



May 18, 2022

Submitted via eplanning.blm.gov

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

**re: Protest – Wyoming BLM Q2 Oil & Gas Lease Sale Final EA -
20220419.0827.WY 2022-06 – DOI-BLM-WY-0000-2021-0003-EA**

Dear State Director Archuleta,

The Petroleum Association of Wyoming (PAW) appreciates the Wyoming Bureau of Land Management's (BLM) efforts to issue a final environmental assessment (Final EA) and finding of no significant impact (FONSI) for the June 2022 oil and gas lease sale. The BLM has, unfortunately, deferred parcels without sufficient justification. The reduction in available parcels eliminates opportunities for the Wyoming oil and gas industry to continue deliberative development of these resources. There is no greater harm to an individual or group than to this industry from the action being taken by the BLM as set forth in the Final EA. For the reasons detailed below, PAW is submitting this protest in accordance with 43 C.F.R § 3120.1-3.

Issues Being Protested

Initially, 459 parcels encompassing 561,833 acres were available by the BLM through Expressions of Interest submitted by oil and natural gas operators. Those 459 parcels were determined available for leasing and had previously gone through necessary environmental reviews. Now, with the issuance of this Final EA for the June 2022 lease sale, only 129 parcels, encompassing 131,389 acres, are being offered in Wyoming. This is a 76 percent reduction in acreage from what was originally available. Concerningly, the BLM appears to be overexerting presumed discretion in deferring these parcels.

Of particular concern in the Final EA are the BLM's decisions to utilize State Director Discretion to defer leasing of 61 parcels, to defer 260 parcels located in Greater Sage-Grouse habitat and to delete portions of 27 other parcels without explanation. All of these parcels have been deemed available through their respective Resource Management Plans (RMP) and through the 2015 amendments to those RMPs which incorporated Greater Sage-Grouse habitat management stipulations. The BLM does not have the authority to outright deny offering these parcels for competitive leasing.

The additional item on which PAW has concerns is the BLM's lack of inclusion of social benefits of domestically-produced oil and natural gas, or more specifically, development of those resources on public lands. Failure to incorporate this information into the Final EA intentionally skews upward the social cost of greenhouse gases, when in fact PAW believes a full analysis of this information would result in a net benefit to society.

State Direct Discretion

30 U.S Code § 226(b)(1)(A), which is titled "*Lands within known geologic structure of a producing oil or gas field; lands within special tar sand areas; competitive bidding; royalties*", states:

- [a]ll lands to be leased which are not subject to leasing under paragraphs (2) and (3) of this subsection *shall be leased* as provided in this paragraph to the highest responsible qualified bidder by competitive bidding. (emphasis added)

The Code of Federal Regulations (CFR) implementing this section of U.S. Code effectuates Congress' directive by stating¹:

- All lands available for leasing *shall* be offered for competitive bidding under this subpart. (emphasis added)

Of those lands which are available for lease, § 3120.3–5 *Parcels receiving nominations* states:

- Parcels which receive nominations *shall* be included in a Notice of Competitive Lease Sale. The Notice shall indicate which parcels received multiple nominations in response to a List of Lands Available for Competitive Nominations[.] (emphasis added)

Lastly, determining which lands are and are not available for leasing on federal lands is guided by the provisions of the Federal Land Policy and Management Act². As the BLM states in the Final EA:

- “The decision as to which public lands and minerals are open for leasing and what leasing stipulations may be necessary is made during the BLM's land use planning process in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA).”

Oil and gas leasing protocols within the Mineral leasing Act (encapsulated in U.S.C 30 § 226 and underlying CFR) require that federal lands be available for oil and gas leasing. FLPMA is the vehicle that determines which lands are and are not available and is accomplished during the development of a RMP (i.e., the “land use planning process”). Those lands determined to be available within an RMP are placed on the “List of Lands Available for Competitive Nominations.” Then, when a nomination to lease a parcel is made, through an Expression of Interest or other avenue, the BLM is obligated to put that parcel up for competitive bid during a mandatory quarterly lease sale. The BLM's discretion is severely limited after an RMP-

¹ 43 CFR Subpart 3120-Competitive Leases

² 43 U.S.C. § 1712

designation is made to change a designation, except through a successive amendment or revision to that RMP. Appropriate stipulations may be applied to a parcel, but the BLM cannot outright deny a parcel being available for competitive bid.

Upon issuance of this Final EA, the BLM has utilized State Director Discretion to defer 61 parcels. The BLM goes against all the aforementioned laws and regulations requiring these parcels to be offered for lease, points to no other authority granting such discretion and provides little reason as to why these parcels were deferred, except to describe them as “low potential” for oil and gas reserves. Many of the parcels deferred based on “low potential” are adjacent to or surrounded by existing leases, some of which appear to be held by production, as well as significant existing oil and gas production and infrastructure. Regardless of the estimated potential to economically develop these parcels, they are still listed as available for leasing and must be available for competitive bidding.

There is compelling reason to believe many of the parcels deferred due to this reason may have economic reserves of oil and natural gas. For example, Table 6.3, *State Director Discretionary Deferrals*³, delineates many parcels, including WY-2022-06-0869 and WY-2022-06-0946, that are being deferred due to their estimated reserve potential. However, active wells exist either on the nominated deferred parcel itself or literally within feet of the deferred parcels. This indicates that the parcels which have been nominated do have economic reserves and render the State Director’s decision to defer them unsubstantiated. The Wyoming Reservoir Information Tool⁴, cross-referenced with township and range information found in the Final EA⁵, shows that well API No. 49-005-28296 is within WY-2022-06-0946. The well was spud in 1985 and has since produced 2,070,561 barrels of oil. Four other wells on that parcel, spud the same year, have collectively produced 5,515,732 barrels of oil.

In the draft EA, there was scant mention of State Director Discretion. There was certainly no indication the State Director was contemplating deferring a number of leases according to this unsubstantiated authority. It was for this reason that PAW could not have contemplated commenting on the unreasonableness of deferring these 61 parcels, when they were in fact eligible, nominated and available for leasing. The BLM’s dramatic change in course here goes against the provisions of the Administrative Procedures Act.

It appears the Director has also used his discretion to delete portions of 27 other parcels. At Table 2.2 on page 18 of the Final EA and the subsequent paragraph, the BLM uses one sentence to acknowledge it is deleting five whole parcels due to their absence in the National Fluid Lease Sale System. Those five parcels collectively encompass 1,081 acres. However, Table 2.2 also shows that the BLM is deleting portions of 27 other parcels, collectively amounting to 14,932 acres. The BLM offers no explanation for why certain acreage in these parcels is unfit for leasing and other acreage is suitable.

³ Final EA, page 239

⁴ www.eori.wygisc.org

⁵ Final EA, page 143

The 61 parcels can be found in the BLM's Final EA for this lease sale, at Table 6.3 State Director Discretionary Deferrals⁶ and the 27 parcels partially deleted can be found on Table 2.2⁷.

Greater Sage-Grouse

PAW did comment on the draft EA regarding the BLM's proposal to defer 260 parcels due to their location wholly or partially within Priority Habitat Management Areas (PHMA) for Greater Sage-Grouse (GSG). The BLM has still not sufficiently justified why it is not adhering to the RMPs currently in effect and the GSG leasing prioritization associated with those RMPs. The fact that the BLM has initiated a process to again revise the 2015 RMPs carries no legal weight for not adhering to the RMPs currently in effect.

The 2015 RMP amendments allow for leasing in PHMA and other GSG habitat. This is afforded because successive protections are in place to ensure the stability of GSG habitat. Federal leases within habitat areas are issued with stipulations requiring operators to implement specific measures that reduce impacts on GSG populations and their habitat. Those measures are developed during the project-level NEPA analysis, as well as the Application for Permit to Drill (APD) on-site and environmental review process. Similar reviews occur at the state level when an operator is obtaining a concurrent state APD. In PHMA or analogous core habitat areas, specific disturbance thresholds cannot be exceeded and operators must adhere to specific stipulations regarding distance, timing of activities, and restoration activities to reestablish disturbed habitat.

Since implementation of this coordinated framework, APDs have rarely been denied by either the BLM or the state of Wyoming because they were in PHMA. By deferring parcels within PHMAs, PAW is very concerned BLM may be attempting to completely cease development from new leases in PHMAs, an action not supported by data or established regulatory regimes. In addition, the deferral of leases in PHMAs may limit operators' ability to develop existing leases. In some cases, operators require additional federal parcels to sufficiently lease up a proposed unit such that planned wells can effectively penetrate ample resources within the unit and become economically feasible. The BLM also has a statutory responsibility to lease parcels that may be subject to drainage.

The BLM is also making this decision to defer these leases without considering pertinent facts on the ground about oil and gas' diminishing impact on surface lands. Due to the incredible evolution of technology, more development is occurring using horizontal drilling. Additionally, multiple wells are often drilled on the same well pad and now extend laterally two miles or more. Looking at data in Wyoming, from 2000-2004 there were 3,828 wells spud on average per year. The average annual barrels of oil equivalent (BOE) production during that same time period was 343,758,843. During this time, a vast majority of the wells drilled were vertical. Fast-forward to the 2017-2021 timeframe, the average annual number of wells spud was 546, while annual average production was 357,187,018 BOE. During that roughly 20-year period, production ticked up just a bit while the number of wells spud decreased by 85 percent. That reflects

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https://eplanning.blm.gov/public_projects/2015621/200495701/20057788/250063970/20220419.0827.WY%202022-06%20Lease%20Sale%20EA.v2.pdf

⁷ Final EA, page 18

significant reduction in surface disturbance from oil and gas activities. The BLM should acknowledge this astounding progress in its leasing program.

The specific parcels in question can be found in the BLM's Final EA for this lease sale, at Table 3.27 titled "PHMA parcel evaluation and recommendation⁸."

Social Cost of Greenhouse Gases

PAW supports the BLM's finding of no significant impact for this lease sale. However, PAW strongly believes the BLM would have come to the same conclusion if all of the original 459 parcels were approved. This belief is supported by the fact that, if the BLM had appropriately accounted for the social benefits of domestically produced hydrocarbons, the benefits would have largely or entirely offset the costs.

Domestically produced oil and natural gas have myriad tangible benefits to our nation, including significant domestic economic activity and reductions in OPEC+'s influence on commodity prices. Domestically produced oil and gas are also not subject to certain supply chain vulnerabilities prevalent with other energy sources, primarily alternative resources like wind and solar. The U.S. is over reliant on China for rare earth minerals, effecting the availability and prices of wind and solar products. Similarly, the U.S. is over reliant on many adversarial nations regarding our supply of uranium. At any point, any nation providing these raw materials could put a quota or ban on exports to the U.S., severely hindering our national security and the health and wellbeing of our citizens. If these considerations had been included, the estimated net cost from oil and gas development on federal lands would reduce drastically, likely resulting in a net benefit to society.

Conclusion

The Final EA proposes to defer many parcels that should be offered for lease, including parcels within existing oil and natural gas units and producing fields. Deferral is not supported by the administrative record or the governing RMPs. The decision to defer these parcels was based on State Director Discretion and a new prioritization process for parcels within GSG habitat. These deferrals are arbitrary and capricious under the Administrative Procedures Act. The governing RMPs designated these lands as open for oil and natural gas development. The BLM's Final EA is in violation of the Federal Land Policy and Management Act.

The BLM has not initiated the public process needed to hold a 2022 third quarter lease sale. PAW urges the BLM to reconsider the deferrals in this Q2 lease sale and offer those parcels for competitive bid at the Q3 2022 lease sale. The BLM can incorporate the analysis that has already been fully completed for the deferred parcels into a new EA. This can be finalized in time to comply with the statutory mandate to hold a lease sale in each quarter when parcels are available.

The solution outlined above ensures BLM Wyoming's lease sale schedule complies with all applicable laws and regulations.

PAW appreciates the work and efforts of the Wyoming BLM staff. Employees of the Wyoming BLM are residents of this state, as are those who work in the oil and gas patch, and each are dedicated to the long-term success of Wyoming. The oil and gas industry is the largest economic engine in the state of Wyoming and provides invaluable revenues for state and local government functions and supports the livelihoods of thousands. At a time when domestic oil and gas is needed more than ever and can be developed on lands carrying the highest level of environmental stewardship, PAW implores the Wyoming BLM to take the aforementioned actions and make these parcels available at the Q3 lease sale.

Attachment 1, for your records, are the comments submitted by PAW on the Draft EA.

Sincerely,



J. Pete Obermueller

President

Petroleum Association of Wyoming

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Casper, WY 82604

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Attachment 1 – PAW Comments on the draft EA – Oil & Gas Lease Sale

December 10, 2021

Submitted via www.eplanning.blm.gov

Kim Liebhauser
Acting State Director
Wyoming Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82009

re: Wyoming Q1 Oil & Gas Lease Sale and associated Draft Environmental Assessment – DOI-BLM-WY-0000-2021-0003-EA

Dear Acting State Director Liebhauser,

The Petroleum Association of Wyoming (PAW) is the voice of the oil and gas industry in Wyoming and is dedicated to Wyoming's success and to limitless economic opportunities for her people. PAW has a long, successful working relationship with the Wyoming Bureau of Land Management. PAW represents companies that produce over ninety percent of the oil and natural gas in the state of Wyoming. Due to the prevalence of federal lands and mineral estate in Wyoming, the State produces the most natural gas, and second most oil, from federal lands in the nation. For years, PAW and the Wyoming BLM have successfully coordinated efforts to find a common approach to develop these resources. Advancing our collective interests in that manner has effectuated years of strong economic activity and environmental stewardship in Wyoming. In continuance of that approach, PAW submits the following comments regarding the BLM's draft environmental assessment (EA) for the upcoming Q1 2022 oil and gas lease sale.

Calendar Year 2021 will mark the first year in recent memory in which the Wyoming BLM failed to hold an oil and gas lease sale. Following the recent preliminary injunction⁹ restricting the BLM from forgoing lease sales, PAW was encouraged that lease sales and development plans would quickly return. The 459 parcels under consideration have already undergone extensive environmental reviews, were designated as appropriate to lease in applicable Resource Management Plans and were also subject to subsequent leasing EAs.

In an about face, on November 1, the BLM issued its lease notice proposal to offer 195 parcels and a corresponding significant reduction in leased area, while removing the remaining 264 leases from consideration primarily due to their location in Greater-Sage Grouse Priority Habitat Management Areas (PHMA), the federal equivalent of Wyoming's core area designation. The BLM states in the draft EA:

⁹ State of Louisiana, et al v. Joseph R. Biden, et al., Case No. 2:21-CV-00778

“The decision as to which public lands and minerals are open for leasing and what leasing stipulations may be necessary is made during the BLM’s land use planning process in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) [43 U.S.C. § 1712]”

The decision to not offer these lands for lease is counter to the RMPs that designated these lands as available for leasing, which represents BLM’s land use planning process and underpins its decision-making authority under FLPMA. The BLM did not provide sufficient justification for deferring those 264 parcels from consideration for leasing.

Greater Sage-Grouse

For the better part of two decades, the oil and gas industry, the state of Wyoming and other interests have made revolutionary steps in developing a framework to protect and restore sage brush habitat. This work culminated in 2015 with RMP amendments incorporating that framework and the concurrent decision by the U.S. Fish & Wildlife Service that the Greater Sage-Grouse does not warrant listing under the Endangered Species Act. The RMPs incorporated Wyoming’s Sage Grouse Executive Order, ensuring consistent implementation of the strategy across all land surfaces in the state. That effort also recognized that conservation of habitat and activities important to the State’s economy are not mutually exclusive.

The BLM states that, due to ongoing litigation, a new prioritization strategy within sage grouse habitat needed to be developed and is incorporated into this draft EA. PAW believes the BLM has not provided sufficient justification regarding why PHMAs are now considered unfit for leasing, an action counter to the determinations made in the RMPs and inconsistent with Wyoming’s Sage Grouse Executive Order. More complicating is that several of the leases proposed for deferral due to PHMA include large tracts of land not in PHMA. Deferring the entire lease, even if just a portion occurs within PHMA, from the sale significantly reduces the amount of acreage available under the Modified Proposed Alternative. The BLM did not provide information as to why the non-PHMA acreage is unavailable.

The information outlined in Table 3.27 reasonably justifies the deferral of only 24 lease parcels consistent with the 2015 RMP lease prioritization process. The BLM has gone far beyond this by proposing to defer all parcels that are in PHMA habitat and within four miles of a lek. These criteria are inconsistent with both the RMP amendments and the Wyoming Sage Grouse Executive Order, which are designed to protect sage brush habitat, the species and allow reasonable opportunities for development. It would be detrimental for the BLM to bifurcate these interrelated habitat management practices.

The act of leasing has no effect on the underlying lands. Federal leases within habitat areas are issued with a stipulation requiring operators to implement specific measures to reduce impacts on Greater Sage-Grouse populations and their habitat. Those measures are developed during the project-level NEPA analysis as well as the Application for Permit to Drill (APD) on-site and environmental review process. Similar reviews occur at the state level when an operator is obtaining a concurrent state APD. In PHMA or core habitat areas, specific disturbance thresholds cannot be exceeded and operators must adhere to specific stipulations regarding distance, timing of activities, and restoration activities to reestablish disturbed habitat. Since implementation of

this coordinated framework, APDs have rarely been denied because they are in PHMA. By continuing to defer parcels within PHMAs, PAW is very concerned BLM may be attempting to completely cease development from new leases in PHMAs issued under this and future lease sales, an action not supported by data or established regulatory regimes.

PAW has long supported the collaborative efforts to create the strategic framework in place for Greater Sage-Grouse. As noted, it helped result in a not warranted determination from the USFWS in 2015, meaning the State of Wyoming has retained jurisdictional authority over management of the species. The BLM should defer to the state of Wyoming and stay consistent with the existing RMPs which incorporate the appropriate balance between protection and development.

Greenhouse Gas Emissions Analysis

PAW is concerned the BLM has not provided a fully transparent, balanced greenhouse gas (GHG) analysis or commentary on how the analysis will be factored into successive decision-making. PAW had difficulty determining how the BLM developed their estimates for the social costs of estimated GHG emissions (SC-GHG). From the information provided in the draft EA, we are not able to follow the BLM's calculations to recreate similar results. We ask that the BLM provide more information about the data underlying its analysis.

PAW provided comments to the Office of Management and Budget earlier this year regarding our concerns about the reliability of the models used to estimate the SC-GHG. The models are easily manipulated to generate any cost one wants to justify for political means. As it relates to the analysis provided in this draft EA, the Modified Proposed Alternative shows a SC-GHG of \$357 million at a five percent discount rate, but also shows a SC-GHG of \$4.1 billion at the 95th percentile value. That is an increase by over a factor of ten. This is an incredible range through which to determine effects.

Further, if the BLM were to consider the modeled effects only within the U.S. instead of global (as is done with nearly every rulemaking and regulation promulgated by the federal government), that would decrease the estimated SC-GHG by a factor of ten. That would bound the low end of the estimated effects at \$36 million. PAW is concerned about decision-making based on models which cannot reasonably gauge a realistic outcome and urges the BLM to not utilize an ambiguous and unreliable model to make decisions on the ground.

Further, the BLM does not include any analysis of the social benefit derived from the availability of affordable, reliable resources. Domestically produced oil and natural gas have tangible myriad benefits to our nation, including significant domestic economic activity and reductions in OPEC+'s influence on commodity prices. Domestically produced oil and gas are also not subject to certain supply chain vulnerabilities prevalent with other energy sources, primarily alternative resources like wind and solar. The U.S. is over reliant on China for rare earth minerals, effecting the availability and prices of wind and solar products. Similarly, the U.S. is over reliant on many adversarial nations regarding our supply of uranium. At any point, any nation providing these raw materials could put a quota on exports to the U.S., severely hindering our national security and the health and wellbeing of our citizens. These considerations have not been factored into the

BLM's analysis of greenhouse gases and has the effect of tipping the scale in favor of the Administration's policies.

The BLM fails to consider the strong potential of increased GHG emissions generated from selecting either the No Action or Modified Proposed Action. By selecting anything but the Proposed Action, the BLM is limiting oil and gas development on federal lands and pushing development to other places, including foreign adversaries with limited or no environmental considerations. As PAW has argued in the past, oil and gas development on federal lands comes tied with the strongest environmental requirements of any development globally. Operators must install equipment to capture volatile organic compounds, which in turn capture methane. These operators continue to implement innovative techniques to reduce venting and flaring, many of which were piloted and executed while developing federal minerals in Wyoming. The BLM conditions approvals with best management practices which further limit emissions. Many states, including Wyoming, have limits or restrictions on the amount of methane that can be flared or vented, requirements which also affix to federal lands. Operators operate under stringent requirements for reclamation, which once in place, not only bring back habitat for numerous flora and fauna but also acts as a natural carbon sink.

The same is true of environmental justice considerations. Access to affordable energy, domestically and sustainably produced, is the best way to ensure that our communities can thrive. Increasing global GHG and other emissions by limiting development on federal lands is not a solution to environmental justice mistakes of the past.

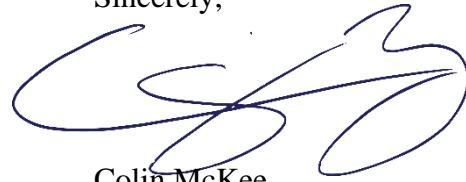
The last concern regarding the SC-GHG analysis is the lack of clarity on how the BLM intends to use this analysis going forward. The BLM states that the act of leasing lands does not create GHG emissions – PAW agrees. However, PAW is concerned the BLM will use the SC-GHG analysis when making individual decisions on issuance of APDs. The BLM has not provided a threshold above which it considers GHG emissions to be significant. The BLM admits the following:

“The incremental contribution to global GHGs from a single proposed land management action cannot be accurately translated into its potential effect on global climate change or any localized effects in the area specific to the action.”

PAW believes the BLM's projections for the overall contribution of emissions from the offered leases, while likely overstated, represents an insignificant fraction of total U.S. and global GHG emissions.

PAW appreciates the opportunity to provide these comments and looks forward to engaging directly with BLM on this and future leasing EAs. We respectfully request the BLM move forward with the Proposed Alternative, which when considered through an objective lens, provides the greatest benefit. We also request that BLM make targeted changes to the draft EA per these comments, promptly issue a Finding of No Significant Impact and move forward conducting the Q1 2022 oil and gas lease sale as scheduled.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a final flourish that extends to the right.

Colin McKee
Regulatory Affairs Director
Petroleum Association of Wyoming