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October 19, 2023

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

**Re: Protest of BLM Proposed Fourth Quarter 2023 Oil and Natural Gas Lease Sale and Draft Environmental Assessment and Draft Finding of No Significant Impact – DOI-BLM-WY-0000-2023-0004-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 fourth 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 (the Alliance) is the leader and champion for independent oil and natural gas companies in the West. Working with a vibrant membership base for over 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. Most independent producers are small businesses, with an average of fourteen employees.

## Statement of Reasons

On March 16, 2023 the Wyoming BLM announced an oil and natural gas lease sale to be held during the fourth quarter of 2023. The initial sale list identified 47 parcels covering approximately 46,250 acres as available. On September 19, 2023 the BLM opened a public protest period on its second draft Environmental Assessment (EA), Finding of No Significant Impact and Notice of Lease Sale. The proposed sale list has been reduced to 39 parcels encompassing 36,673 acres.

Though the number of parcels proposed for deferral is not as significant as in prior lease sales, the BLM's lack of adherence to anything resembling the rule of law is substantial. The Associations had argued that the five parcels originally proposed for deferral were not based on deficiencies in their respective Resource Management Plans (RMP) but based on policy positions which have not gone through the necessary Administrative Procedure Act (APA) process. In the draft environmental assessment issued on May 19, 2023 the BLM proposed to defer five parcels:

- WY-2023-12-1350 based on IM 2023-007, Criteria #1 (proximity to existing development);
- WY-2023-12-1451 based on Greater Sage-grouse prioritization;
- WY-2023-12-1499 based on Greater Sage-grouse prioritization;
- WY-2023-12-1530 based on Greater Sage-grouse prioritization; and
- WY-2023-12-7243 based on Greater Sage-grouse prioritization.

With the issuance of this second draft EA, the BLM is proposing to defer parcels that all center on one theme – the State Director having full discretion to determine how the oil and gas program should operate. Using various labels for cover, the BLM is now proposing to defer eight parcels. The Associations strongly note the intentional action by the BLM to defer every lease within the Rock Springs Field Office.

The leases now proposed for deferral include:

- WY-2023-12-1350 based on IM 2023-007, Criteria #1 (proximity to existing development);
- WY-2023-12-1404 based on State Director Discretion;
- WY-2023-12-1407 based on State Director Discretion;
- WY-2023-12-1451 based on IM 2023-007, Criteria #2 (GSG habitat/connectivity);
- WY-2023-12-1499 based on Greater Sage-grouse prioritization;
- WY-2023-12-1515 based on State Director Discretion;
- WY-2023-12-1530 based on Greater Sage-grouse prioritization; and
- WY-2023-12-7243 based on IM 2023-007, Criteria #2 (GSG habitat/connectivity).

Three parcels are proposed for deferral for the same reason given in May, Greater Sage-Grouse (GRSG) prioritization and proximity to existing development<sup>1</sup>. The BLM has changed its reason for deferral of two parcels from GRSG prioritization to their claimed location in GRSG

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<sup>1</sup> WY-2023-12-1350, WY-2023-12-1499 and WY-2023-12-1530

connectivity areas<sup>2</sup>. The BLM has also included three new parcels for deferral due to the State Director's view of their low preference.<sup>3</sup>

The 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. This is a violation of 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 authorize 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.

This EA and FONSI issued in September 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 oil and natural gas industry, which is the most directly and substantially impacted by BLM's decision-making for the Wyoming 4<sup>th</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 4<sup>th</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 April 17, 2023 and again during the comment period for the first draft EA in letters addressed to State

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<sup>2</sup> WY-2023-12-1451 and WY-2023-12-7243

<sup>3</sup> WY-2023-12-1404, WY-2023-12-1407, and WY-2023-12-1515

Director Archuleta dated June 20, 2023. New issues have been presented with the issuance of this second draft EA, which the Associations address in this protest.

### **Issues being Protested**

The Associations are protesting the unsubstantiated proposal to defer two parcels based on GRSG prioritization, the use of State Director Discretion to defer an additional three parcels, deferral of one parcel based on proximity to existing development and the BLM's deferral of two parcels in GRSG connectivity. The Associations are also protesting the BLM's intentional and arbitrary decision to defer every parcel offered in the Rock Springs Field Office.

In addition to protesting these deferred parcels, the Associations are protesting the BLM's recently acknowledged process to decide which parcels will be offered, deferred, and how deferred parcels may be made available in subsequent lease sales.

### Greater Sage-Grouse Prioritization<sup>4</sup>

The BLM is proposing to defer two parcels due to a GRSG habitat prioritization process that does not adhere to the process in effect. The BLM has identified three prior court cases in which oil and natural gas leasing in GRSG habitat was a subject challenged but the BLM does not explain what opinions in those prior cases have prompted the need to revise its prioritization process. These parcels are adjacent to each other and are located in an area with authorized oil and natural gas leases and active wells. There has been no evidence to support that oil and natural gas activities are having a negative effect on GRSG populations in this area, rendering the BLM's reason for deferral baseless. The BLM does outline its process of reviewing parcels with consideration to prioritizing among GRSG habitat but it did not indicate what trigger within that process prompted deferral. The BLM also fails to explain how RMP provisions are insufficient to mitigate any perceived risks.

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 proposed triggers 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 are having impacts on the identified PHMAs.<sup>5</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.

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

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<sup>4</sup> Attachment 1

<sup>5</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

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. The Associations disagree with BLM's decision to defer these parcels.

#### State Director Discretion<sup>6</sup>

New in this draft EA is the BLM's miraculous finding that three additional parcels warrant deferral. Each parcel was deferred using State Director Discretion. At least here, the BLM did provide justification for proposing deferral:

*...three (3) parcels have an overall low preference for leasing based on State Directors discretion.<sup>7</sup>*

This is the entirety of the BLM's justification, that the State Director simply does not like these parcels. Nothing in rule, regulation or law could allow the BLM to veer so greatly, with such subjective and sparse explanation, from how it is to manage lands according to their RMPs. The acres underlying these parcels have been identified as available for oil and natural gas leasing. The Mineral Leasing Act commands the BLM to encourage development of our nation's mineral resources. These are not lands that a State Director can simply toss without substantiating a serious issue.

#### Instruction Memorandum 2023-007 – Criteria 1 – Proximity to Existing Oil and Natural Gas Development<sup>8</sup>

The BLM is proposing to defer one parcel in this sale under the shade of Instruction Memorandum 2023-007. Criteria #1 within this IM encourages the BLM to defer parcels which generally have no active development or oil and gas infrastructure within five miles. The Associations note that the maps provided by the BLM only extend a couple of miles, rendering the public incapable of verifying the BLM's justification.

Deferring parcels based on this criterion is the BLM's attempt to eliminate speculative oil and natural gas development on public lands. What the BLM sees as speculation is known as exploration by this industry. Exploration is a fundamental aspect of this industry and necessary for continued drilling programs in exploratory areas. It is how new resources are found and developed. Every field producing today started as an exploratory area. It is the process the industry has used to ultimately establish productive oil and natural gas basins and to expand the boundaries of existing development.

Ending exploration is not a directive of the BLMs. Again, the BLM has a duty to adhere to the in effect RMPs and offer lands for oil and natural gas leasing which have been identified as available. If the BLM believes it has full discretion to operate this program as it sees fit, the Associations counter and ask, if that is the case, then what need does the BLM have for revising

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<sup>6</sup> Attachment 2

<sup>7</sup> Page 19, Draft Environmental Assessment, DOI-BLM-WY-0000-2023-0004-EA

<sup>8</sup> Attachment 3

RMPs? If the BLM can change management decisions on a whim, what's the point of land use planning, public involvement, and coordination with state and local governments?

#### Instruction Memorandum 2023-007 – Criteria 2 – Habitat and Connectivity Areas<sup>9</sup>

The BLM is using Criteria #2 to defer two parcels due to their location in a GRSG connectivity area. In its first draft EA issued in May, the BLM had proposed to defer these parcels due to GRSG prioritization. The Wyoming Game and Fish Department wrote to the BLM, asking that it identify:

*for each of the lease sale parcels which meet the criteria for deferral under the Greater Sage-Grouse prioritization process, at what point in the evaluation described in section 4.3, these parcels meet the criteria for deferral consideration.<sup>10</sup>*

The BLM could not do this. Attempting to continue deferral of these parcels, the BLM countered by alleging deferral is actually justified “based on the parcels being situated in a high probability genetic connectivity corridor based on figures presented in Cross et al (2023)”. The maps the BLM provided<sup>11</sup> do not show these two parcels being in a connectivity corridor. Wyoming Executive Order 2019-3, which the BLM incorporated into their 2015 RMP's upon which these decisions must be based, does not have any GRSG connectivity areas designated in this part of the state.

#### Parcels Deferred in the Rock Springs Field Office<sup>12</sup>

From issuance of the initial list of parcels to now, the BLM has deferred every parcel located in the Rock Springs field office. The BLM used multiple avenues to achieve this outcome (State Director Discretion, GRSG Prioritization, and GRSG Connectivity) but each was not supported by verifiable reasons or statute commanding such action be taken. In its recently released Rock Springs RMP revision, the BLM has selected as its preferred alternative the one that stresses conservation of public lands. Part of achieving that objective would be to not allow for oil and natural gas development on any lands not already leased. In order to adhere to that yet-to-be finalized management objective, the State Director used this unbounded discretion and has removed leases from consideration.

For the following reasons, deferral of these leases is without merit and not supported by applicable case law or BLM policies. The BLM has full discretion to continue leasing parcels pending completion of the land use plan update process.

The Interior Board of Land Appeals (IBLA) has rejected the argument that the BLM must suspend action in conformance with an existing land use plan when it decides to prepare a new plan. See *S. Utah Wilderness Alliance*, 163 IBLA 14, 28 (2004); *Sierra Club Legal Defense Fund, Inc.*, 124 IBLA 130, 140 (1992). The IBLA has also specifically held that the BLM is not

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<sup>9</sup> Attachment 4

<sup>10</sup> BLM Response to Comments, comment #89

<sup>11</sup> Attachment 7.1, Parcel Specific Maps (Wildlife), page 25

<sup>12</sup> Attachment 5

required to suspend oil and natural gas leasing pending the RMP update process. See Wyoming Outdoor Council, 156 IBLA 377, 384 (2002).

This tenet of land use planning law is also firmly established in BLM's existing guidelines and policies. The BLM's Land Use Planning Handbook provides that "[e]xisting land use plans decisions remain in effect during an amendment or revision until the amendment or revision is completed and approved." H-1601-1, VII. E. at 47.

Moreover, federal court and IBLA legal precedent reiterate that under FLPMA, the BLM can continue to authorize proposed actions in conformance with an existing RMP, while the RMP is in the process of being revised. See *ONRC Action v. BLM*, 150 F.3d 1132, 1138 (9th Cir. 1998) (rejecting the notion that BLM is precluded from taking specific action pending revision of an RMP, even when revision is warranted.); *Biodiversity Associates v. United States Forest Service*, 226 F. Supp. 2d 1270, 1308 (D. Wyo. 2002); *Wyoming Outdoor Council*, 156 IBLA 377, 384 (2002) (citing *Sierra Club Legal Defense Fund, Inc.*, 124 IBLA 130, 140 (1992), in which IBLA rejected the argument that BLM must suspend action in conformance with an existing land use plan when it decides to prepare a new plan).

In sum, the BLM is not required to defer leasing pending the update of the RMPs. The BLM has full authority to offer these parcels for lease.

### **Parcels in Deferral Status**

In the Associations' protest of the Q3 oil and natural gas lease sale, we requested that the BLM provide information on the process it will use to remove parcels in deferral status in order for them to be available for sale. In the BLM's response to comments<sup>13</sup>, it stated:

- Any of the analyzed parcels may be added or deferred until the time of the sale at the discretion of the state director; and
- Deferred parcels are re-evaluated at the earliest time possible to determine whether the reason for the deferral has been resolved.

What these statements say is that parcels may be deferred simply on State Director discretion and in order for the parcels to be made available at a future date, the State Director only need to change his mind with regard to his preference to lease or not lease the parcel. This flies in the face of how public lands are to be managed for the public through FLPMA.

### **Conclusion**

As the Associations have put the BLM in the position of having to explain the reasons behind its actions, the BLM comes up with ever more vague reasons. This lease sale, with a comparatively minimal number of parcels proposed for deferral, is perhaps the most egregious example that we've witnessed. There is no basis in law granting the BLM the authority to completely dismiss decisions made in resource management plans. Each label given for deferral is backed with no justification. Making decisions on a yet-to-be finalized RMP objectives is contrary to FLPMA and BLM policy. And the BLM's explanation of its authority to offer or defer leases shows it has

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<sup>13</sup> 2023-09 Response to Public Protest, comment #2 and #8

completely disregarded the laws of this nation and has taken management of public lands away from the public.

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

<b>Parcel No.</b>
WY-2023-12-1499
WY-2023-12-1530

**Attachment 2 – Deferral due to State Director Discretion**

<b>Parcel No.</b>
WY-2023-12-1401
WY-2023-12-1407
WY-2023-12-1515

## **Attachment 3 – Deferral due to IM 2023-007 Criteria #1 (Proximity)**

**Parcel No.**

WY-2023-12-1350

**Attachment 4 – Deferral due to IM 2023-007 Criteria #2  
(Connectivity)**

<b>Column2</b>
WY-2023-12-1451
WY-2023-12-7243