soil erosion.

In relation to "paleontological values", the RMP states: Surface or subsurface ROWs will be designed and routed to avoid paleontologic sites. The EA fails to provide any studies whatsoever of paleontological sites and resources, including underground (where NSO activity takes place), and where potential pipeline ROWs, horizontal drilling, etc. may take place).

The RMP relies on "avoidance areas" – which are very inadequate and ineffective by any modern day standards, for native sagebrush wildlife and other resources. See Knick and Connelly 2009/2011, *Studies in Avian Biology*, and Manier et al. 2013 for example describing sage-grouse avoidance distances of several miles based on current scientific studies. While sage-grouse may not currently occupy the site (but there is some sagebrush present and it appears no surveys were done for potentially some sage-grouse winter, connecting habitat, or other use), many other avian species also are impacted by disturbance – including noise, visual intrusions, increased predation caused by habitat disturbance, elevated perches, human activity and structures, increased diseases (like West Nile from stagnant water areas associated with Oil and Gas activity) and the overall cumulative impacts of development.

Certainly all ground squirrel habitat should be an "avoidance area". Migratory bird species and raptors require much earlier time period avoidance. BLM has not studied the ground squirrel population sufficiently to be able to understand how large the population may be, and what avoidance is necessary, and it has not identified restoration needs that are required to support viable populations over the long term.

The superficial and lax RMP page 16 explains that the RMP leaves a shocking 94% of the land area open to leasing – because it was thought that problems could be solved by NOT LEASING or mitigation. So certainly NOT LEASING is specifically highlighted in the RMP, yet BLM is choosing to ignore this. The Cascade RMP at the time was so minimal that it pretty much kicked the can down the road. Now this programmatic and superficial EA seeks to do the same – but is making an irreversible commitment.

The BLM was to evaluate areas for paleontological values prior to taking action. That has not occurred here – in fact WLD had to remind BLM that there were indeed paleontological values in these formations. No valid baseline surveys and systematic studies have been provided on the scientific values. Perhaps instead of Oil and Gas leasing here, an ACEC may need to be established to protect a suite of values from harm.

**RMP Revision Is Required Before BLM Acts**

Revisions to resource management plans are necessary if monitoring and evaluation findings, new data, new or revised policy, or changes in circumstances indicate that decisions for an entire plan or a major portion of a plan no longer serve as a useful guide for resource management. BLM, Land Use Planning Handbook H-1601-1. While there may be a revised handbook, these same principles still apply.

There are a host of new and changed circumstances here since 1988, so BLM cannot rely on the Cascade RMP for heavy levels of extractive and environmentally damaging allocations. A VERY important changed circumstance is that BLM has not provided for sustained habitats and populations of important, rare and sensitive species. Other very significant changes range from the human development and population expansion across the Treasure Valley, increased air and water pollution that already exists, to the increasing rarity of species once considered "common" like sage-grouse or "vermin", like the southern Idaho ground squirrel.

BLM must conduct a new EIS to amend the LUP, and/or Supplemental analysis in the current process that amends the LUP and places the very important lands here off-limits to Oil and Gas.

There is no consideration of Open Space in the 1988 Cascade RMP. There is no adequate consideration of pollution of air, ground and surface water, climate change, BLM's current conservation plans and promises for sagebrush species, in the RMP.

#### **Irretrievable Commitment of Resources**

The issuance of these leases represents an Irretrievable commitment of resources. It sets in motion the very foreseeable future development - and loss of public resources and pollution of air, water, and the ground in very harmful and potentially irreversible manners. It certainly sets in motion the future linked and foreseeable destruction of underground water-bearing strata, and pollution of ground and potentially surface water with toxic and even radioactive materials.

#### **There Is No Need for Project – There is A Present Glut of Oil and Gas Leases**

There is a glut of oil and gas leases. See: [http://suwa.org/wp-content/uploads/OGFactSheet\\_May2014Final\\_2.pdf](http://suwa.org/wp-content/uploads/OGFactSheet_May2014Final_2.pdf)

There is no shortage of oil and gas leases, and this cannot be a reason for leasing.

BLM has not provided the geological and other studies necessary to understand the configuration of any oil and gas deposits, if financial speculation is involved in this "boom", and how development on private non-split estate and/or state lands might or might not affect any oil under BLM lands. Further, BLM has not questioned the industry to determine methods to avoid drainage of the federal oil.



It appears that BLM is giving into political pressure to lease, rather than asking hard questions and taking a hard look at the serious issues and conflicts that this precedent-setting action will have.

### **The Oil and Gas Company Appears To Already Occupied Some of these Sites to Potentially Force BLM to Lease**

The FEA states:

*There are currently 15 wells that have been drilled on private or State leases in and/or near the Willow and Hamilton Fields and are capable of production, and three wells that have been approved but haven't been drilled. Four existing wells and two proposed wells are within 0.5 miles of federal mineral resources. Several of the wells are located in sections with federal mineral estate (Map 1). The existing wells are classified as "shut in pending a pipeline" indicating that they are capable of production.*

BLM must explain just what is going on in much more detail, and how any pipeline might impact BLM resources, will it cross BLM lands below or above the surface, will it facilitate drainage BLM Oil? How might a pipeline and other unassessed infrastructure cumulatively degrade and fragment habitats for the same sensitive and other species that would be adversely impacted by the leasing proposal?

### **Alternative B Is A Delay Tactic – But It Still Makes Irretrievable Commitment of Resources**

Alternative B on its surface appears to kick the can down the road. But once leases are issued, the RMP cannot take them back. The FONSI would approve Alternative B.

Alternative B has significant and unmitigated adverse impacts to the environment –to air quality, soils, groundwater quality and quantity, surface water, human health and well-being, migratory birds, sensitive species such including burrowing owl, long-billed curlew, sage sparrow, Brewer's sparrow, sage thrasher, loggerhead shrike and many others. It has very significant impacts to the southern Idaho ground squirrel.

### **Inadequate Lease Stipulations and CSUs**

The lease stipulations and CSUs are inadequate for all resources, including:

**Fragile soils**

· **Flood plain management**

- Special status mammals
- Migratory birds and raptors
- Water quality
- Cultural resources
- Lands and realty
- Paleontological resources

They are also inadequate for ALL special status animals, special status plants, air quality, buffering climate change, water quantity, human health, etc. Please refer to WLD Draft EA comments and follow-up e-mails discussing timing, avoidance and other inadequacies. Thus, BLM cannot claim they are adequately mitigated and cannot sign a FONSI.

#### **DISCUSSION OF LEGAL BASIS FOR PROTEST AS DESCRIBED IN STATEMENT OF REASONS**

BLM attempts to try to tamp down public concern and controversy by delaying a decision on NSO vs. SO, but the leases will already be held by the oil company.

*The Leasing Federal Mineral Estate with No Surface or Subsurface Occupancy Stipulations Alternative would offer five parcels (6,349.20 total acres) for lease with the ability to drain the federal mineral reserve; however, surface and subsurface occupancy of the parcels would not be allowed until completion of the Four Rivers Field Office Resource Management Plan (FRMP) intended to be released as draft in mid-June 2015.*

Leasing under FLPMA with surface occupancy (SO) and no surface occupancy (NSO) stipulations constitutes a "major Federal action[s] significantly affecting the quality of the human environment" that requires the preparation of a pre-leasing environmental impact statement. 42 U.S.C. § 4332(C). An adequate range of alternatives and mitigation protections has not been considered and analyzed.

#### **A. Leasing The Contested Parcels Violates NEPA**

1. BLM Failed To Take The Required "Hard Look" At Whether Its Existing Analyses Are Valid In Light Of New Information Or Circumstances and Arbitrarily Determined That New Information Did Not Warrant Preparation of Supplemental NEPA Analyses.

NEPA requires federal agencies to take a hard look at new information or circumstances concerning the environmental effects of a federal action even after an environmental assessment (EA) or environmental impact statement (EIS) has been prepared, and to supplement the existing environmental analyses if the new circumstances "raise[] significant new information relevant to environmental concerns." *Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705, 708-09 (9th Cir. 1993). Specifically, an "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look' at the environmental effects of [its] planned actions." *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000). NEPA's implementing regulations further underscore an agency's duty to be alert to, and to fully analyze, potentially significant new information. The regulations declare that an agency "shall prepare supplements to either draft or final environmental impact statements if . . . there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii) (emphasis added).

When considering whether BLM has taken a hard look at the environmental consequences that would result from a proposed action, the Interior Board of Land Appeals will be guided by the 'rule of reason.'" *Bales Ranch, Inc.*, 151 IBLA 353, 358 (2000) (citation omitted). "The query is whether the [DNA] contains a 'reasonably thorough discussion of the significant aspects of the probable environmental consequences' of the proposed action." *Southwest Center for Biological Diversity*, 154 IBLA 231, 236 (2001) (quoting *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982)) *Thompson*, 124 F.3d 1210, 1213 (10th Cir. 1997) (to comply with NEPA's "hard look" requirement an agency must adequately identify and evaluate environmental concerns) (emphasis added).

As explained, the Four Rivers Field Office failed to take a hard look at new information and new circumstances that have come to light since BLM's Cascade RMP and its accompanying EIS were prepared, along with the very significant precedent that this leasing sets and the political circumstances and citizen repression surrounding Oil and Gas leasing and development in the Payette region, and the location of these parcels very close to population centers.

Air quality, climate change and public health effects.

BLM has arbitrarily determined that the sale of five leases is appropriate. It did not even conduct local air quality studies and assess all direct, indirect and cumulative impacts, including the already degraded air quality in the Treasure Valley, local levels of air pollution (agricultural activities including pesticides, dust, CAFOs, etc.) and the indirect and cumulative impacts of this leasing, whose effects may be particularly acute to local residents. There is no adequate assessment of pollutant exposure, wind patterns, localized airshed weather patterns, existing degree of vile odors, haze nor of the broader Treasure

Valley airshed pollution, and human health effects. How many residents live within 10 miles of the facilities and sites where pollutants may be released? What are existing asthma and respiratory problem rates, cancer rates for particular types of cancer, and other health problems in the local area and are they already higher than average? Where are these sites currently degrading air quality, and what are the pollutants? All of this information is lacking, along with a site-specific study of baseline levels of pollution from agricultural pesticides, dust, vehicle emissions, power plants, CAFOs, etc.

Plus the Reasonably Foreseeable Development scenario does not take into account the massive amount of foreseeable new and additional pollution (and habitat loss and fragmentation and effects to all other resources) that full throttle development on private and state lands in the area (not just the two fields) will cause.

BLM has arbitrarily determined that the sale of these five leases is appropriate, and did not even consider air pollution and human health effects; greenhouse gas emissions with all aspects of this proposal, and climate change effects and stresses on the environment and native biota.

BLM has arbitrarily determined that the sale of five leases is acceptable, and does not jeopardize air quality and human health. BLM has arbitrarily ignored the effects on human health and well being, and the full contribution to climate change, as well as the very significant adverse effects of climate change on thwarting successful rehab of disturbed areas, and the additional and cumulative stress it places on native biota, rare species like southern Idaho ground squirrel, sagebrush birds, and water and other resources.

The BLM's land use plan was prepared when no one believed there was really any exploitable oil and gas in region. Thus, there are no proper environmental safeguards in the RMP to protect air quality, water quality, soils, microbiotic crusts, watersheds, riparian areas and processes, water quality and quantity, native vegetation communities, sensitive species and imperiled species, migratory birds, raptors, big game, rare plants, human health, economic values of private property, cultural sites, recreational uses and enjoyment, and many other values of the public lands.

To the extent that it could somehow be believed that the Field Office took the required hard look, the determination that that it need not prepare a supplemental NEPA analysis was arbitrary and capricious. See *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 443 (4th Cir. 1996).

#### **BLM Should Adopt A Precautionary Approach**

WLD urges the BLM to adopt a precautionary approach to management of all remaining

sagebrush habitat, big game winter range, SIDGs habitats, migratory bird habitat, raptor habitat, and to seriously and candidly study development that might adversely impact the local population and residents whose air and water will likely be polluted (and water depleted) by the series of harmful activities associated with oil and gas exploration, development and production – whether SO or NSO.

BLM should withdraw these five lease parcels until the Four Rivers Field Office completes its land use planning process.

BLM's failure to do so is a clear violation of NEPA due to:

The rarity of SIDGs and numerous other sensitive species including many sagebrush species; the adverse effects of climate change (which oil and gas production and development exacerbates, and the effects of climate change (hotter, drier, less resilient more weed risk) make any rehab of sites much less likely and places large stress on native biota and water resources; the nearly complete dominance of many areas of the FO by exotic species devoid of shrubs making the land areas as mapped with sagebrush vegetation even more critical to sensitive species - SIDGs do better with sage communities, mule deer and other big game rely on cover and security in winter, and many of these areas are vital winter range; there are nesting sites for numerous migratory birds, including species that are now sensitive species but were not considered to be sensitive at the time of the outdated LUP.

New information on ground and surface water depletion and over-allocation of water rights across Idaho makes the water use, water waste, pollution and overall ruination of aquifers with modern day Oil and Gas production extremely controversial and significant - with each well using 1 to 6 million gallons of water in drilling plus the very foreseeable destruction of underground strata and lowering and pollution of ground water caused by development activity.

There is now extensive new information on the adverse direct, indirect and cumulative impacts of fracking on water, pollution, human health, causing earthquakes, etc. that were never considered in any way in the Cascade RMP. See WLD DEA comments and follow-up e-mails and literature submitted on fracking and other impacts.

Fracking entails what can best be described as a horror show of long lasting and irreversible environmental degradation. It permanently alters and destroys underground geology, with destruction of water-bearing layers and strata. It may result in permanent loss and depletion, as well as permanent and highly unpredictable drops in water tables. It uses a toxic brew of dangerous and harmful substances including even radioactive materials. All of this poison can then seep into and pollute ground and surface water and aquifers. There are two streams in very close proximity – Little Willow Creek and the Payette River and other waters as well. There is no valid assessment of the

current water quality in these and how Oil and Gas activity may worsen water quality and quantity coupled with permanent depletion of water, too.

There are also very serious environmental hazard and contamination effects associated with "conventional" Oil and Gas and the immense infrastructure footprint it requires.

WLD described many of these effects in our comments on the DEA, but BLM has not taken a hard look at, and addressed the severe impacts that will be caused if fracing takes place. There is NOTHING in the lease stipulation to prevent its use. Plus, even if wells are not fracked, there is still very significant underground disturbance and potential for water loss, and pollution from so-called "conventional" oil and gas – including from re-injection activities.

There has been no adequate study of any kind conducted by BLM, the state of Idaho's Oil Board, Payette County, or the developer to understand the vulnerability of domestic wells and ag irrigation wells other water supplies to conventional development and/or fracing. When WLD has raised concerns about fracing, BLM brushed it aside, saying the industry says we don't need to frac here.

There is no assurance whatsoever what will take place as industry tries to squeeze every drop of oil out of these and other "Fields". There is no safeguard, and nothing in the lease stipulations to prohibit fracing. Thus, it must be assumed that fracing will occur – and necessary ground and surface water studies, amounts of aquifer decline at present, and foreseeable expansion with oil and gas activity far beyond what is claimed in the RFD scenario, will take place.

When WLD sought water and air studies that BLM relies upon for brushing aside concerns, to our dismay we saw that studies and models of risk were not even conducted in Idaho, let alone the Payette area close to a large human population center and extensive agricultural production, including food and crops grown for human consumption.

There are numerous springs in lands near the project area and the Payette River and Little Willow Creek are very close – yet current flow rates, losses, declines, changes over time, degradation, level of pollution and impairment and causes, and characteristics and types of springs and their connection to shallow and/or deep underground aquifers are never examined. The underlying soil layers and geologic stratigraphy along which pollutants may seep from fracing, and/or even with "regular industrial scale blasting and drilling for oil production and water use in the process have never even been studied,

Thus, there is no way to understand the direct, indirect and cumulative adverse impacts of leasing-related energy development and production.

BLM must conduct these studies upfront, before any lands are leased, because leasing is the point of no return under BLM's Oil and Gas regulations. Post-leasing studies will not be able to ensure the protection of vital water resources, their sustainability, protect human health, avoid impacts to water rights, avoid impacts to drinking water and irrigation wells, and impacts to flows of springs, seeps, and streams. It does not matter what the long-delayed RMP might do.

There is not even any analysis of the supposed oil reservoirs in relation to water tables, depth to water tables, strata and permeability vs. impermeability of strata, potential for contamination of aquifers with the oil itself, and a host of other baseline data, scientific reviews, and analyses that must be undertaken to understand the significance of the issue.

The minimal information that BLM relies upon from other areas does not show what pollutants will be released from the particular formations and oil processing of this Little Willow oil and gas.

All of these site-specific baseline studies are also necessary to conduct a valid economic analysis – including the value of natural resources lost (such as sustainable populations of ground squirrels and curlews, water necessary to support riparian vegetation, etc.), private property value losses from OG activity, pollution, disturbance, stench, noise, water declines; costs to local residents from health impacts and impacts across the airsheds, etc.

Moreover, BLM cannot credibly claim that it has ever taken a hard look at the impact that oil and gas development would have on these very important elements of the human environment, as the RMP is not a valid current inventory of these lands and does not rely on current scientific information and the current degraded and diminished/declined state of resources.

The BLM's EA does contain any valid site-specific "What Is Really Out There" hard look analysis – it only relies on coarse overall vegetation, soil and animal species database layers. There are no current systematic biological inventories on the ground over all seasons of the year and habitats.

In sum, BLM's EA is highly superficial and relies overwhelmingly on stale databases, and reports from outside the area. On top of this is the very old and outdated LUP allocations.

Climate change assessment, air shed and air pollution studies, thorough aquifer and ground and surface water analyses, geological strata studies, ground squirrel inventories and assessment of habitat quality, quantity, degree of fragmentation, connectivity/restoration needs, population status and trends – and similar studies for all

sensitive species - constitutes precisely the type of information that must be acquired for a hard look.

The info on facing impacts, stress of climate change and the role of fossil fuels in causing climate change, the fact that there actually IS oil and gas in this area and the sudden explosion of foreseeable development across public, state and private lands in this region is all significant new information that has arisen long after the 1988 Cascade RMP. This requires additional environmental analysis and an integrated allocation process to ensure conservation of important species and to protect the residents of Idaho before BLM approves the irreversible commitment of resources – in the May 2015 lease sale.

Again and importantly, when the RMP was prepared, the BLM did not know that the lands in question would be at the epicenter of an explosion in Oil and Gas development.

Consequently, it is hardly surprising that a detailed review of the RMP reveals that it does not discuss open space and the value of undeveloped lands near population centers; climate change and the role of fossil fuels in greenhouse gas emissions as well as how climate change exerts significant stress on arid sage communities and watersheds; human health effects of oil and gas activities including potential carcinogenic effects of oil and gas chemicals and pollution of wells and waters; how degraded air quality in the Treasure valley is; aquifer depletion; connectivity between ground and surface waters, or imperilment conservation and habitat restoration needs of TES species.

Further this does not address the effects of climate change on making rehab and restoration more difficult - due to hotter temperatures and other harsh conditions in which weeds thrive.

Until BLM actually collects current proper baseline data on the qualities of the public lands proposed for leasing at the lease sale and conducts a ground-based site-specific analysis of the impacts of those qualities, it will be unable to determine how severe the impacts will be, and also will be unable to determine necessary mitigation measures to minimize environmental harm.

BLM cannot rely on its outdated planning documents to argue that these values were previously identified and the impacts of oil and gas development on them were previously evaluated. Changes in scientific understanding, the severe stresses on the natural environment in 2015 (such as the extreme stress that sagebrush species are currently under, the rarity of southern Idaho ground squirrels and many other declining species); the failure of BLM to live up to its own RMP's promises of sustainability and improvement and increase of native biota; the potential imminent loss of sage-grouse in the region if the oil and gas boom proceeds with the first step being this precedent-setting Little Willow proposal; and new studies on sensitivity of humans to oil and gas chemical



exposure and associated activity is sufficient new and significant information to require a supplemental NEPA analysis before leasing takes place.

In fact, if BLM were to undertake new, full and fair NEPA analysis in a land use plan and/or EIS that looked at allocation of SIDGs habitat, and/or oil and gas proliferation right next to population centers given what is now known about fracking, carcinogens, water scarcity, and the poor air quality of the airshed now, it is very likely that lands would not be allocated for Oil and Gas and other energy development involving many toxic materials that may pollute the air, ground, and surface waters and also potentially contaminate the food chain.

The necessary site-specific baseline information is lacking in the EA. A valid NEPA analysis here must specifically address the effects of leasing on human health, water quality and sustainability, wildlife habitats and population viability as well as restoration needs, recreation, open space, visual resources, native vegetation and risk of flammable weed invasion, soil stability and health, yet the EA contains only the broadest discussion of the effects of leasing does not contain the site specific analysis as to the resources actually found on each of these parcels and their current condition.

For example, without comprehensive ground squirrel, long-billed curlew, loggerhead shrike, or other surveys across the fields and the area of the local population, and then comparison with the species use on the parcels, it will be impossible to determine the significance of the losses that may occur due to oil and gas development derived from the leasing. In order to do this properly, BLM must also assess the full cumulative adverse effects of the very significant public lands and other livestock grazing and other impacts to habitats and populations, waters, and other values.

The best and most current information must be considered.

This must also include a thorough and candid discussion of the political pressures that are exerted by state and local entities, and efforts to silence local citizens. It must also include the harmful effects to local property values and quality of life from living adjacent to proliferating oil and gas activity.

## **2. NEPA Requires An Adequate Pre-Leasing Document.**

The BLM has not analyzed the potential site-specific impacts of leasing and development on the protested parcels and therefore the sale of these parcels violates NEPA. NEPA requires the BLM to prepare an environmental impact statement whenever major federal actions may significantly alter the quality of the human environment. See 42 U.S.C. § 4332(2)(C). The Interior Board of Land Appeals and numerous courts have held that NEPA requires an EIS for non-NSO proposed oil and gas leases because they constitute a

full and irretrievable commitment of resources. See Southern Utah Wilderness Alliance, 159 IBLA 220, 240-43 (2003); Colorado Env'tl. Coalition, 149 IBLA 154, 156 (1999); Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988); Sierra Club v. Peterson, 717 F.2d 1409 (D.C. Cir. 1983). In this case, it is still uncertain if leases - at the time they would undergo development - will be SO or non-NSO, plus the very significant human population and presence of numerous species of concern and other resources heightens the need for an EIS.

BLM's documents greatly failed to consider the potential impacts of roads, pipelines, drilling rigs, waste pits, and other drilling-related activities that are highly foreseeable surrounding the parcels, and that this activity may increase with the parcel leasing, as well as the uncertainty and potential future SO depending on the outcome of the new RMP process.

Because the BLM has not adequately examined the potential impacts of leasing and development activities on/under the contested parcels, the agency should withdraw the protested parcels from the lease sale. The parcels should be offered for lease only after the agency prepares a new RMP and a site-specific EIS that describes, analyzes, and discloses the site-specific effects of oil and gas exploration, leasing, development, and reclamation.

A Decision to postpone leasing until the new RMP process allocation and plan NEPA analysis is finalized is appropriate because the Four Rivers Field office is preparing a new land use plans with new allocations, leasing categories, stipulations, mitigation measures, and efforts to balance and resolve conflicts to address the many challenges of land management in the most populated region of the state.

### **3. BLM LUP Fails to Consider The Unique Impacts Of Fracing and Many Other Aspects of an Oil and Gas Boom Act in This Setting.**

The Cascade RMP failed to consider the unique issues and impacts associated with fracing - and ground and surface water pollution, depletion and permanent and irreversible loss, human health effects, effects to native biota, causing geological instability and seismic activity. Fracing could occur under both SO and NSO development, too. Because it is reasonably foreseeable that fracing destruction of underlying strata will take place on/under these lease parcels, BLM must comply with NEPA's EIS requirement before proceeding with the sale of these lease parcels.

The RMP does not analyze the significantly different impacts, environmental or otherwise, of fracing, and the magnitude of all the myriad impacts on the environment of conventional oil and gas, too, in this setting. As such, these documents cannot serve as the EIS required by NEPA. Moreover, to the extent the BLM contends that the impacts have been sufficiently analyzed in project level NEPA documents completed in the field

office, it is mistaken.

2015 FEA page 8 states:

The following issues were identified from comments and scoping letters received during the scoping effort:

1. Leasing could indirectly impact air quality in the proposed lease area if exploration and development occur.
2. Leasing could indirectly impact water quality in the proposed lease area if exploration and development occur.
3. Leasing could indirectly pollute ground water in the proposed lease area if exploration and development wells require hydraulic fracturing (fracing).
4. Leasing could indirectly impact sensitive plant species in the proposed lease area if exploration and development occur.
5. Leasing could indirectly impact sensitive wildlife species in the proposed lease area if exploration and development occur.

Yes, we agree with all of this, but BLM fails to provide necessary protections to prevent these harms, and has not collected sufficient information to understand how severe the harm will be so that proper mitigation, including by complete avoidance, can be applied. This is necessary to prevent irreversible harm and violations of FLPMA, the MBTA, the CWA and other environmental regulations. The mitigation measures are not sufficient. We also note that fracing and other oil and gas activity could DIRECTLY impact water quality, and that fracing could indirectly and cumulatively affect water quality and quantity and the health and wellbeing of the Payette residents. For example, an oil and gas pipeline could rupture and pollute the Payette River.

Other non-fracing use of hazardous and/or toxic substances may contaminate soils and harm burrowing animals such as the southern Idaho ground squirrel, contaminate water and harm human residents, and have a host of other negative and adverse impacts. We stress that many residents and citizens, including our members, certainly do not trust local authorities and the state of Idaho Oil and Gas Commission and DEQ to properly oversee the effects.

Project level NEPA analyses cannot and do not stand in the place of resource

management plans and their accompanying EISs.

In short, NEPA requires the preparation of an EIS that will evaluate, analyze, and disclose all effects of oil and gas development activity including fracing, and all related impacts prior to the sale of the parcels.

**4. Failure To Take A Hard Look**

As we described throughout our comments, follow-up e-mails and this Protest, the five lease parcels are located on lands where exploitation of oil and gas resources has a broad range of adverse impacts on nearly all elements of the environment. BLM has not included sufficient avoidance and timing stipulations to protect native biota and other resources, and has not conducted sufficient baseline studies. It has not committed to sufficient monitoring and mitigation to protect human health and well-being in the local and regional area, or to protect the wealth of public resources that are likely to be harmed, impaired or destroyed. BLM should withdraw parcels until it evaluates this important resource and determines the appropriate wildlife timing stipulations for these parcels, air and water mitigations, and other protections - if leasing is appropriate at all.

**5. Leasing The Contested Parcels Violates FLPMA.**

FLPMA requires the BLM to establish management plans for the lands under its jurisdiction and requires that decisions, permits and other authorizations conform to an approved plan. 43 U.S.C. §§ 1712(a) and 1732(a). See Southern Utah Wilderness Alliance, 111 IBLA 207, 210-11 (1989); Jennott Mining, 134 IBLA 191, 192 (1995). Existing planning documents authorize conventional oil and gas development for parcels, but do not address the impacts in any substantial way, and certainly do not address impacts of fracing; aquifer depletion and ruination; development right next door to population center with potentially very serious health impacts, and many other effects.

As a result, existing plans fail to identify the necessary stipulations and other leasing conditions that would protect these lands, waters, neighboring homes, the town of Payette, the health and well-being of the people, springs, Little Willow Creek, the Payette River, southern Idaho ground squirrel, burrowing owl, long-billed curlew, rare plants and many other species from the impacts of oil and gas development. BLM fails to consider in any way the unique and toxic impacts associated with oil and gas activity, and potentially even fracing development.

**Existing Land Planning Document Does Not Address the Extreme Sensitivity of Resources -No Adequate Protections for Threatened Resources**

Existing planning documents do not address oil and gas activity blanketing much of

SIDGs habitat. Existing planning documents do not address the overlapping and cumulative adverse effects of burgeoning Oil and Gas development near a townsite with thousands of residents, and right by the Payette River and its tributaries.

As described in the Statement of Reasons, the leasing also violates the limited protective measures that are found in the Cascade RMP, and violates BLM sensitive species policy.

**MBTA and BGEPA Violations, and Clean Water Act and Clean Air Act Violations**

This Little Willow Oil and Gas action also will certainly "take" nests and eggs, and harm migratory birds and their habitats and populations, including due to the minimal avoidance period that begins far too late in the breeding and nesting season. There are also greatly insufficient protections for native raptors, and bald eagles and golden eagles.

There are a host of other conflicts and violations of laws and regulations including insufficient controls and mitigation to prevent violations of Clean Water Act and Clean Air Act. Further, lower income populations in areas of Payette may be particularly impacted by the pollution.

Thus, BLM has not ensured that harm will be minimized in this precedent-setting oil and gas action in western Idaho.

**REQUEST FOR RELIEF**

WLD requests the following appropriate relief: (1) the withdrawal of the five protested parcels from the May 2015 Competitive Oil and Gas Lease Sale until such time as the agency has complied with NEPA, FLPMA, the Clean Water Act, the Clean Air Act, the Migratory Bird Treaty Act and other protections for the environment.

Sincerely,



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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

WITH COPY TO SOLICITOR

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

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.

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(Form 1842-1, September 2006)