



Transmitted via email

August 21, 2018

Scott Talbott, Director  
Wyoming Game and Fish Department  
5400 Bishop Blvd  
Cheyenne, WY 82006

**RE: REQUEST FOR LEASE DEFERRALS IN THE SUBLETTE MULE DEER MIGRATION CORRIDOR AND IN MULE DEER CRUCIAL WINTER RANGE**

Dear Mr. Talbott,

I am writing on behalf of the Wyoming Outdoor Council to ask you to urge the BLM to defer from sale dozens of oil and gas lease parcels that overlap the Sublette mule deer migration corridor. As you know, these parcels, thirty-three in all, are being offered by the Wyoming BLM at its third quarter 2018 oil and gas lease sale.<sup>1,2</sup> We also ask you to urge the BLM to defer parcels that contain crucial winter range for mule deer due to the proven inadequacy of BLM's mule deer lease stipulations and mitigation measures.<sup>3</sup> These actions are necessary to prevent further harm to mule deer populations which have experienced significant declines in the past twenty years due to a loss of habitat and habitat quality."<sup>4</sup> We recognize that only BLM can make a decision to defer a parcel, but the State of Wyoming and the Wyoming Game and Fish Department have considerable influence.

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<sup>1</sup> See attached map displaying lease parcels overlapping the Sublette mule deer migration corridor: WY-183Q-289, 290, 296, 298, 299, 300, 302-316, 318-323, 328, 331, and 336-339, comprising approximately 52,735 public land acres.

<sup>2</sup> See WY BLM Notice of Competitive Oil and Gas Lease Sale, September 18-20, 2018, *available at*: [https://eplanning.blm.gov/epl-front-office/projects/nepa/85072/152842/187109/Final\\_Book.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/85072/152842/187109/Final_Book.pdf)

<sup>3</sup> Sawyer, Hall, et al., Mule deer and energy development – Long-term trends of habituation and abundance, *Global Change Biology* (2017) *attached and available at*: <https://onlinelibrary.wiley.com/doi/full/10.1111/gcb.13711>

<sup>4</sup> See, e.g., Wyoming Mule Deer Initiative, <https://wgfd.wyo.gov/WGFD/media/content/PDF/Habitat/Mule%20Deer%20Initiative/Mule-Deer-Initiative.pdf>

We appreciate the Governor's and the WGFD's efforts earlier this summer that led to the BLM's decision to defer three parcels located within the Sublette migration corridor,<sup>5</sup> but we believe that those actions fall far short of what is needed to achieve the "overarching goal" set by the WGFD in its Ungulate Migration Corridor Strategy "to conserve and protect ungulate migration corridors, stopover areas and bottlenecks so that these landscape features persist in form and function."<sup>6</sup>

Although the BLM has deferred three parcels located in the Sublette mule deer migration corridor, the agency is proposing to go forward with the sale of thirty-three other parcels that overlap the corridor.<sup>7</sup> Each of these 33 parcels contains a "Lease Notice for Big Game Migration Corridor," which Interior Secretary Ryan Zinke asserts will provides sufficient protection for the corridor.<sup>8</sup> For the reasons discussed below, that claim lacks merit. The BLM's lease notice states that:

This parcel is located within a big game migration corridor designated or currently under review by the Wyoming Game and Fish Department. The lessee or their designated operator will be required to work with the BLM and Wyoming Game and Fish Department to take reasonable measures (see 43 CFR 3101.1-2) to avoid and minimize impacts to maintain big game migration corridor functionality, such as those contained within the "Wyoming Game and Fish Commission Ungulate Migration Corridor Strategy" (February 2016). The BLM will encourage the use of Master Development Plans for operations proposed on this lease parcel in accordance with Onshore Oil and Gas Order No. 1.

See BLM Notice of Competitive Oil and Gas Lease Sale, at 112. The lease notice is attached to parcels: WY-183Q-289, 290, 296, 298, 299, 300, 302-316, 318-323, 328, 331, and 336-339.

Apparently, the WGFD also believes that this lease notice will provide adequate protection for the migration corridor. Director Talbott, it is important to understand that this notice is simply that—a notice. It does not carry the legal weight of a lease stipulation, nor does it alter the terms or conditions of the BLM's standard oil and gas lease. BLM's regulations are clear on this point:

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<sup>5</sup> See DOI Press Release, "Secretary Ryan Zinke and Governor Matt Mead Work Together to Conserve Big Game Migration Corridor in Southwest Wyoming," <https://www.doi.gov/pressreleases/secretary-ryan-zinke-and-governor-matt-mead-work-together-protect-big-game-migration>

<sup>6</sup> See WGFD Ungulate Migration Corridor Strategy (February 4, 2016) at 2. See also Letter from Scott Smith, Deputy Director, WGFD, to Travis Bargsten, WY BLM, June 5, 2018 (stating that WGFD's goal is "to ensure that activities occur in a manner that maintain habitat function and result in no significant declines in species distribution or abundance.")

<sup>7</sup> See note 2, above.

<sup>8</sup> See note 5, above.

*An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.*

See 43 C.F.R. § 3101.1-3 (emphasis added).

An adequate level of protection cannot be achieved by virtue of this lease notice. It accomplishes nothing, except to: 1) provide a courtesy notice to the prospective lease purchaser that BLM may require “reasonable measures” to minimize impacts – authority the agency already possesses regardless of the notice; and 2) encourage discussions between the BLM, WGFD and the project proponent, opportunities the WGFD already enjoys via cooperative agreements, onsite visits, regular inter-agency meetings, etc.<sup>9</sup>

The much-touted lease notice<sup>10</sup> states, “The BLM will encourage the use of Master Development Plans for operations proposed on this lease parcel in accordance with Onshore Oil and Gas Order No. 1.” This is an empty promise. This same language promising master development plans has been attached to many other oil and gas leases issued by WY BLM, yet few if any plans have ever been developed. For example, oil and gas leases issued by BLM in the Chain Lakes Wildlife Habitat Management Area –an area undergoing intensive development pressure– contains even stronger language in a lease notice, yet BLM has failed to prepare a single master development plan for that rapidly developing field.<sup>11</sup>

Assuming for purposes of argument that one or more master development plans were actually developed by BLM, you should be aware that those plans would not prohibit drilling and operations on the lease, nor would they avoid the impacts of drilling and production. At best, the development plan would be an attempt to better manage and reduce the impacts from development proposed in the corridor. The attached map reveals that many of the contested 33 lease parcels lie entirely or substantially within the corridor. Those parcels located entirely

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<sup>9</sup> See, e.g., BLM-WY-MOU, Oil and Gas Coordination Procedures, Appendix 5G, (Revised August 2013), executed September 3, 2013. Recently issued Secretarial Order No. 3362 also directs the BLM to work in close partnership with the western states “to enhance and improve the quality of big-game winter range and migration corridor habitat on Federal lands ... in a way that recognizes state authority to conserve and manage big-game species...”

<sup>10</sup> See Department of Interior Press Release, note 5, above, incorrectly claiming that “the Department [of Interior] will prioritize the conservation of a mule deer migration corridor in southwest Wyoming through both deferred lease sales and lease stipulations.” As DOI knows, a lease notice is not a lease stipulation, and offering 33 parcels in the Sublette migration corridor with nothing more than a simple lease notice cannot reasonably be viewed as a conservation success.

<sup>11</sup> See, e.g., WY-1611-009 to -112 (“BLM will encourage the use of Master Development Plans in accordance with Onshore Order #1, on this lease parcel **to the extent possible.**”

within the corridor should not be leased due to the obvious impacts oil and gas development within the corridor would have.

In theory, the parcels that extend outside the corridor could *potentially* be developed without harm to the corridor, but this would depend on the size and configuration of the parcel, and on BLM's willingness to impose restrictions. A key question—unanswered in the BLM's leasing EAs—is whether sufficient distance can be maintained between the drilling operations and the migration corridor. As noted in Hall Sawyer's 2017 study, the impacts to mule deer from drilling and production activities have an impact well beyond the well pad location: "Even during the last 3 years of the study, when most wells were in production and reclamation efforts underway, mule deer remained >1 km away from wells pads."<sup>12</sup> The question that must be answered is whether the "reasonable measures" available to the BLM under its general regulatory authority permit it to move drilling operations far enough away from the corridor to avoid impacts. The leasing EAs are silent on this question.<sup>13</sup> And even assuming the necessary setback is within the realm of "reasonable measures," (e.g., 200 meters)<sup>14</sup> will the "energy dominance" policies of today's Department of Interior trump the needs of wildlife and prevent the BLM from taking the appropriate actions, which will undoubtedly be viewed as unnecessary "impediments" to energy production?<sup>15</sup>

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<sup>12</sup> Sawyer, et al., 2017 at 4521 and 4525-4526.

<sup>13</sup> The BLM's leasing EAs also fail to disclose the impacts of both existing and reasonably foreseeable activities/impacts within the corridor, along with the potential for additional development on *existing* federal and state leases within the corridor.

<sup>14</sup> 43 C.F.R. § 3101.1-2 Surface use rights. "A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year."

<sup>15</sup> See Executive Order (EO) 13783, *Promoting Energy Independence and Economic Growth*, dated March 28, 2017; Department of Interior Final Report: Review of the Department of the Interior Actions That Potentially Burden Domestic Energy, 82 FR 50532, November 1, 2017, available at: <https://www.federalregister.gov/documents/2017/11/01/2017-23702/final-report-review-of-the-department-of-the-interior-actions-that-potentially-burden-domestic>; and **Onshore Energy Burdens**-Examining the Department of the Interior's Actions to Eliminate Onshore Energy Burdens, Statement of Brian C. Steed, Deputy Director, DOI/BLM House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources Hearing on "*Examining the Department of the Interior's Actions to Eliminate Onshore Energy Burdens*" January 18, 2018 ( "**Planning for Energy Dominance**: The BLM recognizes that lease stipulations and additional Conditions of Approval (COAs) added at the permitting stage can overly burden energy development on public lands by adding additional development costs;

Director Talbott, there is simply too much at stake to risk the potentially significant, perhaps irreversible, impacts that may result from oil and gas leasing inside the corridor.

Accordingly, to ensure that the functionality of the Sublette migration corridor is maintained, now and into the future, the BLM must withdraw the parcels from the September 2018 sale pending the development of effective, science-based lease *stipulations* specifically designed to protect mule deer migration corridors. An effective, science-based stipulation would explicitly allow the BLM to prohibit operations on the lease if necessary to prevent damaging impacts to the corridor. For example, federal oil and gas leases overlapping the Chain Lakes WHMA contain a controlled surface use (CSU) stipulation that states: *“Surface occupancy or use will be restricted or prohibited unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts...”* The BLM needs to retain the legal authority to deny operations if site-specific environmental analysis reveals the potential for unacceptable impacts, authority the lease notice does not contain: *“Information notices shall not be a basis for denial of lease operations.”* See 43 C.F.R. § 3101.1-3.

As you know, the wildlife stipulations contained in WY BLM’s resource management plans for oil and gas leases do not address big game migration corridors. Due to the absence of appropriate stipulations, parcels located within the Sublette migration corridor should not be leased until the BLM develops, in consultation with the WGFD, effective and scientifically sound stipulations to protect the functionality of migration corridors. If effective stipulations cannot be developed, leasing within the migration corridor should not be permitted.

The Wyoming Game and Fish Department has substantial authority over the state’s wildlife, and this authority is recognized by the BLM. We ask you to assert that authority now and urge BLM in the strongest possible terms to defer these leases from the September sale.

**Parcels in mule deer crucial winter range must also be deferred.**

In addition to the thirty-three parcels located within the Sublette migration corridor, the BLM is proposing to sell nearly two-dozen lease parcels in mule deer crucial winter range.<sup>16</sup> We believe that leasing those parcels for oil and gas development would be a terrible mistake. Importantly, Hall Sawyer’s landmark 2017 study of mule deer on the Pinedale Anticline shows that oil and

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increasing the complexity of the drilling operations; and extending project timeframes. As such, the BLM is also evaluating the need for the numerous land use designations and lease stipulations that may conflict with BLM’s multiple use objectives, as a part of the ongoing review of the planning process, and is committed to working with state, local, and tribal partners to update policies. The BLM is also identifying potential actions it could take to streamline its planning and NEPA review procedures.”) available at: <https://www.doi.gov/ocl/onshore-energy-burdens>

<sup>16</sup> BLM parcels WY-183Q-048, 061-066, 083-088, 95, 101, 236-238, 247-250, and 335.

gas lease stipulations intended to protect mule deer from the impacts of energy development—even when coupled with aggressive post-lease efforts to mitigate impacts—do not work.<sup>17</sup>

The WGFD's Mule Deer Initiative acknowledges the findings and conclusions from the Sawyer study:

Long-term research has established mule deer do not habituate to energy development and significant population declines associated with infrastructure avoidance can be very long-term if not permanent (Sawyer et al. 2017). The research also concluded mitigation efforts and best management practices associated with the Pinedale Anticline natural gas development did not prevent significant population declines. Few viable options exist to expand winter range or to effectively increase mule deer use of winter range offsite (Korfanta et al. 2015 as cited by Sawyer et al. 2017). These findings contradict prior NEPA document statements in which federal agencies speculated energy development would be a short-term impact to which ungulates can readily habituate. The research will have important implications for ongoing and future implementation of Council on Environmental Quality (CEQ) guidance because avoidance of crucial winter range appears to be the only truly effective mitigation approach to sustain mule deer populations. The research suggested offsite mitigation approaches such as biodiversity offsets or mitigation banks, while untested, may warrant further consideration where avoidance and minimization of impacts are not feasible. However, future impact assessments should disclose that the impacts to mule deer crucial winter range in the sagebrush-steppe environment of the West may well be a long-term and perhaps an irretrievable commitment of resources.

The above research is compelling evidence that further steps are warranted to reduce the footprint of oil and gas developments within mule deer crucial winter range in Wyoming. Directional drilling and drilling multiple wells from a single pad, remote monitoring to reduce traffic on roads, piping product to offsite centralized collection points rather than by trucking, and abatement of all noise produced by facilities and equipment may reduce impacts to wintering mule deer. Most importantly, however, pre-project planning should ensure facilities are installed at the lowest possible density and in the least sensitive areas. There is evidence site selection can be more effective in areas of topographic relief and less so in open, level terrain. ***The most assured mitigation strategy is to avoid drilling and infrastructure placement within mule deer crucial winter ranges.***

See Mule Deer Initiative at page 10 (emphasis added). Oil and gas development in these vital habitats without proper safeguards would most certainly lead to further declines in mule deer

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<sup>17</sup> Sawyer, et al., at 1.

numbers – declines the WGFD has vowed to prevent.”<sup>18</sup> Without a doubt, the most effective way to achieve the “most assured mitigation strategy” of avoidance is to defer the parcels.

In summarizing the significance of the Sawyer study, the UW Haub School’s RESEARCH BRIEF observed,

This 17-year dataset indicates that mule deer avoid energy infrastructure over the long term, and the resulting indirect habitat loss can lead to significant population declines. Mitigation efforts including directional drilling, liquids gathering systems that reduced truck traffic to well pads, and off-site habitat protection reduced the magnitude of impacts but did not eliminate them. These findings reveal the trade-offs of energy development placed in critical mule deer habitat and suggest that federal planning documents consider these impacts to be long term.<sup>19</sup>

It should be noted that with respect to the September 2018 lease sale, the environmental assessments (EAs) prepared by BLM not only failed to consider the long-term impacts from leasing in crucial winter range, they failed to disclose *any* impacts to mule deer, contending that the now discredited lease stipulations will protect mule deer.<sup>20</sup>

In conclusion, we believe that the serious shortcomings associated with the current suite of mitigation tools calls for a new, more aggressive approach to the management of crucial mule deer habitats threatened by energy development. Therefore, for the reasons stated herein, we strongly recommend that parcels located in mule deer crucial winter range and in the Sublette (“Red Desert to Hoback”) migration corridor be deferred until such time that BLM develops, in consultation with the WGFD, effective, science-based lease *stipulations* to protect these vital habitats. Deferring these parcels would advance the goal set forth in the Wyoming Game and Fish Department’s Strategic Habitat Plan to “protect and maintain big game migration routes and stopover areas as well as other important areas of wildlife movement.”<sup>21</sup>

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<sup>18</sup> The WGFD’s Mule Deer Initiative webpage declares that the agency “is committed to conserving wildlife for the enjoyment of residents and visitors, **and that includes doing all we can to reverse the downward trend among mule deer.** <https://wgfd.wyo.gov/Habitat/Statewide-Mule-Deer-Initiatives> (emphasis added).

<sup>19</sup> See University of Wyoming Haub School of Environment and Natural Resources Research Brief, Mule Deer and Energy: Long-Term Trends of Habituation and Abundance, *attached*.

<sup>20</sup> The Wyoming Outdoor Council and others filed protests with the WY BLM objecting to the sale of oil and gas lease parcels located in the Sublette migration corridor and in mule deer crucial winter range. Our protest sets forth in detail the bases supporting this request. See “Protest National Audubon Society et al” at pages 20-26. We encourage you to review the protest, and contact us with any questions. The protest is available online at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=125997>

<sup>21</sup> WGFD Strategic Habitat Plan, Goal 1, Strategy V.

Deferring the contested parcels would also further specific management objectives and strategies recommended by WGFD to restore and sustain a quality habitat base for mule deer:

- Strategy: Encourage the BLM to withdraw important mule deer habitats from consideration for oil/gas leasing and other industrial developments.
- Strategy: Defer mineral leasing and development until appropriate technological capabilities have been developed to effectively avoid, minimize, and mitigate adverse impacts.<sup>22</sup>

Thank you for taking our concerns into consideration, and for your assistance in persuading the BLM to defer oil and gas lease parcels in the Sublette migration corridor and in crucial winter range. Our big game herds are world-renowned and contribute to our collective sense of pride and quality of life we share in Wyoming. Among nearly 1 million acres the BLM is offering for oil and gas lease sale in Wyoming the upcoming September and December 2018 lease sales, surely the state can and should advise against sales that risk the future of our mule deer population.

Sincerely,



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Copies to:  
Governor Matt Mead  
Wyoming Game and Fish Commissioners

Enclosures:

- 1) Map of migration corridor showing proposed and deferred lease parcels.
- 2) Sawyer, Hall, et al., Mule deer and energy development – Long-term trends of habituation and abundance, *Global Change Biology* (2017).
- 3) University of Wyoming Haub School of Environment and Natural Resources RESEARCH BRIEF, Mule Deer and Energy: Long-Term Trends of Habituation and Abundance.

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<sup>22</sup> See <https://wgfd.wyo.gov/WGFD/media/content/PDF/Habitat/Mule%20Deer%20Initiative/Mule-Deer-Initiative.pdf> at 17.