

*Submitted via eplanning.blm.gov
and electronic mail*

June 10, 2024

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

**Re: Protest of BLM Second Quarter 2024 Oil and Natural Gas Lease Sale, Draft
Environmental Assessment and Draft Finding of No Significant Impact DOI-BLM-
WY-0000-2024-0001-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 Petroleum Association of Wyoming 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 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 November 15, 2023, the Wyoming BLM allowed interested stakeholders to submit scoping comments on a planned oil and natural gas lease sale in the second quarter of 2024. On February 8, 2024, the Wyoming BLM similarly opened its draft environmental assessment (draft EA) and Finding of No Significant Impact (FONSI) for comments. The initial sale list identified 20 parcels covering approximately 11,250 acres. On May 10, 2024, the BLM opened a public protest period on its second draft EA, FONSI, and Notice of Lease Sale. The proposed sale list has been reduced to 18 parcels encompassing 10,155 acres.

Deferral based on Greater Sage-Grouse (GRSG) prioritization is arbitrary and capricious under the Administrative Procedure Act (APA). This action is not in conformance with the governing Resource Management Plans (RMP), 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 the BLM to defer parcels while considering a protest and does not otherwise prohibit the BLM from revisiting its proposed deferral of parcels. The regulation does not diminish the BLM's regulatory authority and discretion to offer a parcel for sale that has been properly nominated and noticed to the public with all applicable stipulations and analyzed under a Lease Sale EA.

This EA and FONSI issued in May propose deferral of a parcel that is eligible and should be offered for lease. It is within and adjacent to existing oil and natural gas units and producing fields, covered by a completed environmental impact statement (EIS), is governed by the associated record of decision (ROD) and has numerous Applications for Permit to Drill (APD) awaiting approval. Deferral is not supported by the administrative record, BLM's National Environmental Policy Act (NEPA) analysis, 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 2nd 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 2nd Quarter Lease Sale

The Associations commented extensively to the Wyoming BLM on this lease sale, first during the scoping period in letters addressed to State Director Archuleta dated November 15, 2023, and again during the comment period for the first draft EA in letters addressed to State Director Archuleta dated February 8, 2024. The Associations incorporate those comments by reference for purposes of this protest.

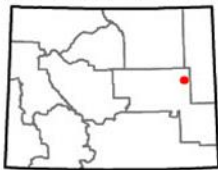
Issues being Protested

A. Arbitrary Deferral of Parcel 1824 and Related NEPA Violations

The Associations are protesting the unsubstantiated deferral of a single parcel based on GrSG prioritization. BLM’s deferral of this parcel is arbitrary, capricious, and an abuse of discretion, as highlighted in BLM’s own map included as Attachment 7.2 to BLM’s EA:



WY-2024-06-1824



- Lease Sale Parcels
 - Alternative 3
 - Defer
- WOGCC Well Status
- STATUS
 - Abandoned
 - Waiting Approval
- Completed Projects EIS
 - Completed Projects EIS
- Authorized OG Units
 - Authorized OG Units Existing Units
- Authorized OG CAs
 - Authorized OG CAs O&G Communitization Agreement
- Authorized OG Leases
- Development Potential
 - HIGH
- SMA
 - Bankhead Jones
 - Bureau of Land Management
 - Private



Date Map Created: 1/5/2024 by WY-921
Coordinate System: North American Datum 83
No warranty is made by the BLM for use of these data for purposes not intended by BLM.



This map documents that deferred Parcel 1824 is:

1. surrounded by authorized, valid existing oil and gas leases
2. within an existing valid federal unit
3. adjacent to an approved oil and natural gas Communitization Agreement area
4. within an approved oil and natural gas project analyzed under an Environmental Impact Statement (EIS), and
5. in an area identified as high development potential for oil and natural gas.

Moreover, the EA documents that for Parcel 1824: (1) the imprint of man's work is substantially noticeable; and (2) there are no outstanding opportunities for solitude or primitive recreation. EA at page 144.

Despite this documentation, BLM's sole basis for deferring this parcel is based on the classification of these lands as being priority habitat for GrSG. This rationale is arbitrary, capricious, an abuse of discretion, and not supported by the administrative record in violation of the Administrative Procedures Act (APA).

1. Failure to Analyze NSO Alternative

BLM deferred Parcel 1824 without analyzing whether to offer the parcel with a No Surface Occupancy (NSO) lease stipulation. This significant omission is a violation of NEPA and also contrary to conforming its actions in compliance to the governing RMP as required under FLPMA. Inclusion of an NSO stipulation is entirely feasible and would conform with the governing RMP.

BLM failed to explain why such an alternative was not feasible or otherwise not considered as a viable alternative to deferral. This failure is arbitrary, capricious, and abuse of discretion in violation of the APA.

This failure is compounded by the fact that Parcel 1824 is located in an area designated by BLM as having a high development potential, within an area already analyzed under an EIS for oil and natural gas development, that is adjacent to an existing valid Communitization Agreement area, and a valid existing oil and natural gas unit.

In deferring Parcel 1824, BLM also failed to analyze the adverse impacts deferral would have on oil and natural gas development in this area, and failed to analyze the loss of federal royalty revenue that would be generated if the parcel was allowed to be developed. These failures are also in violation of NEPA, and BLM's statutory obligations under FLPMA and the Mineral Leasing Act to promote efficient development of oil and natural gas resources and resulting revenue generation for the benefit of the public.

2. Failure to Analyze Additional Cumulative Impacts that would Result from Deferral and Lessees having to Avoid Parcel 1824 to Develop Nearby Leases

BLM failed to analyze under NEPA how deferral of Parcel 1824 would likely result in additional surface disturbance and impacts. These additional impacts will result because adjacent and nearby lessees will be

required to construct additional well pads and drill additional wells (e.g., from both the north and the south) in order to access their leased minerals and also avoid perforating the fluid minerals underlying Parcel 1824, rather than developing their leases minerals from one long horizontal well that would traverse through, and produce, the minerals underlying Parcel 1824. These types of collaborative commercial development agreements are common, and likely here given the existing federal unit.

As discussed above, this efficient development option could also be accomplished with an NSO stipulation for Parcel 1824. Yet BLM failed entirely to analyze this option. This failure is also a violation of BLM's statutory obligation to promote efficient development of American oil and natural gas resources, and to prevent waste under the Mineral Leasing Act.

3. Arbitrary and Capricious Greater Sage-Grouse Prioritization¹

BLM justifies the need to defer this parcel based on its location in GRSG priority habitat and on population data. Any decisions regarding management of non-Endangered Species Act listed species is the sole discretion and jurisdiction of the state of Wyoming. BLM's failure to defer to the State of Wyoming violates its obligations under FLPMA to conform its actions and decision making to state and local plans. 43 U.S.C. § 1712(c)(9).

Wyoming Executive Order 2019-03 details a process to identify triggers and if a threshold is surpassed, establishes a process to identify the factors causing a trigger and offering appropriate mitigating relief. This process is coordinated by the Statewide Adaptive Management Working Group. This group last met in 2022, reviewing proposed triggers from that year. The area where this parcel is proposed for deferral is within the Thunder Basin Core Area. A trigger was identified as a result of residential development. No other factors were identified as causing any impact to GRSG habitat, in that core area or any other.

BLM's failure to defer to the State of Wyoming and its failure to analyze these triggers and related thresholds violates the NEPA, and contrary to its obligations under the governing Resource Management Plan in violation of FLPMA. BLM's justification to defer an oil and natural gas lease is arbitrary, capricious, and an abuse of discretion in violation of the APA.

Moreover, as detailed below, BLM's prioritization process and deferral of Parcel 1824 is contradicted by facts presented by BLM in the EA and attachments. Yet, BLM fails entirely to analyze or explain these key facts and how BLM utilized (if at all) those facts in its prioritization analysis.

4. Failure to Analyze and Disclose Anthropogenic Disturbances; Use of Outdated, Inaccurate Data and Imagery

In the EA, BLM asserts that the area is free of any anthropogenic disturbances, providing reason to defer the lease. *See* EA at p. 76. ("the nominated parcel is not influenced by existing anthropogenic development"). If that assertion were true, it would actually provide even greater justification that allowing the lease will have no significant impact on the species because the applicable 5% surface disturbance threshold would not be reached. Under BLM's RMP and State of Wyoming's regulations, disturbances above five percent need additional considerations and analyses, and potential mitigation credits under the state's GRSG program.

BLM failed to analyze the 5% disturbance threshold and failed to analyze or otherwise explain why offering Parcel 1824 with an NSO stipulation would not comport with this threshold (e.g., the NSO parcel not add cumulatively to existing disturbance). BLM failed to conduct a cumulative impacts analysis of this issue under NEPA to inform whether to offer or defer Parcel 1824. The absence of this analysis underscores that this deferral decision is also a violation of FLPMA, and arbitrary and capricious, and an abuse of discretion, in violation of the APA.

Moreover, the data and imagery BLM relies upon and presents to the public misrepresents that no anthropogenic development is occurring in the area. BLM relies on the U.S. Department of Agriculture's National Agriculture Imagery Program (NAIP). *See* EA at p.76. BLM's statement is fundamentally false and in error.

Significantly, the NAIP platform only uses aerial imagery acquired from 2003 to 2017.² The NAIP data is more than 6 years out of date and does not include more recent development and construction that has occurred near the lands comprising Parcel 1824 since 2017.

BLM violated NEPA by not using best available data to inform its NEPA analyses and decision-making. BLM's failure to use more up-to-date data regarding existing development, and pending proposed development, is arbitrary, capricious, and an abuse of discretion in violation of the APA.

In fact, when reviewing active oil and natural gas wells and pipeline infrastructure through the Natural Resource and Energy Explorer tool³ (which BLM failed to utilize), it is apparent this area is being influenced by human development activities. Yet BLM failed to utilize this tool to provide an accurate assessment of existing surface disturbance and development within the area of Parcel 1824.

Parcel 1824 is surrounded by valid existing federal oil and natural gas leases, with numerous APDs being processed for development nearby, and is also near existing production. Moreover, the lands and minerals comprising Parcel 1824 are located within a completed Environmental Impact Statement that analyzes extensive oil and natural gas development, and are located in an area designated by BLM as having oil and natural gas resources with high potential for development.

BLM failed to analyze or otherwise explain these significant facts. These facts are not meaningless; they are direct, substantive reasons the BLM should—must—offer this parcel. Not offering this parcel could strand resources in other nearby leases and diminish overall extraction of the resource by stunting the full potential of development. These failures violate NEPA, and underscore further that BLM's decision to defer Parcel 1824 is arbitrary, capricious, an abuse of discretion, and not supported by the record before the agency in violation of the APA.

Finally, BLM fails to analyze operation and application of adaptive management and lease notices and stipulations designed to minimize potential impacts to greater sage grouse and its habitat. The BLM indicates that the in-effect GRSG Management Plans, Appendix D, is the adaptive management section to be utilized in these instances. BLM also notes that, in order to minimize impacts, all parcels offered in this

² See <https://www.usgs.gov/centers/eros/science/usgs-eros-archive-aerial-photography-national-agriculture-imagery-program-naip> (last visited June 5, 2024).

³ State of Wyoming, <https://nrex.wyo.gov/nrex/>

sale include Standard Lease Notice 3, which indicates to operators that measures may have to be taken to reduce the impacts from oil and natural gas development on GRSG populations and habitat.

BLM indicates that leasing is not the final stage of environmental review, but in fact that site specific review is done when an APD is received. Yet BLM failed to analyze or explain how the adaptive management stipulations in Appendix D, Standard Lease Notice 3, and the subsequent, site-specific environmental analysis will fail to adequately protect GRSG habitat. This failure is a violation of NEPA, FLPMA, the MLA, and APA.

B. BLM Failed to Conduct a Legally Sufficient Socioeconomic Analysis under NEPA; BLM Failed to Analyze the Benefits of American Oil and Gas Leasing and Development

1. Legal Framework

Under both NEPA and FLPMA, BLM is required to integrate social science and economic information in the preparation of informed, sustainable decisions. Specifically, Section 202 of FLPMA requires BLM to integrate “physical, biological, economic, and other sciences” in developing land-use plans, 43 USC § 1712, and BLM’s program level decision-making must conform to these plans. Similarly, Section 102 of the NEPA statute requires Federal agencies to “ensure the integrated use of the natural and social sciences . . . in planning and decision making.” 42 USC § 4332.

NEPA implementing regulations include the requirement that BLM consider and analyze economic and social effects. The NEPA regulations state that federal agencies “**shall** . . . identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside **economic** and technical **analyses.**” 40 C.F.R. § 1501.2(b)(2) (emphasis added); *see also* 40 C.F.R. § 1508.1(i)(4) (“Effects include ecological . . . aesthetic, historic, cultural, **economic**, social, or health . . .”) (emphasis added); 40 C.F.R. § 1502.16 (b) (“when the agency determines that **economic** or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss these effects on the human environment”) (emphasis added).

2. BLM Violated NEPA and FLPMA

BLM failed to analyze and disclose the full suite of benefits of American oil and natural gas development in its socio-economic impacts analysis, including economic benefits, in violation of NEPA. BLM also failed to explain to the public and analyze emissions reductions that will result from BLM’s new waste prevention rules and the U.S. Environmental Protection Agency’s (EPA) new methane rules. The continued leasing and development of federal natural gas resources provides significant beneficial impacts in the context of greenhouse gas emission reductions.

BLM failed to quantify the indirect beneficial effects of the decision to lease federal natural gas reserves, in violation of NEPA. As EPA explained in its 2021 GHG Inventory Report: “Between 2018 and 2019, emissions from the electric power sector decreased 8.4 percent due to a decrease in electric power generation of 1.4 percent and a decrease in the carbon intensity of the electric power energy mix.”⁴

⁴ *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2019*, EPA, 2021, pp. 2-13.

Although BLM cites to this 2021 EPA Report in the EA for the second quarter lease sale, BLM arbitrarily and capriciously fails to present this information to the public or include in its analyses.

BLM's failure to analyze the direct and indirect **benefits** of leasing and developing American oil and natural gas resources violates NEPA. Indeed, BLM's EA misinforms the public through a one-sided analysis that only focuses on the benefits of renewable energy for GHG emissions reductions to the exclusion of oil and gas. *See, e.g.*, EA at 59, 93.

From an economic standpoint, BLM also failed to analyze or even disclose the acreage of long-pending EOIs that have been continually deferred and how these continued deferrals impact federal oil and natural gas revenues and other benefits such as local jobs and secondary revenue at the county and local levels. This failure also violates NEPA, and underscores BLM's violation of FLPMA and the Mineral Leasing Act in failing to prevent waste by stranding federal fluid mineral resources.

As a result of these failures, in addition to violating NEPA, BLM's proposed leasing decision and lease sale EA is arbitrary, capricious, and an abuse of discretion in violation of the APA.

C. BLM's Failure to Analyze the Cumulative Effects of Deferred EOIs and Its Infinitesimally Small Lease Acreage Offerings Violates NEPA and the APA and is Contrary to the BLM's Mandatory Requirements Under the Inflation Reduction Act.

As explained in the EA, in Section 1.6 at pages 11-12, the Inflation Reduction Act (IRA) includes a provision that ties the amount of oil and gas onshore lease acreage BLM offers for sale on an annual basis as a prerequisite for issuance of a right-of-way for wind or solar energy projects.

The IRA states "the Secretary may not issue a right-of-way for wind or solar energy development on Federal land unless (A) an onshore lease sale has been held during the 120-day period ending on the date of the issuance of the right-of-way for wind or solar energy development; and the sum total of acres offered for lease in onshore lease sales during the 1-year period ending on the date of the issuance of the right-of-way for wind or solar energy development is not less than the lesser of (i) 2,000,000 acres; and (ii) 50 percent of the acreage for which expressions of interest have been submitted for lease sales during that period..." . Section 50265, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

To comply with Section 50265 of the IRA, on an annual basis, BLM must offer either a sum total of 2,000,000 acres or 50% of the acreage nominated through expressions of interest (whichever is lesser) for sale through the competitive lease sale process.

1. Failure to Disclose and Analyze Impacts of Cumulative/Aggregate EOI Deferrals

BLM's EA fails to identify how many Expressions of Interest (EOI) have been deferred on a cumulative basis prior to 2024. BLM cannot piecemeal its analysis by only analyzing EOIs received for the Second Quarter Lease Sale. BLM's statutory obligations under both NEPA and the IRA are broader.

BLM failed to analyze and inform the public on the percentage of lease acreage offered for sale compared to the aggregate of all EOIs that have been long pending and deferred by BLM. BLM must inform the public of deferrals dating back at least six years (statute of limitations), or at a minimum since at least January 21, 2021, when BLM started issuing and implementing new policies to severely restrict oil and

natural gas leasing. These policies have resulted in significant EOI deferrals, lease parcel deferrals, and inaction on EOIs and a significant reduction in lease parcels that BLM has offered for sale. These recent policies do not even include the significant deferrals due to the GRSG planning process in Wyoming which have occurred since at least 2011.

BLM failed to analyze and disclose this aggregate deferred acreage for purposes of informing the public of the adverse impacts of BLM's decision to not offer nominated lease parcels for sale in terms of lost federal oil and gas revenues to the U.S. Treasury and to the State of Wyoming.

2. Failure to Analyze, Forecast or Disclose IRA Compliance

BLM failed to analyze, forecast, even address whether the minimum amount of oil and natural gas leases BLM offered at the second quarter lease sale will adversely impact BLM's ability to meet its statutory requirements under the IRA regarding annual oil and natural gas leasing, and in turn whether this nominal lease acreage offerings will impact on renewable energy projects and rights-of-way on federal lands.

BLM failed to analyze, disclose, and present, from a cumulative impacts standpoint, what percentage of the parcels offered for sale would go towards BLM's annual oil and natural gas leasing requirements under the IRA, and an analysis and forecast as to whether a sufficient amount of acreage is being offered in Wyoming, when combined with lease acreage offered in other states, to meet BLM's annual IRA requirements.

Given the severely small amount of acreage being offered in Wyoming, one of BLM's most prolific oil and natural gas states, it is difficult to believe that BLM will be able to meet its IRA statutory requirements in 2024 based on this leasing trajectory. BLM has an obligation to analyze and disclose this to the public, and also to inform its own decision-making.

BLM also failed to disclose the adverse impacts that would result to renewable energy development if BLM does not meet its statutory leasing requirements under the IRA. BLM must provide this cumulative impacts analysis under NEPA to inform the public, and to inform its own decision making.

To comply with NEPA, FLPMA, and the IRA, BLM must conduct an analysis to inform the public, and its own decision-making, as to what extent the lease acreage being offered goes towards meeting its mandatory statutory requirements under IRA Section 50265.

3. Arbitrary and Capricious Treatment of Oil and Gas Compared to Renewable Energy

BLM's failure to analyze the impacts of offering minimal parcels for oil and natural gas leasing is compounded by the fact that BLM's EA does include an analysis regarding impacts on renewable energy under its IRA statutory obligations. As discussed above, BLM arbitrarily analyzes the benefits of future renewable energy deployment but does not analyze or present the benefits of offering more American oil and natural gas to market.

In the EA's narrative on the IRA, BLM does present the benefits of renewable energy in the context of reducing GHG emissions, "even with continued oil and gas leasing in the near term." BLM EA at 95. BLM fails to do so for oil and natural gas development. This analysis gap is in violation of NEPA and arbitrary and capricious in violation of the APA.

In addition, BLM's decision to analyze the IRA in the context of increased renewable energy usage, while failing to analyze impacts to oil and natural gas leasing or BLM's ability to comply with its IRA statutory obligations related to leasing is entirely arbitrary, capricious, and an abuse of discretion in violation of the APA.

BLM must analyze potential beneficial impacts on both oil and natural gas leasing and development and renewable energy development. BLM cannot capriciously choose to analyze one form of energy and not another under its multiple use mandate under FLPMA. This capricious decision violates NEPA and FLPMA and is contrary to the Congressional intent of Section 50265 of the IRA. Each failure is a violation of the APA.

Conclusion

BLM's Lease Sale EA and Proposed leasing decision violates NEPA, FLPMA, the MLA, IRA, and the APA. The Associations urge BLM to fix these significant legal deficiencies for the second quarter lease sale and for future lease sales.

Sincerely,



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