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January 18, 2024

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

**Re: Protest of BLM Proposed First Quarter 2024 Oil and Natural Gas Lease Sale and Draft Environmental Assessment and Draft Finding of No Significant Impact – DOI-BLM-WY-0000-2023-0005-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 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.

Now more than ever, a strong, unified voice is essential to sustain environmentally responsible exploration and production (E&P) of oil and natural gas in the West. Working with a vibrant membership base of independent oil and natural gas companies for over 50 years, Western Energy Alliance stands as a credible leader, advocate, and champion of industry in the West. 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. The Alliance is bold, fearless, and won't back down as we initiate meaningful change.

### **Statement of Reasons**

On June 12, 2023 the Wyoming BLM commenced the scoping period and announced its intention to hold an oil and natural gas lease sale in the first quarter of 2024. On October 20, 2023 the Wyoming BLM issued its draft EA and Finding of No Significant Impact (FONSI). The initial sale list identified 36 parcels covering approximately 19,140 acres as available. On December 13, 2023 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 30 parcels encompassing 13,416 acres.

The deferrals based on Greater Sage-Grouse (GRSG) prioritization are arbitrary and capricious under the Administrative Procedure Act (APA). These actions are 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 December propose deferral of 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, covered by a completed environmental impact statement (EIS) and governed by the associated record of decision (ROD), numerous Applications for Permit (APD) to drill are awaiting approval. and where denial of these parcels would have development implications for state-owned lands. 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 1<sup>st</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 1<sup>st</sup> 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 July 12, 2023 and again during the comment period for the first draft EA in letters addressed to State Director Archuleta dated October 2, 2023.

### **Issues being Protested**

The Associations are protesting the unsubstantiated proposal to defer five parcels based on GRSG prioritization. In addition, the Associations are protesting the BLM's lack of transparency in the leasing process.

#### Greater Sage-Grouse Prioritization<sup>1</sup>

The BLM is proposing to defer five parcels based on internal revisions to the GRSG habitat prioritization process that do not conform to the process in effect. The BLM identifies 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 or direction from the Courts have prompted the need to revise its prioritization process. As mentioned, these parcels are adjacent to each other, are located in an area with authorized oil and natural gas leases, have active wells and APDs awaiting approval, where development was further approved through an EIS and associated ROD and where denial of the leases would have complications for the state of Wyoming to generate revenue on state lands for its beneficiaries – public education and state institutions. The BLM has provided no evidence to support that oil and natural gas activities are having a negative effect on GRSG populations in the area where the parcels are proposed for deferral. The BLM has simply stated this is the fact, but that statement is baseless without a justification. The BLM did not indicate what habitat or population trigger prompted deferral. The BLM also fails to explain how RMP provisions are insufficient to mitigate any perceived risks.

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. In 2022, 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

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<sup>1</sup> Attachment 1

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. We request the BLM provide this information if it intends to continue deferral of these parcels.

In the section “Alternatives Considered but Not Analyzed in Detail,” the BLM identifies an alternative that would defer all parcels in PHMA and an alternative that would defer all parcels within General Habitat. In both instances, the BLM stated that “This alternative was not analyzed in detail because the [Approved Resource Management Plan Amendments] allows for leasing in PHMA.” If the in-effect RMPs governing management of Greater Sage-Grouse habitat allow for leasing in GRSG habitat, what justification does the BLM have for deferral?

In Chapter 4, page 72, the BLM states, “The [Wyoming State Office] received input from the WGFD regarding habitats or populations that may be impacted by the lease and used that information to verify the appropriate stipulations were attached to each parcel. Under Alternative 2, all 36 parcels would be available for lease.” The BLM states the same under its analysis for Alternative 3, which proposes to defer these parcels. The Associations fail to believe that the WGFD would have a difference in opinion based on a BLM alternative. If the WGFD approved the BLM offering the leases in Alternative 2, they would have done the same for Alternative 3.

The BLM further states in this analysis that, “A State of Wyoming, WGFD, and BLM Wyoming coordination meeting occurs after the comment period closes. Any major conflicts identified are discussed with the [State Director] and Deputy State Director (DSD) for Lands and Minerals (and other staff if determined necessary by the SD) for a decision on whether to delete, defer or move the parcel forward.” The BLM did not offer any specific information in the analysis relating to concerns with the parcel proposed for deferral. The Associations request the BLM provide context to the recommendations made at this meeting.

The BLM states the reason for deferral was based on the parcels’ location in PHMA and a corollary “habitat and/or population metric.” The BLM indicates that the ARMPA, Appendix D, is the adaptive management section to be utilized in these instances. The BLM also notes that, in order to minimize impacts, all parcels offered in this 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. Lastly, the 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. The Associations request the BLM 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.

One statement the Associations take exception to and request the BLM remove from further analysis was found on page 77, which stated, “An example of this could be where BLM WY, along with state and local resources and/or private entities, have invested large amounts of time and resources to restore the habitat within an area. These areas would be considered a priority if

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<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

they are trending toward successful reclamation and new disturbance that may occur as a result of leasing would hinder the continuation of that trend.”

This statement related to the BLM offering a parcel in an area where habitat restoration efforts have been conducted and the BLM asserting that any development activities would negatively impact those efforts. The Associations note that allowing for development actually creates opportunities and requirements for operators to reclaim and restore habitats. In most instances, habitats are more productive for GRSG and other species after development has occurred because of the reclamation requirements. This statement is untrue, misleading and we ask for it to be removed.

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

### **Initial Selection of Parcels**

Section 2.0, page 16, outlines the entirety of the BLM insight to its process of developing an initial parcel list: “BLM developed a parcel list of nominated lands from Expressions of Interest (EOI) and the WSO created a shapefile of all parcels.” This gives industry and the public no indication of, from the universe of EOIs at the BLM, how they are initially selected. It is an insufficient explanation. Companies pay a \$5/ per acre fee simply to have acreage considered for sale. The Inflation Reduction Act only compels the BLM to offer 50 percent of that acreage, meaning an operator has only a 50 percent chance of the acreage it nominates to ever be offered for sale. Additionally, the BLM has taken the position that it can unilaterally adjust an operator’s EOI-acreage however it wants – it can add acreage, delete, rearrange or anything else. Then the BLM applies five criteria outlined in Instruction Memorandum 2023-007, which the Associations have continually objected to.

The BLM has shifted the operation of the oil and natural gas leasing program to one that instills little confidence in the partners it is intended to work with. At the beginning of this assessment, the BLM states that it has a responsibility to offer oil and natural gas resources to meet the needs of the American public and generate a fair return. With no transparency of the process the BLM uses, which lessens the confidence that an operator will receive the opportunity to bid on acreage they have indicated a need for, how is the BLM fulfilling its responsibility to the American public?

The Associations again ask the BLM, in its response to comments, exactly what process it uses to initially develop an oil and natural gas parcel list for consideration for sale.

### **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 RMPs. 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 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,



Pete Obermueller  
President  
Petroleum Association of Wyoming  
2435 King Boulevard, Suite 140  
Casper, WY 82604  
(307) 234-5333



Kathleen Sgamma  
President  
Western Energy Alliance  
1660 Lincoln St., Suite 2175  
Denver, CO 80264  
(303) 623-0987

## **Attachment 1 – Greater Sage-Grouse Prioritization**

<b>Parcel Number</b>
WY-2024-03-1785
WY-2024-03-1819
WY-2024-03-7290
WY-2024-03-7292
WY-2024-03-7293