

May 1, 2023

Submitted via eplanning.blm.gov

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

Re: Protest of BLM Proposed Second Quarter 2023 Oil and Natural Gas Lease Sale and Draft Environmental Assessment – DOI-BLM-WY-0000-2023-0001-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 second quarter oil and natural gas lease sale in accordance with 43 C.F.R § 3120.1-3. The Associations also submit additional comments for the administrative record in response to changes from the original draft lease sale EA to the second draft EA and associated finding of no significant impact (FONSI).

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 Explaining the State Director's Decisions Are Incorrect

When Wyoming BLM announced on October 6, 2022 an oil and natural gas lease sale for the second quarter of 2023, it listed 208 parcels covering approximately 250,910 acres as available.¹ Upon issuance of the second draft EA and Notice of Lease Sale on March 23, 2023, the offering has been whittled down to 116 parcels encompassing 127,014 acres. The BLM reduced the available acreage by almost half through insufficient analysis, arbitrary justifications and criteria far more restrictive than contemplated in the current Resource Management Plans (RMPs). The resulting deferrals are arbitrary and capricious under the Administrative Procedure Act (APA). These actions are not in conformance with the governing RMPs, which designated these lands as open for oil and natural gas development, which is a violation of the Federal Land Policy and Management Act (FLPMA).

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 March 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 impacted by BLM's decision-making for the Wyoming 2nd quarter lease sale. On average over the last ten years, 73 percent of the oil and natural gas in Wyoming has been produced from the federally-managed mineral estate. As such, 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 2nd Quarter Lease Sale

The Associations commented extensively on the Wyoming BLM on this lease sale, first during the scoping period in individual letters addressed to State Director Archuleta dated November 7, 2022 and,

¹ There was one additional parcel initially offered for sale in Nebraska, totaling 40 acres, upon which the Association's have no position.

again during the comment period for the draft EA in separate letters addressed to State Director Archuleta dated January 23, 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 General Habitat Management Areas (GHMA), and BLM's incorrect application of GRSG Winter Concentration Area Stipulations to 78 parcels in the draft EA and 20 parcels in the Notice of Lease Sale. BLM also proposes to defer 44 parcels in the draft EA due to presumed low reasonably foreseeable development potential. This action has only come to light with the issuance of the second draft EA. The Associations were unable to address these deferrals in our prior comments but are doing so now at the first opportunity.

Greater Sage-Grouse Prioritization

BLM is proposing to defer 30 lease parcels due to a new GRSG habitat prioritization process it is utilizing (Attachment 1). Twenty-one of those parcels are located in areas of high development potential. 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). BLM's reasoning to defer these parcels is based on their location in PHMA together with the statement that they "are located in an area in which a habitat and/or population metric indicates a need for further review".²

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. BLM does not provide sufficient information as to what it has specifically incorporated into its prioritization process from the Court decisions. BLM also fails to explain in what way the RMP provisions are insufficient to mitigate any perceived risks and the indications or threshold 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.³ Based on this process and science-based detailed review, the Associations fail to understand what other information BLM is incorporating to determine that oil and natural gas leasing should not occur on the listed parcels.

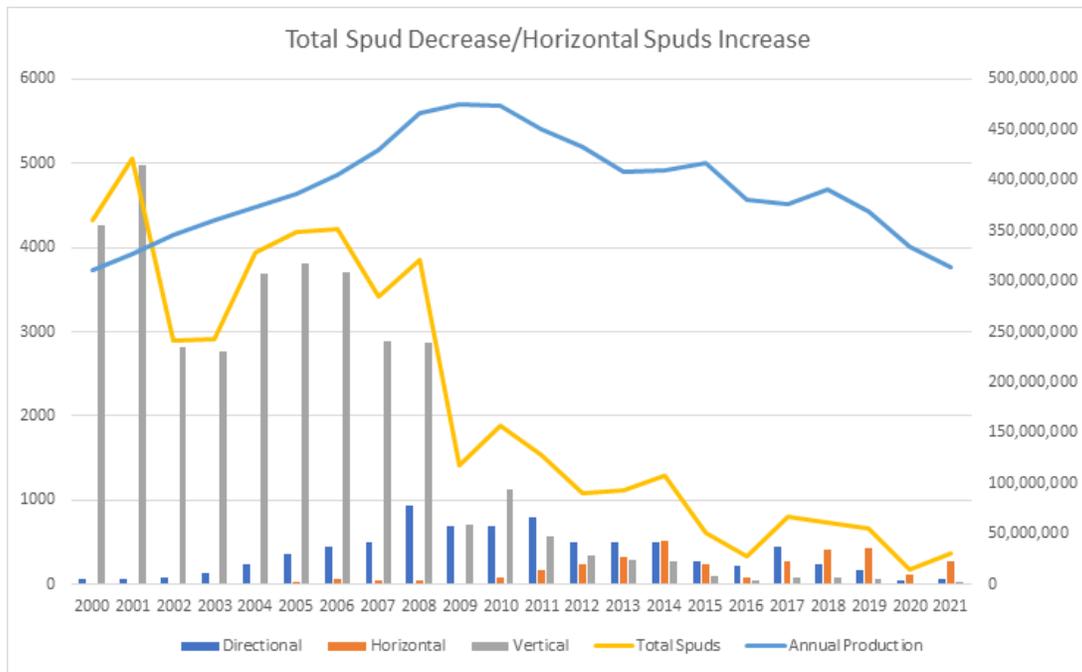
BLM's draft EA applied all appropriate lease stipulations on the parcels nominated for sale. The RMPs have achieved the objective of prioritizing areas outside of habitat for leasing and development over those in GHMA and PHMA by virtue of the onerous restrictions applied. In fact, IM 2016-143 reiterates

² Page 73, Draft Environmental Assessment, DOI-BLM-WY-0000-2023-0001-EA

³ 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

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 2015.⁴ 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. Despite one-sixth as many wells being spud, 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.

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 BLM in the draft EA. The BLM did not reconcile this fact with the process for leasing in GHMA and PHMAs but instead has arbitrarily deferred numerous parcels.

⁴ This was the year during which the initial Greater Sage-Grouse RMP amendments were issued.

As such, the Associations disagree with BLM's decision to defer these parcels. 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.

Greater Sage-Grouse – Winter Concentration Areas – Stipulation WY SW TLS PHMAWCA

BLM needs to remove the improper application of the stipulation for GRSG winter concentration areas to several parcels in the EA. In its scoping letter dated December 12, 2022, the WGFD informed BLM of the improper inclusion of Stipulation WY SW_TLS_PHMAWCA BLM to 26 parcels. In the draft EA, BLM has incredibly applied that stipulation to 78 parcels (Attachment 2). In the Notice of Lease Sale, 20 parcels have this stipulation applied (Attachment 3). No parcels under consideration in the draft EA, or by extension the Notice of Lease Sale, are within identified Winter Concentration Areas, as such the stipulation needs to be removed.

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

BLM has identified 18 parcels it proposes to defer because, “The rationale to defer these parcels is based upon 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 4. The Associations direct BLM to our arguments in the Greater Sage-Grouse Prioritization section above. The Associations fail to differentiate between BLM's decision-making under IM 2023-007 and prioritization based on the 2015 RMP amendments. 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 are gravely concerned by BLM's reliance upon Local Working Group recommendations during its internal review and decision-making for lease sales. BLM needs to instead coordinate with the WGFD, the entity with knowledge and jurisdiction to make decisions on stipulations for development in GRSG habitat. Or again as expressed above, BLM should consider recommendations from the SAMWG. It's important to note that neither WGFD nor SAMWG has expressed a need to deviate from the 2015 GRSG RMP amendments.

To put a finer point on this, we reference BLM's use of LWG recommendations to defer certain parcels in the Wyoming Q3 lease sale. 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.⁵ LWG recommendations are one step in the process, not the final decision. WGFD further requested BLM provide specific information it relied upon from the LWGs as part of its IM 2023-007 analysis. The Associations request the same.

Instruction Memorandum 2023-007 – Criteria 5 – Reasonably Foreseeable Development

In Table 4.9 of the EA, BLM identifies 44 parcels it is proposing to defer due to IM 2023-007 – Criteria 5 that prioritizes consideration of the reasonably foreseeable development potential of underlying

⁵ Wyoming Game and Fish Department, April 5, 2023 letter to the BLM on DOI-BLM-WY-0000-0003-EA. Reference wer9580.70a_Signed Letter

minerals. In Table 2.3, BLM indicates that 27 of these parcels “have a low development potential based on the RMPs; however, through additional review these parcels are located near existing development and therefore the field offices determined evaluated (sic) these parcels as having an overall high preference for leasing” (Attachment 5). Even with the stated intention of considering these parcels as high for leasing, BLM ultimately deferred these 27 parcels with no additional context provided. The Associations note that, of the 27 parcels, five appear to have ultimately been deferred under the umbrella of GRSG prioritization and one was deferred due to remaining consultation requirements with the U.S. Army Corps of Engineers. These inconsistencies obfuscate the true reason for deferral, even in context to the vagueness of the current explanations. Under its existing policies and requirements, BLM should make these parcels available for leasing.

The Associations reviewed the remaining 23 parcels deferred under this category (Attachment 6) against BLM’s Existing Development Map and determined the decision to defer these parcels is arbitrary. Many of the parcels border currently authorized oil and natural gas leases, are within Participation Areas, have active wells in their proximity, are within areas with completed project EISs, or border other parcels BLM is intending to offer at the Q2 lease sale. The Associations are unable to identify sufficient justification for deferral of a single one of these parcels. Information specific to each parcel can be reviewed in Attachment 6.

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

Attachment 1 – Greater Sage-Grouse Deferral due to Prioritization

Parcel No.
WY-2023-06-1335
WY-2023-06-1336
WY-2023-06-1349
WY-2023-06-1354
WY-2023-06-1359
WY-2023-06-1429
WY-2023-06-1439
WY-2023-06-1446
WY-2023-06-1448
WY-2023-06-1453
WY-2023-06-1455
WY-2023-06-1457
WY-2023-06-1459
WY-2023-06-1463
WY-2023-06-1464
WY-2023-06-1465
WY-2023-06-1491
WY-2023-06-1492
WY-2023-06-1500
WY-2023-06-1511
WY-2023-06-1539
WY-2023-06-1540
WY-2023-06-1542
WY-2023-06-1558
WY-2023-06-1560
WY-2023-06-7242
WY-2023-06-7246
WY-2023-06-7255
WY-2023-06-7259
WY-2023-06-1456

Attachment 2 – Winter Concentration Area Stipulation in Draft EA

Parcel No.	Parcel No.	Parcel No.
WY-2023-06-1493	WY-2023-06-7224	WY-2023-06-1508
WY-2023-06-1494	WY-2023-06-1426	WY-2023-06-1515
WY-2023-06-1565	WY-2023-06-1430	WY-2023-06-7243
WY-2023-06-1564	WY-2023-06-1434	WY-2023-06-1459
WY-2023-06-1539	WY-2023-06-1444	WY-2023-06-1457
WY-2023-06-1552	WY-2023-06-1447	WY-2023-06-1456
WY-2023-06-1540	WY-2023-06-7225	WY-2023-06-1455
WY-2023-06-7254	WY-2023-06-1425	WY-2023-06-1454
WY-2023-06-1549	WY-2023-06-1429	WY-2023-06-7242
WY-2023-06-7235	WY-2023-06-7227	WY-2023-06-1451
WY-2023-06-1437	WY-2023-06-1520	WY-2023-06-1491
WY-2023-06-1438	WY-2023-06-1521	WY-2023-06-1492
WY-2023-06-1439	WY-2023-06-1522	WY-2023-06-1526
WY-2023-06-1443	WY-2023-06-1523	WY-2023-06-1558
WY-2023-06-1542	WY-2023-06-1478	WY-2023-06-7251
WY-2023-06-1464	WY-2023-06-1448	WY-2023-06-1560
WY-2023-06-1571	WY-2023-06-1446	WY-2023-06-1527
WY-2023-06-1511	WY-2023-06-1449	WY-2023-06-1500
WY-2023-06-1465	WY-2023-06-1452	WY-2023-06-1573
WY-2023-06-7246	WY-2023-06-1506	WY-2023-06-1575
WY-2023-06-1477	WY-2023-06-1507	WY-2023-06-1576
WY-2023-06-1475	WY-2023-06-1497	WY-2023-06-1577
WY-2023-06-1462	WY-2023-06-1498	WY-2023-06-1578
WY-2023-06-7247	WY-2023-06-1530	WY-2023-06-1579
WY-2023-06-1463	WY-2023-06-1365	WY-2023-06-1580
WY-2023-06-7249		

Attachment 3 – Winter Concentration Area Stipulation in Notice of Lease Sale

Parcel No.
WY-2023-06-1552
WY-2023-06-7254
WY-2023-06-1549
WY-2023-06-7235
WY-2023-06-1437
WY-2023-06-1462
WY-2023-06-7247
WY-2023-06-1498
WY-2023-06-1365
WY-2023-06-7225
WY-2023-06-1425
WY-2023-06-7227
WY-2023-06-1449
WY-2023-06-1452
WY-2023-06-1506
WY-2023-06-1507
WY-2023-06-1508
WY-2023-06-1454
WY-2023-06-1526
WY-2023-06-7251

Attachment 4 – IM 2023-007 Criteria 2 – Parcels Proposed for Deferral

Parcel No.
WY-2023-06-1521
WY-2023-06-1523
WY-2023-06-1520
WY-2023-06-1522
WY-2023-06-1399
WY-2023-06-1402
WY-2023-06-1414
WY-2023-06-1419
WY-2023-06-1422
WY-2023-06-1426
WY-2023-06-1430
WY-2023-06-1434
WY-2023-06-1444
WY-2023-06-1447
WY-2023-06-1478
WY-2023-06-7224
WY-2023-06-1527
WY-2023-06-7249

**Attachment 5 – IM 2023-007 Criteria 5 – Proximate Parcels Incorrectly
Deferred due to Reasonably Foreseeable Development**

Parcel No.
WY-2023-06-1364
WY-2023-06-1477
WY-2023-06-1493
WY-2023-06-1494
WY-2023-06-1497
WY-2023-06-1355
WY-2023-06-1337
WY-2023-06-1338
WY-2023-06-1342
WY-2023-06-1343
WY-2023-06-1344
WY-2023-06-1345
WY-2023-06-1346
WY-2023-06-1347
WY-2023-06-1348
WY-2023-06-1327
WY-2023-06-1329
WY-2023-06-1331
WY-2023-06-1332
WY-2023-06-1333
WY-2023-06-1334

Attachment 6 – IM 2023-007 – Criteria 5 – Parcels the BLM has Incorrectly Identified as Not Proximate to Existing Development

Parcel No.	Associations Analysis - Parcel Map Review
WY-2023-06-1340	Map identifies authorized oil and gas leases within .25 miles
WY-2023-06-1350	Map identifies this parcel is within a completed Projects EIS
WY-2023-06-1363	Map identifies this parcel borders authorized oil and gas leases and has active wells within .1 miles
WY-2023-06-1404	Map identifies this parcel borders authorized oil and gas parcels and there are active wells within .5 miles
WY-2023-06-1407	Map identifies this parcel borders an authorized participating area, corners authorized leases and has multiple active wells within .5 miles
WY-2023-06-1438	Map identifies these parcels are within a very active development area, with multiple authorized leases and multiple active wells
WY-2023-06-1443	Map identifies these parcels border authorized leases and active wells within 1 mile
WY-2023-06-1451	Map identifies the BLM is proposing to defer a number of leases in this area, many overlying high potential oil and gas development. However, the BLM has selected a number of various reasons to inconsistently defer parcels (1451-low potential; 1459-prioritization). This parcel is within a completed projects EIS.
WY-2023-06-1475	Map identifies this parcel borders an authorized oil and gas lease and is within a completed projects EIS
WY-2023-06-1499	Map identifies the parcels borders authorized oil and gas leases and borders leases the BLM is proposing to offer at the Q2 sale.
WY-2023-06-1515	Map identifies this parcel borders a lease the BLM is proposing to offer at the Q2 sale and borders authorized oil and gas leases
WY-2023-06-1530	Map identifies the parcels is encircled by authorized oil and gas leases and leases the BLM is proposing to offer at the Q2 sale
WY-2023-06-1565	Map identifies this parcel borders an authorized oil and gas lease and is proximate to parcels the BLM is proposing to offer at the Q2 sale

WY-2023-06-1571	Map identifies parcels 1571 through 1580 and 7258 are in a contiguous area, bordering authorized leases and are intended to allow for development to continue westward. Map also shows active oil and gas wells in the authorized leases.
WY-2023-06-1573	Map identifies parcels 1571 through 1580 and 7258 are in a contiguous area, bordering authorized leases and are intended to allow for development to continue westward. Map also shows active oil and gas wells in the authorized leases.
WY-2023-06-1575	Map identifies parcels 1571 through 1580 and 7258 are in a contiguous area, bordering authorized leases and are intended to allow for development to continue westward. Map also shows active oil and gas wells in the authorized leases.
WY-2023-06-1576	Map identifies parcels 1571 through 1580 and 7258 are in a contiguous area, bordering authorized leases and are intended to allow for development to continue westward. Map also shows active oil and gas wells in the authorized leases.
WY-2023-06-1577	Map identifies parcels 1571 through 1580 and 7258 are in a contiguous area, bordering authorized leases and are intended to allow for development to continue westward. Map also shows active oil and gas wells in the authorized leases.
WY-2023-06-1578	Map identifies parcels 1571 through 1580 and 7258 are in a contiguous area, bordering authorized leases and are intended to allow for development to continue westward. Map also shows active oil and gas wells in the authorized leases.
WY-2023-06-1579	Map identifies parcels 1571 through 1580 and 7258 are in a contiguous area, bordering authorized leases and are intended to allow for development to continue westward. Map also shows active oil and gas wells in the authorized leases.
WY-2023-06-1580	Map identifies parcels 1571 through 1580 and 7258 are in a contiguous area, bordering authorized leases and are intended to allow for development to continue westward. Map also shows active oil and gas wells in the authorized leases.
WY-2023-06-7243	Map identifies this parcel joins an authorized oil and gas lease at its corner, within the checkerboard area and is within a high oil and gas development potential area
WY-2023-06-7258	Map identifies parcels 1571 through 1580 and 7258 are in a contiguous area, bordering authorized leases and are intended to allow for development to continue westward. Map also shows active oil and gas wells in the authorized leases.