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July 17, 2023

State Director Andrew Archuleta  
Bureau of Land Management  
Wyoming State Office  
5353 Yellowstone Road  
Cheyenne, WY 82009

**Re: Protest of BLM Proposed Third Quarter 2023 Oil and Natural Gas Lease Sale and Draft Environmental Assessment and Draft Finding of No Significant Impact – DOI-BLM-WY-0000-2023-0003-EA**

Dear State Director Archuleta,

For the reasons detailed below, the Petroleum Association of Wyoming and Western Energy Alliance (collectively the Associations) are protesting the Bureau of Land Management's (BLM) second draft Environmental Assessment (EA) for the Wyoming third quarter oil and natural gas lease sale in accordance with 43 C.F.R § 3120.1-3.

The Petroleum Association of Wyoming (PAW) represents the state's oil and gas industry including production, midstream processing, pipeline transportation, and oil field service companies. The Association also represents affiliated companies offering oil and gas related legal, accounting, oilfield services, and consulting services. Eighty-five percent of the oil and gas companies operating in Wyoming are classified as small businesses.

Western Energy Alliance (Alliance) represents 200 member companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. The Alliance represents independent oil and gas producers, the majority of which are small businesses with an average of fourteen employees.

**Statement of Reasons**

On December 20, 2022 the Wyoming BLM announced an oil and natural gas lease sale to be held during the third quarter of 2023. The initial sale list identified 115 parcels covering approximately

95,471 acres as available. On June 16, 2023 the BLM opened a public protest period on its second draft EA, Finding of No Significant Impact and Notice of Lease Sale. The proposed sale list has been whittled down to 81 parcels encompassing 67,183 acres.

The BLM proposed a substantially similar sale in its first draft EA and draft FONSI. The Associations argued that the BLM was deferring these parcels not based on deficiencies in their respective Resource Management Plans (RMP) but based on policy positions which have not gone through the necessary Administrative Procedures Act (APA) process. The BLM is continuing to propose deferral of 23 parcels due to a Greater Sage-Grouse prioritization process which does not align with how sagebrush habitat is intended to be managed. Four additional parcels are proposed for deferral based on an even broader interpretation from the BLM on lands it considers important to fish and wildlife habitats and connectivity areas. The BLM has provided insufficient justification substantiating these deferrals and has not justified why the in-effect RMPs and successive analyses are incapable of remedying any perceived issues.

The resulting deferrals are arbitrary and capricious under the APA. These actions are not in conformance with the governing RMPs, which designated these acres as open for oil and natural gas development, which violates the Federal Land Policy and Management Act (FLPMA).

The BLM's regulations allow for protests regarding deferral of lease parcels. 43 C.F.R. § 3120.1-3 – titled Protests and appeals provides:

No action pursuant to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale. The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale.

Only the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good and just cause after reviewing the reason(s) for an appeal.

The Protests and appeals regulation authorizes BLM to defer parcels while considering a protest and does not otherwise prohibit BLM from revisiting its proposed deferral of parcels. The regulation does not diminish BLM's regulatory authority and discretion to offer a parcel for sale that has been properly nominated, noticed to the public with all applicable stipulations and analyzed under a Lease Sale EA.

The EA and FONSI issued in June propose deferral of numerous parcels that are eligible and should be offered for lease, including parcels within and adjacent to existing oil and natural gas units and producing fields, where deferral is not supported by the administrative record or the governing RMPs.

### **Interest in Filing This Protest**

The Associations represent the industry that is the most directly and substantially impacted by BLM's decision-making for the Wyoming 3<sup>rd</sup> quarter lease sale. On average, 73 percent of the oil and natural gas in Wyoming is produced from the federally-managed mineral estate. Our members have a profound interest in pursuing orderly development, achieving maximum recovery of oil and natural gas, while attaining the highest environmental benefit. For this to occur, BLM must offer parcels that have been deemed available and eligible in their respective RMPs and upon which this industry has indicated an interest in leasing.

## **Prior Comments on the Wyoming BLM 3<sup>rd</sup> Quarter Lease Sale**

The Associations commented extensively to the Wyoming BLM on this lease sale, first during the scoping period in individual letters addressed to State Director Archuleta dated January 19, 2023 and again during the comment period for the first draft EA in separate letters addressed to State Director Archuleta dated April 10, 2023.

### **Issues being Protested**

The Associations are protesting the proposed unsubstantiated deferral of parcels overlaying Greater Sage-Grouse (GRSG) Priority Habitat Management Areas (PHMA) and the deferral of four parcels based on unsupported use of policy directives outlined in Instruction Memorandum 2023-007-Evaluating Competitive Oil and Gas Lease Sale Parcels for Future Lease Sales.

In addition to protesting the deferred parcels, the Associations are protesting the BLM's lack of process to remove parcels from deferred status.

### Greater Sage-Grouse Prioritization

The BLM is proposing to defer 23 parcels due to a new GRSG habitat prioritization process it is utilizing (Attachment 1). Many of the parcels have active development in proximity to or adjacent to other parcels for which companies have submitted an Expression of Interest (EOI). All fall within an area with authorized Environmental Impact Statements. The BLM's reasoning to defer these parcels is based on their location in PHMA together with the statement that "The rationale to defer these parcels is based upon the population and/or habitat concerns..."<sup>1</sup>

The BLM states that the prioritization process is based on information found in the 2015 GRSG RMP amendments, with additional criteria incorporated from various lawsuits that challenged BLM decision-making for leasing parcels in GRSG habitat. The BLM does not provide sufficient information as to what it has specifically incorporated into its prioritization process from court decisions. The BLM also fails to explain in what way the RMP provisions are insufficient to mitigate any perceived risks and the indications or thresholds it deems significant when considering the habitat or population metrics that have prompted these deferrals.

Soft or hard triggers are initially identified by Greater Sage-Grouse Local Working Groups (LWG) and, if determined to warrant additional review, are forwarded to the Statewide Adaptive Management Working Group (SAMWG), of which BLM is a member. The SAMWG, Wyoming Game & Fish Department (WGFD) biologists, and others review the proposals to determine if there is an identifiable factor causing negative trends in population. Just last year, LWGs from across the state conducted reviews and submitted individual reports to the SAMWG. Upon detailed review, the SAMWG did not conclude that oil and natural gas development and production activities were having impacts on the identified PHMAs.<sup>2</sup> Based on this process and science-based detailed review, the Associations fail to understand what other information the BLM is incorporating to determine that oil and natural gas leasing should not occur on these listed parcels.

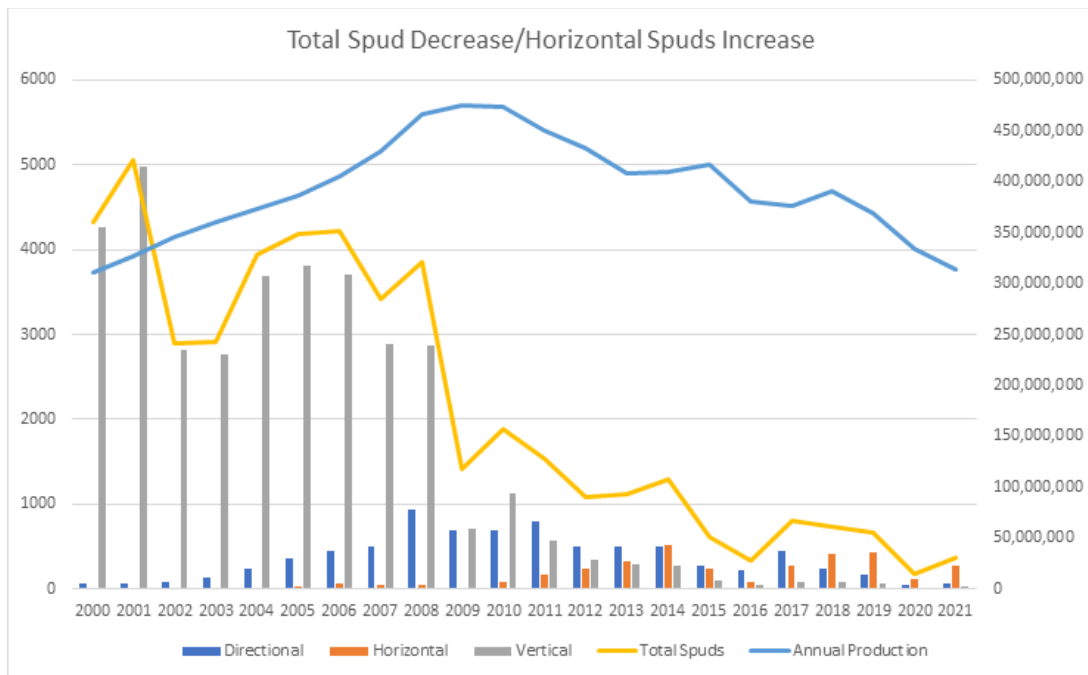
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<sup>1</sup> Page 17, Draft Environmental Assessment, DOI-BLM-WY-0000-2023-0003-EA

<sup>2</sup> Strike Team Final Report to the Sage Grouse implementation Team, December 27, 2022. Wyoming Sage-grouse Strike Team Final Report on Causal Factors and Recommendations for Areas of Concern within the Hanna, Natrona, Blacks Fork, Sage, South Rawlins, and Washakie Core Areas

The BLM’s draft EA applied all appropriate lease stipulations on the parcels nominated for sale. The RMPs have achieved the objective of prioritizing areas outside of habitat for leasing and development over those in GHMA and PHMA by virtue of the onerous restrictions applied. In fact, IM 2016-143 reiterates that leasing is still allowed in GRSG priority habitat with appropriate stipulations, an outcome consistent with BLM’s multiple use mandate.

In addition to the lack of science-based decision-making, the Associations offer the following for BLM to consider in its prioritization process. BLM should give greater consideration to the significant technological advances in horizontal drilling that have been made in Wyoming since 2015.<sup>3</sup> One example can be observed by the average horizontal well in the Powder River Basin, which is now drilled to depths of approximately two miles and at a lateral distance approaching three miles. These significant distances and more prominent use of multi-well pads results in substantially less surface disturbance while increasing production efficiency. The following graph details how horizontal and directional drilling has replaced vertical wells over the past decade:



In the year 2000, over 4,000 wells were spud in Wyoming and the following year (2001) saw combined oil and natural gas production of 327 million barrels of oil equivalent (BOE). In 2019, just over 650 wells were spud, and the production in 2020 was 334 million BOE. That is a nearly 85 percent reduction in the number of wells spud while production of oil and natural gas in 2020 exceeded 2001.

Further, it’s important to emphasize that vertical wells, more prevalent in the 2000’s, were drilled on single-well pads. Directional and horizontal wells, becoming more prevalent around 2010, have multiple wells per pad. Only considering well count is no longer a surrogate for surface disturbance. The number of pads required to recover the same amount of hydrocarbons is even less than the aforementioned reduction in well count total from 2001 to 2019.

<sup>3</sup> This was the year during which the initial Greater Sage-Grouse RMP amendments were issued.

The decrease in surface disturbance and access roads created by the transition to horizontal drilling, and the reduction in habitat fragmentation as a result, needs to be accounted for by the BLM in the draft EA. BLM has not accounted for the fact that horizontal drilling has reduced surface disturbance by up 70% in Wyoming.<sup>4</sup> The BLM did not reconcile this fact with the process for leasing in GHMA and PHMAs but instead has arbitrarily deferred numerous parcels.

In addition to lessening disturbance, this industry has invested significant time and resources to improve reclamation practices. Companies are required to reclaim well sites after initial surface disturbance, with 70 to 80 percent of well pads entering interim reclamation within one year after construction. Nearly 100 percent of pipeline disturbance undergoes reclamation soon after initial disturbance. There have been efforts in the last decade for reclamation to go beyond site stabilization, erosion control and prevention of noxious and invasive weed species towards restoring lands to suitable wildlife habitat with emphasis on the Greater Sage-Grouse. The BLM should recognize these advancements and adapt with them.

As such, the Associations disagree with BLM's decision to defer these parcels. The BLM's decision is arbitrary and capricious given the stipulations applied to PHMA (e.g., No Surface Occupancy) and the fact that these parcels can be developed with long horizontal lateral wells that would result in no surface disturbance on the surface of those parcels.

#### Instruction Memorandum 2023-007 – Criteria 2 – Habitat and Connectivity Areas

The BLM has identified four parcels it proposes to defer because, “concerns and/or recommendations from the different Sage-Grouse Local Working Groups regarding sage-grouse population status on certain leks within the area and/or to help preserve movement between leks, habitats or genetic diversity.” These parcels are identified in Attachment 2. The Associations direct the BLM to our arguments in the Greater Sage-Grouse Prioritization section above.

Further, the Associations fail to differentiate between the BLM's decision-making under IM 2023-007 and prioritization based on the 2015 RMP amendments. The BLM is seemingly using the IM to give itself broader discretion to defer leases than what it can afford itself under its own prioritization process, with little justification to support it. The Associations argued this issue in our protest on the Q2 2023 lease sale. In its Response to Comments, the BLM stated that deferrals based on criteria identified in IM 2023-007 were discussed with the BLM Headquarters Office and based upon RMPs or in conformance with the IM.<sup>5</sup> That statement appears to conflict with the APA and decisions made in RMPs. Specifically what criteria in the RMPs are being used? And being in conformance with an IM to defer parcels because of the IM is a nonsensical argument. None of this is an adequate basis to defer parcels which are available for leasing.

The Associations are gravely concerned by the BLM's reliance upon Local Working Group recommendations during its internal review and decision-making for lease sales. The BLM needs to instead coordinate with the WGFD, the entity with jurisdiction and subject matter expertise to make decisions on stipulations for development in GRSG habitat. Or again as expressed above, the BLM

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<sup>4</sup> [“Oil and gas impacts on Wyoming's sage-grouse: summarizing the past and predicting the foreseeable future,”](#) *Human-Wildlife Interactions Vol. 8 No 2*, Dave H. Applegate and Nick L. Owens, 2014, p. 284-290.

<sup>5</sup> 2023-06.20230626.1248.WSO.921.Protest Response FNL signed. Page 11.

should base its decisions on recommendations from the SAMWG. It's important to note that neither WGFD nor SAMWG has expressed a need to deviate from the 2015 GRSR RMP amendments.

In its April 5, 2023 comment letter to BLM, WGFD clearly noted that the final report to SAMWG did not attribute oil and gas activities as a causal factor for concerns in the area<sup>6</sup>. LWG recommendations are one step in the process, not the final decision. WGFD further requested the BLM provide specific information it relied upon from the LWGs as part of its IM 2023-007 analysis. The Associations request the same.

### **Parcels in Deferral Status**

From 2021 to date, the BLM has proposed to offer 830 parcels in Wyoming covering 954,281 acres. During this time, the BLM has deferred 462 of these parcels, encompassing 586,846 acres. In each environmental analysis, the BLM has stated that, though deferred, the parcels may become available again in subsequent lease sales. To the Associations' knowledge, not one previously deferred parcel has subsequently been made available. The BLM has expressed no process in place to remedy the offered deficiencies prompting deferral. As we stated at the beginning of this protest letter, in order for our industry to conduct deliberate development, access to federal minerals is essential. The parcels nominated through EOIs are deemed as such. We urge an immediate remedy to this issue from the BLM.

### **Conclusion**

The Associations expect sincere consideration of the issues identified in this letter and look forward to BLM's appropriate reconsideration of the aforementioned deferrals.

Sincerely,



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cc: The Honorable John Barrasso, U.S. Senate, State of Wyoming  
The Honorable Cynthia Lummis, U.S. Senate, State of Wyoming  
The Honorable Harriet Hageman, U.S. House of Representatives, State of Wyoming  
The Honorable Mark Gordon, Governor, State of Wyoming

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<sup>6</sup> Wyoming Game and Fish Department, April 5, 2023 letter to the BLM on DOI-BLM-WY-0000-0003-EA. Reference wer9580.70a\_Signed Letter

## Attachment 1 – Greater Sage-Grouse Deferral due to Prioritization

Parcel No.	Additional Commentary
WY-2023-09-1601	This parcel is in an area with multiple producing wells, multiple permits awaiting approval, significant acreage currently under lease from the BLM and within an authorized EIS.
WY-2023-09-1611	This parcel adjoins acres currently under lease from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1629	This parcel adjoins acres currently under lease from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1630	This parcel is within an area of high oil and gas potential and within an authorized EIS.
WY-2023-09-1631	This parcel is surrounded by acres currently leased from the BLM for oil and gas development, has producing wells in the area and is within an authorized EIS.
WY-2023-09-1652	This parcel is surrounded by acres currently leased from the BLM for oil and gas development, has producing wells in the area and is within an authorized EIS.
WY-2023-09-1654	This parcel adjoins acres currently leased from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1656	This parcel is surrounded by acres currently leased from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1658	This parcel adjoins acres currently under lease from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1661	This parcel is surrounded by acres currently leased from the BLM for oil and gas development, has producing wells in the area and is within an authorized EIS.
WY-2023-09-1677	This parcel adjoins acres currently under lease from the BLM for oil and gas development and is within an authorized EIS.

WY-2023-09-1685	This parcel adjoins acres currently leased from the BLM for oil and gas development, has producing wells in the area and is within an authorized EIS.
WY-2023-09-1687	This parcel adjoins acres currently under lease from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1688	This parcel adjoins acres currently under lease from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1689	This parcel is surrounded by acres currently leased from the BLM for oil and gas development, has producing wells in the area and is within an authorized EIS.
WY-2023-09-1690	This parcel adjoins acres currently under lease from the BLM for oil and gas development, has multiple producing wells in the areas and is within an authorized EIS.
WY-2023-09-1704	This parcel is surrounded by acres currently leased from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1709	This parcel adjoins acres currently under lease from the BLM for oil and gas development, has multiple producing wells in the areas and is within an authorized EIS.
WY-2023-09-1719	This parcel adjoins acres currently under lease from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1728	This parcel is surrounded by acres currently leased from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1732	This parcel is surrounded by acres currently leased from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1779	This parcel adjoins acres currently under lease from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1781	This parcel is surrounded by acres currently leased from the BLM for oil and gas development, has producing wells in the area and is within an authorized EIS.



## Attachment 2 – IM 2023-007 Criteria 2 – Parcels Proposed for Deferral

Parcel No.	Additional Commentary
WY-2023-09-1600	This parcel is surrounded by acres currently leased from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1628	This parcel adjoins acres currently leased from the BLM for oil and gas development and is within an authorized EIS.
WY-2023-09-1721	This parcel is in an area with multiple producing wells.
WY-2023-09-1773	This parcel is in an area with multiple producing wells, multiple permits awaiting approval, significant acreage currently under lease from the BLM and within an authorized EIS.