

**Wyoming Outdoor Council * The Wilderness Society * National
Audubon Society * Wyoming Wilderness Association**

Bureau of Land Management
Attn: Brian Davis (307-258-7191)
c/o FedEx Shipping Center
3601 Evans Ave.
Cheyenne, WY 82001¹

Via Federal Express

January 19, 2019

**Re: Protest of the February 25 to March 1, 2019 BLM Wyoming Competitive Oil and
Natural Gas Lease Sale**

To whom it may concern:

Please accept this protest of the above oil and natural gas lease sale that is filed by The Wilderness Society, Wyoming Outdoor Council, National Audubon Society and Wyoming Wilderness Association. This protest is filed pursuant to the provisions at 43 C.F.R. § 3120.1-3. In this lease sale, the Bureau of Land Management (BLM) is proposing to sell 568 parcels that would cover approximately 768,942 acres of federal minerals.

The environmental assessment (EA) prepared for this lease sale is DOI-BLM-WY-0000-2018-0004-EA.

According to the EA, nearly all of the proposed parcels are located within habitat of the Greater Sage-grouse. “Approximately 46% of the proposed parcel acreage is located within [priority habitat management areas] PHMA” and virtually all of the rest are located in general habitat management areas (GHMA). EA at 3-23 and 4-17. In addition, ninety-eight (98)² parcels overlap crucial winter range for mule deer; thirteen (13) parcels overlap the Baggs mule deer migration corridor; and, sixteen (16) parcels overlap the Red Desert to Hoback mule deer

¹ This address is the address provided to the protesters by BLM Wyoming State Director Mary Jo Rugwell in e-mails transmitted on January 16-18, 2019 with instructions this special address would work for delivery during the government shutdown. Should delivery not be successful the protestors will provide the protest to BLM as soon as possible after the shutdown ends, but there will be a record of having attempted timely delivery at this special address.

² BLM’s EA states at 3-28 that 99 parcels (whole or in part) are proposed to be offered in Mule Deer crucial winter range. BLM’s track changes document for this sale revised that number to 98. However, Petitioners’ GIS analysis – which used BLM data- identified 91 parcels overlapping mule deer crucial winter range. To be clear, in addition to protesting all parcels that overlap/intersect the Baggs and Red Desert to Hoback mule deer migration corridors, we are protesting all parcels offered in this sale that overlap/intersect crucial winter range and crucial yearlong habitat for mule deer, regardless of whether the number is 98, 91, or some other number. Parcels protested on the additional basis of mule deer concerns are shown in Exhibit 1.

migration corridor. As discussed further below, the parcels intersecting migration corridors and crucial winter habitats for mule deer should be deferred from leasing as they lack effective stipulations needed to ensure that the functionality of these crucial habitats is maintained.

I. ISSUES OF CONCERN

We have a number of concerns with the proposed action including, in particular, the potential for significant impacts to Greater sage-grouse and other sagebrush-obligate species, and undisclosed yet potentially widespread and significant impacts to big game migration corridors and crucial winter ranges. In addition, the environmental analysis fails to satisfy the basic requirements of the National Environmental Policy Act (NEPA) by failing to analyze a reasonable range of alternatives to the lease everything – lease nothing approach described in the EA, and by failing to take a hard look at the full range of direct, indirect and cumulative environmental impacts that will result from reasonably foreseeable development on the parcels. The absence of the requisite hard look is worsened by BLM’s failure to consider new science relating to both mule deer and greater sage-grouse. The proposed lease sale is also contrary to the multiple use–sustained yield principles embodied in the Federal Land Policy and Management Act (FLPMA). In addition, the proposed lease parcels raise concerns regarding impacts to wilderness resources.

II. LEASE PARCELS PROTESTED

We protest the proposal by BLM to sell the 568 parcels listed under its Notice of Competitive Oil and Gas Lease Sale. *See* Notice of Competitive Oil and Gas Lease Sale February 25—March 1, 2019 (listing and describing lease parcels 001 through 568, including stipulations). <https://eplanning.blm.gov/epl-front-office/projects/nepa/117392/164581/200730/184Q-Feb19FinalNotice.pdf>. The protested lease parcels are also listed in Appendix A to this protest.

III. INTERESTS OF THE PARTIES

The Wilderness Society, Wyoming Outdoor Council, National Audubon Society, and Wyoming Wilderness Association have a long-standing interest in the management of BLM lands in Wyoming and we engage frequently in the decision-making processes for land use planning and project proposals that could potentially affect our public lands and mineral estate, including the oil and natural gas leasing process and lease sales. Our members and staff enjoy a myriad of recreational, scientific and other opportunities on BLM-managed public lands, including hiking, biking, nature-viewing, photography, and quiet contemplation in the solitude offered by wild places. Our missions are to work for the protection and enjoyment of the public lands for and by our members and the public.

The National Audubon Society’s mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth’s biological diversity.

The mission of the Wilderness Society is to protect wilderness and inspire Americans to care for our wild places.

Founded in 1967, the Wyoming Outdoor Council (WOC) is the state's oldest and largest independent conservation organization. Its mission is to protect Wyoming's environment and quality of life for present and future generations.

The Wyoming Wilderness Association is a non-profit organization created in 1979 by a group of wilderness advocates and outdoors people who envisioned the Wyoming Wilderness Act. Our mission is to defend Wyoming's magnificent wild landscapes from the pressures of development, mismanagement, and commodification. We represent the values and interest of nearly 2,000 Wyoming members.

Although our organizations generally support the judicious leasing and responsible development of the public's oil and gas resources when done in the right place and after full disclosure of the environmental impacts that will result from development, we have concluded that with respect to this proposal, none of those basic guiding tenets have been achieved.

IV. AUTHORIZATION TO FILE THIS PROTEST

As an attorney and Litigation and Energy Policy Specialist for The Wilderness Society, I am authorized to file this protest on behalf of The Wilderness Society and its members and supporters, and I have like authority to file this protest on behalf of the Wyoming Outdoor Council, National Audubon Society, and Wyoming Wilderness Association.

V. STATEMENT OF REASONS

A. The BLM has not Prioritized Leasing Outside of Sage-Grouse Habitats as Required by its Land Use Plans and it has not Required Compensatory Mitigation.

1. The BLM has not Prioritized Leasing Outside of Sage-Grouse Habitats.

BLM has not prioritized leasing outside of priority habitat management areas (PHMA) and general habitat management areas (GHMA), as required by the Rocky Mountain Region Record of Decision (ROD) and Wyoming BLM Approved Resource Management Plan Amendments (ARMPA). Under FLPMA, BLM must manage public lands "in accordance with the [applicable] land use plans" 43 U.S.C. § 1732(a); *see also* 43 C.F.R. § 1610.5-3(a) ("All future resource management authorizations and actions . . . shall conform to the approved plan."). Commenting on these provisions, the Supreme Court said,

The statutory directive that BLM manage "in accordance with" land use plans, and the regulatory requirement that authorizations and actions "conform to" those plans, prevent BLM from taking actions inconsistent with the provisions of a land use plan.

Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 68 (2004).

Here, the EA is not consistent with provisions of the Rocky Mountain ROD and Wyoming BLM ARMPA, which require the “prioritization” of oil and gas leasing outside of PHMAs and GHMAs. Under the Rocky Mountain Region ROD, BLM must:

prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs . . . to further limit future surface disturbance and to encourage new development in areas that would not conflict with GRSG. This objective is intended to guide development to lower conflict areas and, as such, protect important habitat and reduce the time and cost associated with oil and gas leasing development. It would do this by avoiding sensitive areas, reducing the complexity of environmental review and analysis of potential impacts on sensitive species, and decreasing the need for compensatory mitigation.

Rocky Mountain Region ROD at 1-25. The Wyoming BLM ARMPA echoes this directive and includes the following objective: “Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMAs and GHMAs.” ARMPA Management Objective No. 14, at 24.

The prioritization mandate applies even when lands are designated as open for leasing under the applicable Resource Management Plan (RMP). Thus, the fact that these lands are open to leasing does not excuse compliance with the prioritization requirement, as BLM asserts in its response to comments on the EA and in the EA itself. *See 20181221.201902 Comment Response final.* (Comment Response);³ EA at 1-4, 2-1 to -3, 4-1 to -2 and 4-17. In addition, BLM cannot rely on stipulations as a substitute for compliance with the RMP prioritization mandate. *Id.* The RMP requirement is to apply certain stipulations *in addition to* prioritization, not instead of it. They are separate RMP provisions that *both* must be satisfied. BLM’s response to these issues, raised in our comments on the EA, will be discussed further below.

BLM’s now-replaced Instruction Memorandum (IM) 2016-143 also put in place many provisions to ensure prioritization of leasing outside of sage-grouse habitats. While IM 2016-143 has been replaced with IM 2018-026, which states, “[i]n effect, the BLM does not need to lease and develop outside of GRSG habitat management areas before considering any leasing and development within GRSG habitat,” this mere IM cannot supersede the statutory obligation for BLM to manage public lands “in accordance with the land use plans” And the RMPs are clear, BLM must “prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs” and “[p]riority will be given to leasing and development of fluid mineral resources . . . outside of PHMAs and GHMAs.”

To the extent IM 2018-026 can be read as purporting to remove any requirement to limit leasing in sage-grouse habitat management areas, and the requirement to prioritize leasing outside those areas, it is inconsistent with the Rocky Mountain ROD and the BLM Wyoming ARMPA. The entire point of the prioritization objective is to limit development and surface disturbance in important sage-grouse habitat—not simply to order BLM’s administrative

³ Available at https://eplanning.blm.gov/epl-front-office/projects/nepa/112234/164588/200737/20181221.201902_CommentResponse_final.pdf.

paperwork. Nor is the prioritization requirement satisfied by “encourag[ing] lessees to voluntarily prioritize leasing” outside habitat management areas. IM 2018-026 at 3. The prioritization objective applies to *BLM’s* decisions about where to offer leases—not the business choices of companies with no stewardship obligations—and it is binding on the agency. BLM has not complied with this requirement. Claims by the BLM that IM 2018-026 allows it to ignore the prioritization requirement and to lease in sage-grouse habitats with impunity are misplaced. *See* EA at 3-23 (making the claim the IM has opened areas to leasing despite the prioritization requirement).

In this lease sale BLM is proposing to offer for lease 568 parcels covering 768,942 acres, virtually all of which is in sage-grouse PHMA or GHMA. According to the EA, 302 parcels (365,902 acres) are in PHMA and 263 parcels (424,434 acres) are in GHMA. EA at 3-23. Only three parcels (722 acres) are not in either PHMA or GHMA. This forms a basis for our protest of all 565 parcels that are located in PHMA and GHMA, with only parcels 394, 397, and 398 not located in these areas. EA at 3-23.

Leasing in sage-grouse habitats at this level is an affront to sage-grouse conservation and will help ensure that the Fish and Wildlife Service (FWS) is forced to change its “not warranted” decision and be forced to move to list the sage-grouse under the Endangered Species Act (ESA). BLM is showing that in Wyoming at least there are not “adequate regulatory mechanisms” to protect the sage-grouse, as the FWS relied on for its not warranted finding. 80 Fed. Reg. 59856 (Oct. 2, 2015) (FWS not warranted finding). Leasing nearly 600 parcels that cover over three quarters of a million acres is not in compliance with the prioritization requirement in BLM’s RMPs. The BLM’s failure to prioritize leasing outside of sage-grouse habitats is a violation of FLPMA.

The inappropriateness of BLM not prioritizing leasing outside of PHMA and GHMA is discussed in the comments of Dr. Matt Holloran, who is a technical advisor on the Governor’s Sage-Grouse Implementation Team, which are included here as Exhibit 2. Among other things, he points out that not prioritizing means BLM is not meeting the first mitigation obligation, avoidance. He also notes that relying on the 2015 ARMPA is not a valid basis for analysis, and an analysis of these specific lease parcels is needed.

According to the EA, there are currently 1, 341,256 acres of PHMA (which represents 8.4 percent of the PHMA in Wyoming) under federal lease. EA at 3-24 (Figure) and 4-22. This represents a 73 percent reduction in the acreage under lease in PHMAs since implementation of the core area strategy began in 2008. *Id.* Yet now BLM is proposing to lease an additional 365,902 acres in PHMA, which would represent a 29 percent increase in PHMA leased acreage. In addition, pursuant to the lease sale proposals for the first, second, and third quarter 2018 lease sales in Wyoming, BLM proposed to offer an additional 303 parcels in PHMA, representing about an additional 397,365 acres in PHMA.⁴ And in the first quarter (March) 2019 lease sale the BLM is proposing to offer about 95 parcels (covering about 95,500 acres) in PHMA. Coupled with the acreage in the current lease sale these proposed and completed lease sales would increase the acreage leased in PHMA by a total of nearly 69 percent. Clearly this level of leasing

⁴ The exact acreage in PHMAs is not clearly indicated in all of the multiple EAs for the first three quarter lease sales, so this is an estimate.

in PHMAs is not meeting the prioritization requirement, or the conservation objectives of the 2015 sage-grouse plans.

BLM's response to these concerns, which we expressed in our comments on the EA when it was open for public comment, are unavailing and do not change the fact BLM is not complying with the prioritization requirement. In BLM's Comment Response Number 115 it simply references earlier comment responses (Numbers 26 and 28). Comment Response 26 basically says prioritization is addressed on pages 3-22 to 3-24 of the EA and the RMPs allow leasing. In Comment Response 28 BLM says the RMPs considered closing areas to leasing and rejected that alternative and the RMPs allow leasing and development to continue, with the stipulations attached, which complies with the EA purpose and need and allows for a Finding of No Significant Impact.

But these responses ignore the plain language of the prioritization requirement, which is to "prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs." Prioritize means to deal with things in their order of importance (and priority means "precedence, especially established by the order of importance or urgency"). The American Heritage Dictionary of the English Language, 4th ed. Not leasing in sage-grouse habitats has been made a first priority under the RMPs, but BLM is ignoring that direction. Even if the RMPs make areas *available* for leasing that does not mean they *must* be offered for lease if an expression of interest is filed, particularly when *the RMP contains other direction*, as it does here, which under FLPMA, BLM must abide by. "Proposals for future actions, such as oil and gas leasing . . . will be reviewed against these RMP decisions to determine if the proposal is in conformance with the plan." Rocky Mountain ROD at 1-39.

We would also note that the RMPs did not consider these particular lease parcels, they only considered leasing at a very broad, field office-wide level. But the validity of leasing these *particular* parcels which are located in PHMA, the most important of sage-grouse habitats, must be considered in this EA, and it has not been. *See* Exhibit 2 (Dr. Holloran's comments).

And the discussion on pages 3-22 to 3-24 of the EA basically says nothing about prioritization. It is mostly built around IM 2018-026 and BLM saying the IM allows it to avoid prioritization. But as mentioned, this IM cannot overrule the statutory command of FLPMA and BLM's duly adopted planning regulations which both state unequivocally that BLM will abide with the direction in an RMP. "An agency's decision cannot prevail if it violates a federal statute, and no agency can override statutory requirements by enacting a contradictory agency rule." *Ohio v. U.S. Army Corps of Eng'rs*, 259 F. Supp. 3d 732, 746 (N.D. Ohio, 2017). "Nor can an agency excuse its failure to obey the statute on the ground that the "procedures were adopted to enable the agency better to fulfill, not to frustrate the statutory mandate." *U.S. v. Fed. Commc'n Comm'n*, 652 F.2d 72, 123 n.154 (D.C. Cir., 1980) (citation omitted). "[S]o-called considerations of "demonstrable urgency" do not make statutory requirements any more flexible." *Id.* Clearly a summarily issued IM has even less stature than a regulation that was adopted through Administrative Procedure Act public notice and comment procedures, yet BLM seems to impermissibly be giving the IM greater status than managing the public lands "in accordance with the land use plans" BLM has developed, as mandated by the statute. 43 U.S.C. § 1732(a). Accordance means "agreement, conformity." The American Heritage Dictionary of the English

Language, 4th ed. And there is no doubt the RMP prioritization requirements are mandatory (“Priority *will* be given to leasing and development of fluid mineral resources . . . outside of PHMAs and GHMAs.” (emphasis added)). So there is no choice but for BLM to comply with the prioritization requirement, which it has not done here, IM 2018-026 notwithstanding.

2. The BLM must Incorporate Requirements for Compensatory Mitigation into the Leases.

One of the key requirements of the 2015 Sage-grouse Plans is that when BLM “authorize[s] third-party actions [that] result in habitat loss and degradation” of sage-grouse habitat, the agency must require “compensatory mitigation projects . . . to provide a net conservation gain to the species.” Rocky Mountain ROD at 1-27. The Plan expressly requires such mitigation to achieve net conservation gain when oil and gas development is authorized in PHMA in Wyoming and prescribes use of offsite mitigation/compensatory mitigation in GHMA, as well, to address impacts that cannot be fully resolved onsite. *Id.* at 1-30 to -31; Wyoming ARMPA, p. 35.

BLM, however, has now proposed to eliminate the ARMPA’s requirement to use compensatory mitigation. Under the December 2018 Proposed RMP Amendment and Final EIS, compensatory mitigation would no longer be required. Wyoming Proposed RMP Amendment and Final EIS at ES-7 to ES-8 and 2-18 to 2-22. BLM states that:

. . . following extensive review of FLPMA, existing regulations, orders, policies, and guidance, the BLM has determined that FLPMA does not explicitly mandate or authorize the BLM to require public land users to implement compensatory mitigation as a condition of obtaining authorization for the use of BLM-administered lands (Instruction Memorandum 2018-093, Compensatory Mitigation, July 24, 2018).

Id. at ES-7.

First, we would note that there is now a new IM on Compensatory Mitigation, IM 2019-018, issued December 6, 2018, but that IM still concludes that BLM cannot require compensatory mitigation under FLPMA and relies on a Solicitor Memorandum M-37046, “Withdrawal of M-37039, “The Bureau of Land Management’s Authority to Address Impacts of its Land Use Authorizations Through Mitigation.” (June 30, 2017).” Solicitor Memorandum M-37046 withdraws a previous Solicitor Opinion that confirmed BLM’s authority to address land use authorizations through mitigation but did not conclude BLM did not have the subject authority; rather, it “attempted to answer an abstract question.” In actuality, the direction in both IM 2019-018 and the Proposed RMP Amendment are arbitrary and capricious, and in violation of law. Consequently, BLM must include requirements for compensatory mitigation in any leases issued in PHMA and GHMA.

FLPMA unquestionably provides BLM with ample support for requiring compensatory mitigation, including its direction to manage public lands in a manner to ensure the protection of ecological and environmental values, preservation and protection of certain public lands in their

natural condition, and provision of food and habitat for wildlife;⁵ and to “manage the public lands under principles of multiple use and sustained yield”.⁶ The principles of multiple use and sustained yield pervade and underpin each of BLM’s authorities under FLPMA, including the policies governing the Act,⁷ the development of land use plans,⁸ the authorization of specific projects,⁹ and the granting of rights of way.¹⁰ While FLPMA does not elevate certain uses over others, it does delegate discretion to the BLM to determine whether and how to develop or conserve resources, including whether to require enhancement of resources and values through means such as compensatory mitigation.¹¹ In sum, these statutory policies encompass the protection of environmental and ecological values on the public lands and the provision of food and habitat for fish and wildlife and are furthered by the implementation of the mitigation hierarchy, including compensatory mitigation, to protect and preserve habitat for the sage grouse.

Additional authority also exists for the use of the mitigation hierarchy in issuing project-specific authorizations. For example, project-specific authorizations must be “in accordance with the land use plans,”¹² so if the land use plans adopt the mitigation hierarchy or other mitigation principles for the sage grouse under the various authorities described above, the project authorization must follow those principles. Moreover, in issuing project-specific authorizations, BLM may attach “such terms and conditions” as are consistent with FLPMA and other applicable law.¹³ This general authority also confers broad discretion on BLM to impose mitigation requirements on project applicants, including compensatory mitigation in appropriate circumstances.¹⁴

Finally, as a distinct authority, BLM also has the obligation to ensure that project-specific authorizations do not result in undue or unnecessary degradation. FLPMA states that BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue

⁵ 43 U.S.C. § 1701(a)(8). Among other things, public resources should be managed to “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values” and “provide food and habitat for fish and wildlife”.

⁶ 43 U.S.C. § 1732(a).

⁷ 43 U.S.C. § 1701(a)(7).

⁸ 43 U.S.C. § 1712(c)(1).

⁹ 43 U.S.C. § 1732(a).

¹⁰ 43 U.S.C. § 1765(a)(i).

¹¹ P. L. 94-579 (Oct. 21, 1976) (stating an intent “[t]o establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, *and enhancement of the public lands*; and for other purposes.” (emphasis added)).

¹² 43 U.S.C. 1732(a).

¹³ 43 U.S.C. § 1732(b).

¹⁴ BLM also has authority and/or obligations to ensure that all its operations protect natural resources and environmental quality, through statutes such as the Mineral Leasing Act of 1920, 30 U.S.C. 181 et seq.; *see also Independent Petroleum Assn. of America v. DeWitt*, 279 F.3d 1036 (D.C. Cir. 2002) (Act grants “rather sweeping authority” to BLM, or NEPA, 42 U.S.C. 4321; *see also* 40 C.F.R. § 1505.2(c), which requires consideration of mitigation alternatives where appropriate. In addition, BLM’s authority under FLPMA is broader than that exercised by purely land use or regulatory agencies such as EPA or zoning boards, because BLM [has authority] to act as both a regulatory and as a proprietor. Accordingly, BLM can take action using all the tools provided by FLPMA for managing the public lands, including issuing regulations, developing land use plans, implementing land use plans or in permitting decisions. 43 U.S.C. §§ 1712(a), 1732(a), 1732(b).

degradation of the lands.”¹⁵ A number of cases have found that BLM met its obligation to prevent unnecessary or undue degradation based, in part, on its imposition of compensatory mitigation. *See e.g., Theodore Roosevelt Conservation Partnership v. Salazar (“TRCP”)*, 616 F.3d 497, 518 (D.C. Cir. 2010) (BLM decision to authorize up to 4,399 natural gas wells from 600 drilling pads did not result in “unnecessary or undue degradation” in light of substantial mitigation required from permittees, including prohibition of new development outside core area until comparable acreage in the core was restored to functional habitat, and a monitoring and mitigation fund of up to \$36 million); *see also Gardner v. United States Bureau of Land Management*, 638 F.3d 1217, 1222 (9th Cir. 2011) (FLPMA provides BLM “with a great deal of discretion in deciding how to achieve the objectives” of preventing “unnecessary or undue degradation of public lands.”)

BLM’s implementation of a standard requiring compensatory mitigation was recently confirmed in *Western Exploration, LLC v. U.S. Department of the Interior*, 250 F.Supp.3d 718 (D. Nev. 2017).¹⁶ In considering the argument that a net conservation gain standard for compensatory mitigation violated FLPMA, the court stated:

The FEIS states that if actions by third parties result in habitat loss and degradation, even after applying avoidance and minimization measures, then compensatory mitigation projects will be used to provide a net conservation gain to the sage-grouse. The Agencies’ goals to enhance, conserve, and restore sage-grouse habitat and to increase the abundance and distribution of the species, they argue, is best met by the net conservation gain strategy because it permits disturbances so long as habitat loss is both mitigated and counteracted through restorative projects. If anything, this strategy demonstrates that the Agencies allow some degradation to public land to occur for multiple use purposes, but that degradation caused to sage-grouse habitat on that land be counteracted. The Court fails to see how BLM’s decision to implement this standard is arbitrary and capricious. Moreover, the Court cannot find that BLM did not consider all relevant factors in choosing this strategy...

In sum, Plaintiffs fail to establish that BLM’s challenged decisions under FLPMA are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Western Exploration, LLC v. U.S. Department of the Interior, 250 F.Supp.3d at 747.

BLM’s conclusions in the 2018 Proposed RMP Amendment and Final EIS, and in IM 2019-018, cannot be supported by applicable law, as reviewed in Solicitor’s Opinion M-37039 (Dec. 21, 2016) (attached and incorporated by reference as Exhibit 3). As detailed in M-37039, FLPMA and other applicable laws allow BLM to require compensatory mitigation. Taking the opposite approach based on a misreading of the law is both arbitrary and capricious and contrary

¹⁵ 43 USC § 1732(b).

¹⁶ BLM cited this case in its determination to issue its Notice of Intent to open the RMP amendment process. *See* Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments. 82 Fed. Reg. 47248 (October 11, 2017). Docket No.: LLWO200000/LXSGPL000000/17x/L11100000.PH0000

to law, and moreover may violate FLPMA's requirement to avoid unnecessary or undue degradation (UUD). Abandoning compensatory mitigation as a tool to prevent habitat degradation would violate this requirement. As noted above, the UUD standard prohibits degradation beyond that which is avoidable through appropriate mitigation and reasonably available techniques. *TRCP*, 661 F.3d at 76-77; *Colo. Env. Coal*, 165 IBLA at 229. Offsite compensatory mitigation is a well-established, reasonable and appropriate tool that has long been used to limit damage to public lands. Refusing to use that tool fails to meet FLPMA's requirement that BLM avoid unnecessary or undue degradation.

Because many of the proposed lease parcels in the February 2019 lease sale cover PHMA and GHMA, BLM must attach a stipulation to those leases imposing the net conservation gain/compensatory mitigation requirement in PHMA and providing for use of compensatory mitigation in GHMA that may soon be eliminated from the Wyoming ARMPA. The need to address compensatory mitigation was also addressed by Dr. Holloran. Exhibit 2 at 5-6. Applying these requirements as terms of the leases is necessary to prevent unnecessary or undue degradation of the PHMA and GHMA lands being leased and to meet BLM's obligation to prioritize leasing outside of sage-grouse habitats.

B. BLM has not Taken a Hard Look at Impacts to Mule Deer.

1. Impacts to Mule Deer Migration Corridors and Crucial Winter Ranges are not Adequately Considered.

The BLM's analysis of the environmental consequences to mule deer is insufficient to properly inform the public and agency decision-makers of the impacts to Wyoming's mule deer herds likely to result from the proposed action.¹⁷ The EA's failure to disclose the direct, indirect, and cumulative effects from the sale and potential development of these parcels, and its reliance on outdated, incomplete and largely irrelevant RMP-level analysis to support the sale of these parcels necessitates the preparation of additional environmental analysis and public comment opportunities. To ensure the integrity of the process, parcels offered at this sale should be deferred pending the development of such additional analysis.

The Wyoming BLM is proposing in the Supplemental February 2019 oil and gas lease sale to offer a total of 29 leases in two different state-designated mule deer migration corridors: thirteen parcels in the Baggs corridor and sixteen parcels in the Red Desert to Hoback corridor, and 91 leases covering approximately 75,731 acres of crucial winter range, habitat that is essential for their survival.¹⁸ The BLM's failure to adequately disclose the impacts from the proposed action begins with an inaccurate and incomplete description of the affected environment in the EA, the entirety of which is excerpted below:

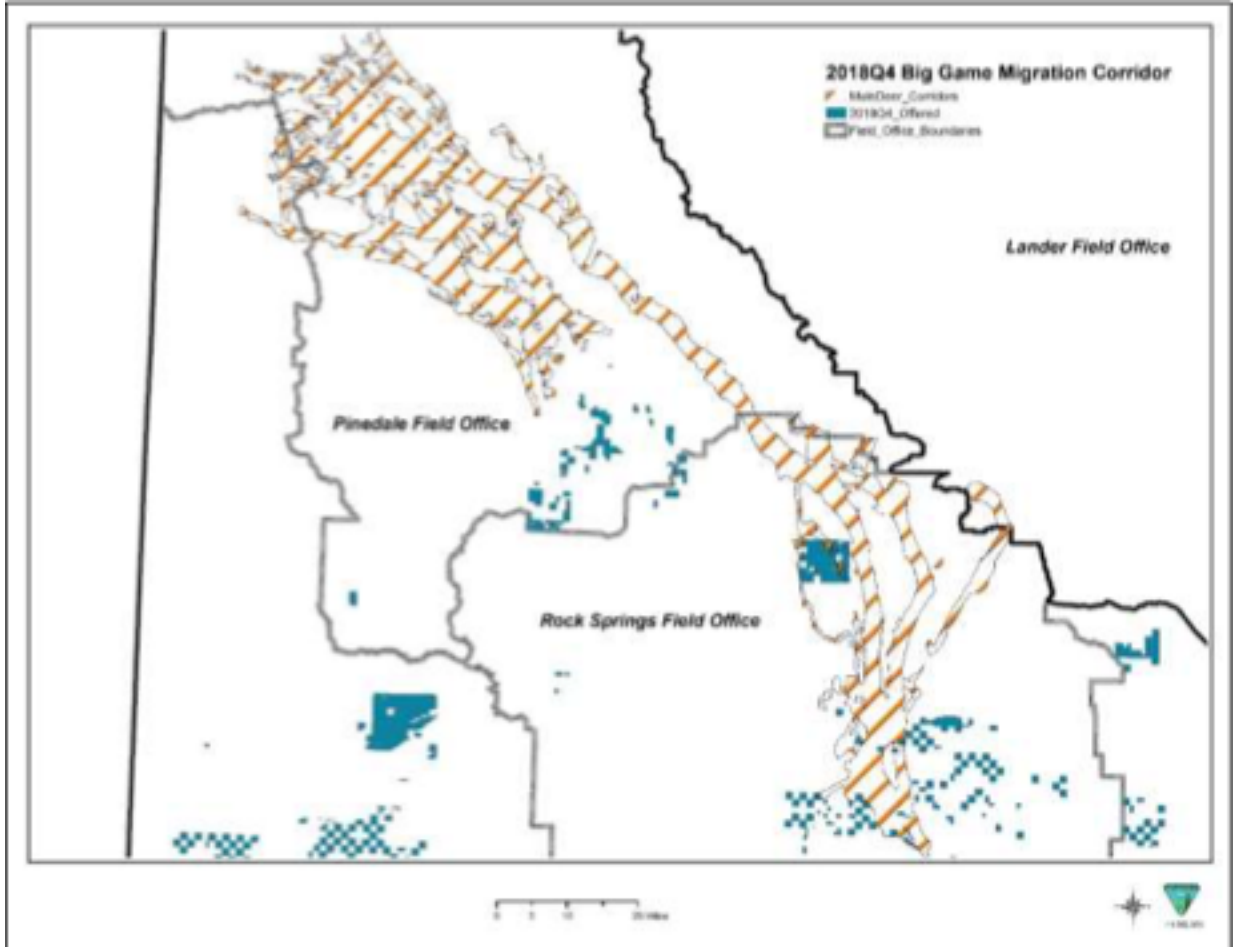
¹⁷ Our comments on the WY BLM Fourth Quarter oil and gas lease sale EA dated September 12, 2018, incorporated herein by reference, discussed in detail the specific flaws in the BLM environmental analysis.

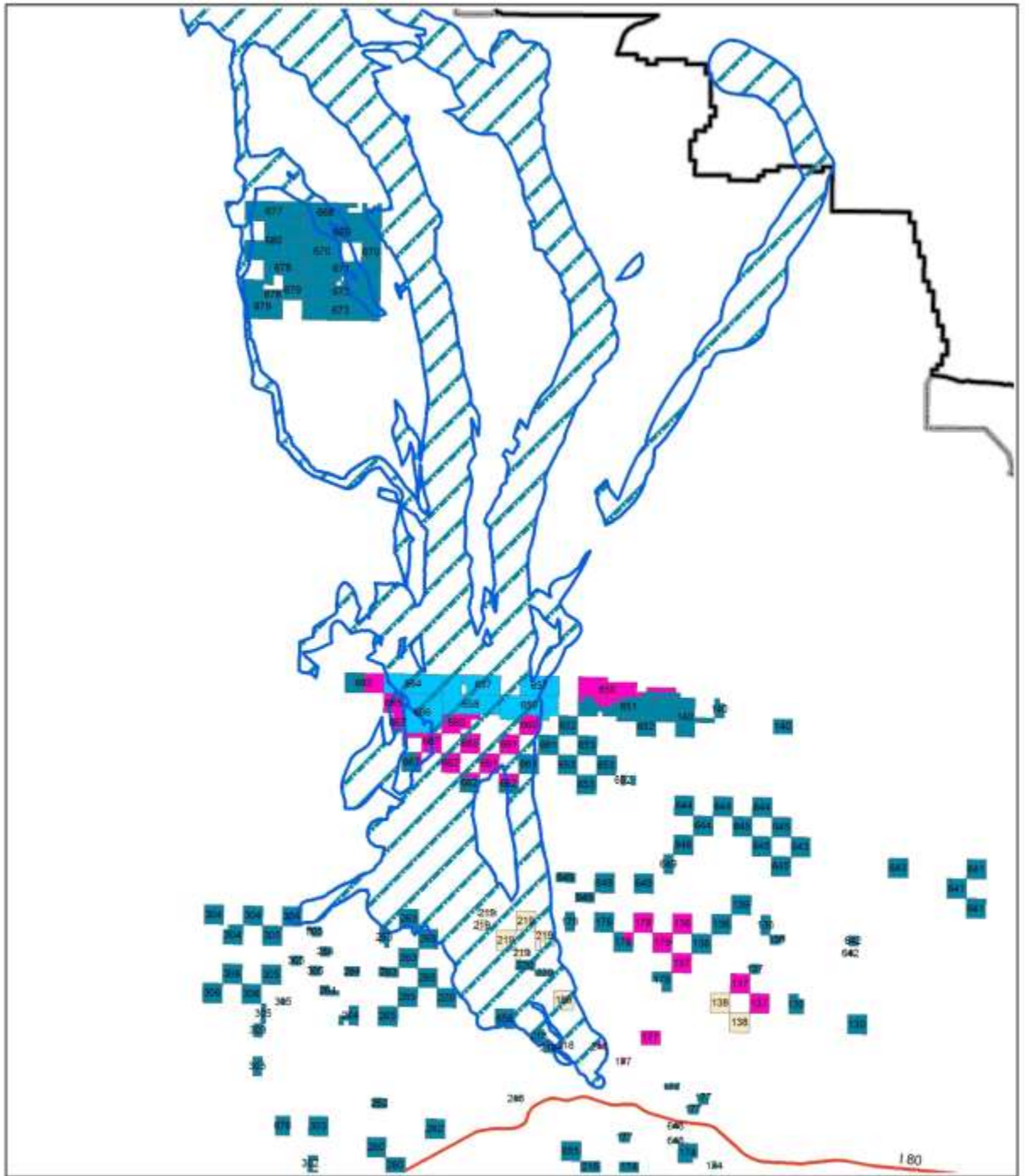
¹⁸ Parcels intersecting mule deer migration corridors and crucial winter range, which we protest, are identified in Exhibit 1, attached hereto.

3.10.3 Big Game

Several of the subject parcels are located within Big Game habitats.

During initial coordination with the Wyoming Game and Fish Department (WGFD) and during preparation of this EA, the BLM and WGFD met to discuss several proposed lease sale parcels located in areas with the State of Wyoming-designated Hoback to Red Desert mule deer migration corridor (see map, below). Seventeen parcels, whole or in part, are proposed to be offered and are located within this migration corridor; these parcels are comprised of approximately 31,469.80 acres. These parcels include 218, 220, 264, 304, 656, 657, 658, 659, 665, 667-677, 679 and 680 and are shown in the following Map.





- ▣ MuleDeer_Corridors
- ▣ 2018Q4_Parcels to be offered
- ▣ 2018Q4_Deleted in whole
- ▣ 2018Q4_Deferred All
- ▣ 2018Q4_Deleted or Deferred in Part

0 2.25 4.5 9 Miles

1:400,000

Nine parcels in the HPD and 237 parcels in the HDD are within big game crucial winter range. Of these parcels, approximately 107,983 acres (151 parcels, whole or in part) are proposed to be offered in Pronghorn antelope crucial winter range and 86,363 acres (99 parcels, whole or in part) are proposed to be offered in Mule Deer crucial winter range. An additional 50 parcels, whole or in part, containing approximately 53,574 acres intersect Elk crucial winter range. No parcels are within big game partition areas. (see Maps in Attachment 5.4)

Big game populations statewide are generally below objective as determined by the WGFD, and as detailed within their Job Completion Reports 6. Conditions contributing to these below objectives are varied by herd unit but generally include ongoing energy development, poor habitat quality, and winter weather conditions.

During local coordination at the field office level, several parcels were noted by the WGFD as being within an area undergoing active vegetation treatment to improve conditions for big game; these parcels include 041-044 and 057-063. These parcels are in the Baggs herd unit

EA at 3-25—28.

The above description notes that several parcels are located within big game habitats, and provides maps showing the general location of parcels relative to those habitats. It also notes that BLM coordinated with the Wyoming Game and Fish Department (WGFD) to discuss parcels located in the Red Desert to Hoback mule deer migration corridor. Significantly, this section notes—unfortunately without identifying the particular species—that “[b]ig game populations statewide are generally below objective as determined by the WGFD...” and explains that “ongoing energy development” along with poor habitat quality and winter weather conditions may be contributing to the WGFD’s inability to achieve population objectives. *Id.*

Generic, non-specific information such as this does assist informed agency decision-making. Information critical to understanding the baseline environmental conditions is incomplete or missing altogether. The present condition of lands comprising mule deer migration corridors and crucial winter range, and activities taking place or proposed in those habitats is not provided. Nor is information on specific mule deer herd size and their health provided. Information on the number of mule deer utilizing these corridors is absent, as is information concerning the timing of migration, and use of specific habitats within the corridors such as stopover sites. Specifically, with respect to migration corridors, existing threats and barriers, such as fencing, roads, energy and mineral developments, drought, the effects of climate change, existing mineral and oil and gas leases, invasive species, energy/mineral and residential development on private lands, etc., are not disclosed, yet this information is essential to understanding the potential environmental consequences of the BLM’s leasing proposal. In addition, the EA (which has since been corrected in the BLM’s track change document)¹⁹ did not disclose that parcels were being offered in the Baggs Mule Deer Migration Corridor (a state designation which had been proposed and was known to BLM at the time the EA was drafted), even though that corridor is identified as a priority corridor in the Wyoming Action Plan for Implementation of Department of Interior Secretarial Order 3362: “Improving Habitat Quality in

¹⁹ <https://eplanning.blm.gov/epl-front-office/projects/nepa/112234/164587/200736/20181220.TrckChng.201902SupplementalEA.BLM-WY-0000-2018-0004-EA.pdf>

Western Big-Game Winter Range and Migration Corridors.” Moreover, the specific functional attributes of habitats within the corridors, such as stopovers, high use areas, movement corridors, topography, and plant phenology are not disclosed, even though several parcels are located within such habitats. This topic was discussed at length in WOC’s Supplemental Comments on the EA, dated November 9, 2018.

There is no justification for BLM’s failure to include more specific and detailed information in the EA about the specific conditions, features and characteristics of the migration corridors and crucial winter ranges at issue here. The agency has access to all of this information either directly through its own internal databases and files, or from various public data bases such as WYGIS and cooperating agencies including WGFD. In addition, Petitioners have provided BLM on many occasions copies of scientific reports and research papers, direct links to pertinent Wyoming Migration Initiative web pages, and detailed letters containing numerous exhibits outlining our concerns. *See, e.g.*, WOC’s December 3, 2018, letter to Wyoming BLM State Director Mary Jo Rugwell Re: Ensuring Functionality of Wildlife Corridors by Using the Best Available Science to Implement Secretarial Order 3362, attached as Exhibit 4. To understand the environmental effects of leasing these lands, the BLM must provide a description of their present condition, uses, threats, etc. The EA does not.

The lack of detailed and parcel-specific baseline information in the EA concerning the uses, conditions and threats of lands comprising mule deer migration corridors and crucial winter range leads directly to the next problem: the BLM’s failure to take a hard look at the environmental impacts of leasing in these WGFD-designated vital habitats. Due to its brevity, and in order to facilitate State Office review, we include below the EA’s entire impacts analysis:

4.2.8.3 Big Game

If the proposed parcels located in the known and mapped mule deer migration corridors are leased, and if operations are authorized by the BLM, oil and gas activities may adversely affect use of the migration corridors by mule deer. Consistent with DOI Secretary’s Order No. 3362, “Improving Habitat Quality in Western Big-Game Winter Range and Migration Corridors” (February 9, 2018), the BLM may require, in coordination with the WGFD, additional measures at the time operations are authorized to mitigate impacts to mule deer migration corridors. These measures may include those described in the WGFD’s “Recommendations for Development of Oil and Gas Resources within Crucial and Important Habitat” (2010). Deferral of the vast majority of the parcels located within the Red Desert to Hoback migration corridor will adequately minimize impacts pending completion of the Rock Springs RMP revision process. All future development on the parcels, should they be leased and development proposed, will be coordinated with the WGFD and will take into account current science and field conditions.

The BLM and WGFD agreed to add a Special Lease Notice to those parcels being offered within the Red Desert to Hoback migration corridor (see Attachment 5.1), to ensure prospective lessees or their operators are aware of the WGFD’s current policies for management of oil and gas development within wildlife habitats, including big game migration corridors:

Special Lease Notice: This parcel is located within an identified migration corridor. BLM will consider recommendations received by the Wyoming Game and Fish Department, such as those contained within the document entitled “Recommendations for Development of Oil and Gas Resources within Important Wildlife Habitats” (current version available at

<https://wgfd.wyo.gov/Habitat/Habitat-Information/Development-of-Oil-and-Gas>) if development of this lease is proposed. BLM will encourage the use of Master Development Plans in accordance with Onshore Oil and Gas Order No. 1 on this lease parcel, to the extent possible.

While parcels may be intersected by migration routes, these routes are not afforded any additional protection by the WGFD or through the BLM RMPs. A Timing Limitation Stipulation for protection of big game on crucial winter range habitat has been attached to all parcels occurring within this habitat type. Future development will be subject to coordination with WGFD as determined appropriate, and in accordance with the BLM -WGFD Memorandum of Understanding. Additional mitigation, consistent with lease rights granted, could be applied at the APD stage. Impacts from potential future development are consistent with those identified in the underlying approved RMP FEIS’.

EA at 4-17, 4-18.

Upon review, the only statement that can be construed as a disclosure of impacts to mule deer is presented in the first sentence, and it simply acknowledges what is already widely known among wildlife managers and informed members of the public, which is that “oil and gas activities may adversely affect the use of migration corridors by mule deer.”²⁰ Certainly, to ensure informed decision-making, NEPA requires more than simply a general statement that impacts to mule deer migrations may occur as a result of energy development. To underscore this point, we are including as an exhibit²¹ Wild Migrations: Atlas of Wyoming’s Ungulates, written by Dr. Matthew Kauffman and his team of researchers at the University of Wyoming’s Wildlife Migration Initiative. A summary of the Atlas is available at <https://migrationinitiative.org>. Among the many topics discussed, it is significant that energy development in migration corridors is identified a significant challenge to migration.

Unfortunately, instead of taking a hard look at impacts at a point where disclosure could be useful for informing the agency’s leasing decisions, the BLM has deferred analysis to the drilling (APD) stage, when individual projects are proposed. Public comments encouraged the BLM to consider site-specific impacts in the EA, but BLM responded by claiming that it “has provided the level of analysis that is currently available based on known information.” See, e.g., BLM response to comment 20. But this misses the point. As Dr. Matt Holloran advised BLM in his attached report on sage-grouse,

BLM postpones analyses of potential impact to the APD stage because “the uncertainty [in infrastructure configuration and placement] that exists at the time the BLM offers a lease for sale includes crucial factors that will affect potential impacts” (EA at 4-1). However, as noted above, development is reasonably foreseeable given leasing of a parcel. Any uncertainty in surface disturbance levels and infrastructure can be dealt with analytically through an investigation of

²⁰ See, e.g., Wyoming Action Plan for implementing SO 3362 (identifying oil and gas leasing and development as specific threats to the Bags and Sublette (Red Desert to Hoback) mule deer migration corridors.

²¹ The migration Atlas is incorporated by reference into this protest. Hand delivery of the Atlas to the Wyoming State Office will be attempted in accordance with arrangements made with the BLM State Director detailed in a series of emails transmitted on Thursday, January 17, 2019. However, due to the ongoing government shutdown, and potential uncertainties regarding this arrangement, Petitioners cannot guarantee that BLM will be able to physically take possession of the Atlas per this arrangement. If delivery is unsuccessful, Petitioners will endeavor to make delivery at a time and place that is mutually convenient for the parties.

potential development scenarios and a weight of evidence approach to estimating potential impacts by parcel given these scenarios (see footnote 1). It is worth noting that BLM's NEPA Handbook H-1790-1 (as quoted in EA at 4-1) establishes the need to perform analyses focused on the effects of individual actions not analyzed in a broader EIS, and that analyses included in an EA should concentrate on issues specific to subsequent actions. In the case of this Lease Sale, the EA fails to address potential impacts specific to the foreseeable actions resulting from the sale.

Exhibit 2 at 4.

In addition, there is no disclosure in the EA of impacts from the potential development of the 91 lease parcels offered in this sale that overlap crucial winter range, despite the fact that timing limitation stipulations (TLS) typically attached to leases in mule deer crucial winter range have been shown by research conducted in Wyoming (referenced in our EA comments) to be ineffective. Mule deer depend entirely on these "vital" habitats to survive Wyoming's harsh winters, yet the EA fails to assess impacts in even the most general way. In its response to public comments, the BLM claims that these impacts have been disclosed in the underlying RMPs, but fails to acknowledge that the EISs prepared for those plans—such as the Green River RMP—are dated, fail to consider important and highly relevant mule deer science being developed by the Wyoming Migration Initiative and elsewhere,²² and fail to consider impacts at an appropriate scale to be useful here. *See, e.g.*, BLM Response to Public Comments 38 and 125.

Finally, there is no disclosure of the combined effect of development on these 91 crucial winter range leases and on other pre-existing and proposed leases that may now or in the near future encumber these crucial habitats.

Instead of providing an assessment of potential impacts of development on these parcels, BLM simply allows that it "may require, in coordination with the WGFD, additional measures at the time operations are authorized to mitigate impacts to mule deer migration corridors." EA at 4-17. NEPA requires more than this, particularly where issues are complex, where unresolved controversies exist, where resources are both sensitive and scarce, and where the actual on-the-ground impacts could be significant and potentially irreversible. The BLM claims that these unspecified and unanalyzed mitigation measures, together with the deferral of certain leases, "will adequately minimize impacts" but fails to provide in the EA any support for that claim or any information regarding how the mitigation measures will achieve the WGFD's mitigation policies for vital habitats ("The Department is directed by the Commission to recommend no significant declines in species distribution or abundance or loss of habitat function.").²³

Petitioners have pointed out to BLM time and time again in their letters to the agency and in their comments on BLM's leasing EAs that oil and gas leasing and development in these crucial habitats could have significant, potentially devastating impacts to Wyoming's mule deer

²² This new mule deer science, and its implications with regard to the proper and accurate environmental impacts of the proposed leasing decision, was cited and discussed in detail in our comment letters on the EA dated September 12, 2018 and November 9, 2018.

²³ See Wyoming Game and Fish Commission Mitigation Policy, Policy Number VII H, Issued January 28, 2016.

herds, but for some reason the agency is not listening. The agency continues to lease in crucial habitats without properly disclosing the impacts, without analyzing the effectiveness of mitigation, and without including adequate stipulations on leases that would permit BLM to deny operations if impacts to mule deer were deemed unacceptable.

Section 4.2.8.3 of the EA ends with this statement: “Impacts from potential future development are consistent with those identified in the underlying approved RMP FEIS’.” This claim is untenable for a number of reasons. First, with respect to impacts to the Red Desert to Hoback and Baggs migration corridors, the RMPs are largely silent due to the fact that migration science was nascent at the time the EISs were prepared for the Rock Springs and Rawlins RMPs and the corridors have just recently been mapped and designated. Second, even if the RMPs analyzed impacts to these migration corridors, the impacts of leasing these particular parcels has not been analyzed. Three, significant new science from Wyoming, dealing both with mule deer migrations and with the effects of drilling in crucial winter habitats, has emerged since the publication of the underlying RMPs. Any potentially relevant impact analyses disclosed in those documents with respect to environmental consequences of drilling, or the effectiveness of mitigation relative to corridors and/or crucial winter range are meaningless in light of new information and findings presented in these studies. Petitioner’s letter to BLM State Director Mary Jo Rugwell, dated December 3, 2018 Re: Ensuring Functionality of Wildlife Corridors by Using the Best Available Science to Implement Secretarial Order 3362 provides a detailed overview of this new mule deer science and explains its relevance to BLM impact analyses and decision-making. This letter is incorporated by reference herein and is attached to this protest as Exhibit 4.

2. The EA fails to disclose cumulative impacts to mule deer.

With respect to the disclosure of cumulative impacts to mule deer, the EA simply states that “Cumulative impacts are addressed in the underlying RMP FEIS’.” “No impacts beyond those identified in those documents from cumulative actions are expected.” EA at 4-22. As discussed below, that conclusion is not supported by the dated and generic analysis presented in RMPs, and it is certainly not supported by the reams of new mule deer science that BLM failed to consider in its EA. The EA’s cumulative impacts discussion contains a short section titled “4.4.2 Big Game.” That section provides:

There are over 16.6 million acres of big game crucial winter range (CWR) in the State of Wyoming. Of this amount, approximately 6,335,000 acres is Mule Deer CWR, 5,973,000 acres is Antelope CWR, and 834,000 acres is Elk CWR.

As of April 2018, 9.2% of mule deer CWR is currently under Federal lease (582,723 acres), 15.6% of antelope CWR is under Federal lease (934,351 acres), and 7.2% of elk CWR is under Federal lease (312,381 acres). Additionally, of the 834,142.7 acres within State of Wyoming designated mule deer migration corridors, 47,951 acres (5.75%) is under Federal lease. Additional private and state leases may also be in place. Impacts (direct and/or indirect) beyond those analyzed in the underlying RMP FEIS is not expected due to the continual expiration of existing federal leases whether because they lack production in paying quantities or are never explored. Additional coordination with WGFD will occur for all projects proposed in CWR and migration corridors as determined necessary, and in accordance with the BLM -WGFD interagency MOU. See Attachment 5.4 for relevant maps.

Between the Third Quarter and 4th Quarter sales, the vast majority of the mule deer corridor remains unleased and closed to oil and gas development.

EA at 4-22. Essentially, what this section is communicating is that since there is an abundance of big game habitat in Wyoming, and federal leases encumber only a small percentage of that habitat, we shouldn't be concerned. If the year was 1970, we would probably agree. But it's not, and we don't.

Even under the most favorable light, this spurious analysis fails to meet the most basic requirements of NEPA. First, with respect to the migration corridors, the EA merely provides the total statewide acreage within designated mule deer migration corridors and the acreage and percent under Federal lease. While interesting, this information does not aid the public's understanding of the cumulative impacts from this decision. First, the migration corridors at risk from the proposed action are the Baggs and Red Desert to Hoback corridors; the EA should focus on disclosing direct, indirect and cumulative impacts to those corridors.²⁴ Second, regardless of the acreage under lease, the EA fails to disclose that oil and gas exploration and/or development activities on a single lease or cluster of leases could significantly impair or perhaps (depending on the size and location of the field) even destroy the functionality of a corridor.

For it to be of any use at all to the public and to the decisionmaker, the cumulative effects analysis for the leases offered in the Baggs and Red Desert to Hoback migration corridors must at a minimum look at existing conditions in the corridors, disclose the past, present and reasonably foreseeable actions (such as, for example, other past and future lease sales and oil and gas drilling projects) that may impact the functionality of the corridors, examine the health, condition and population trends of the mule deer herds that use the corridors and the habitat they rely on, not only within the corridors, but also summer, winter and transitional ranges. We have prepared a series of maps showing recently offered and proposed oil and gas leases within the Hoback and Baggs migration corridors. These maps also show lease parcels located in crucial winter ranges. *See Exhibit 5.* Although far from complete in terms of presenting an adequate assessment of cumulative impacts, these maps at least provide a sense of the potential cumulative effects of BLM's leasing decisions.

With leases from the BLM's September 2018 and 1st quarter 2019 sale added to the map, the public can see that the risk of development and resultant impacts inside the corridors is much greater than from just the proposed action. Other essential information necessary to further illuminate potential cumulative impacts to mule deer is missing, such as fences, roads, gravel quarries, etc., but it is not the public's job to provide it. As we said before, the BLM has access to all the information it needs to prepare a useful and legally defensible NEPA document that fully discloses the impacts from potential development on the offered parcels. The fact that additional coordination with WGFD may occur at the APD stage does not absolve BLM of properly disclosing environmental effects and effectiveness of potential mitigation measures prior to offering these parcels.

²⁴ The WGFD has identified in its Wyoming Action Plan five priority mule deer migration corridors; three have been designated, two are proposed, with final designations expected shortly.

Similarly, statewide figures for federal leases in crucial winter habitats are of little to no use in understanding the cumulative effects of this proposal. No information is provided in the EA as to the location of these parcels vis a vis crucial winter range other than a poor quality and difficult to decipher map on EA page 5-57, but the parcels do appear to be unevenly distributed around various areas of the state with clusters occurring in the Big Horn Basin and Southwest Wyoming. The EA provides no information about the condition or quality of the habitat, no information discussing the number or condition of mule deer that utilize these areas during the winter, no information about existing and proposed federal mineral and oil and gas leasing activities and/or other federally-permitted uses of those lands, no information on population trends or wildlife counts, and no information on other activities that could be cumulatively impacting mule deer on these winter ranges. Indeed, the EA simply states that “impacts (direct and/or indirect) beyond those analyzed in the underlying RMP/FEIS is not expected due to the continued expiration of existing federal leases whether because they lack production in paying quantities or are never explored.” EA at 4-22. This is an astonishing display of malfeasance, given the steep declines in mule deer populations statewide and the complete and utter failure of BLM to consider any of the new science and information provided by the Petitioners.

C. The BLM has not Considered a Reasonable Range of Alternatives in the EA in Violation of the National Environmental Policy Act.

NEPA generally requires the BLM to conduct an alternatives analysis for “any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). The regulations further obligate BLM to “rigorously explore and objectively evaluation all reasonable alternatives” including those “reasonable alternatives not within the jurisdiction of the lead agency,” so as to “provid[e] a clear basis for choice among options.” 40 C.F.R. § 1502.14. The range of alternatives is the heart of a NEPA document because “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded.” *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 708 (10th Cir. 2009). That analysis must cover a reasonable range of alternatives so that an agency can make an informed choice from the spectrum of reasonable options.

By contrast, in evaluating lease sales, BLM frequently analyzes alternatives that essentially boil down to only considering a no action alternative, which would exclude all lease parcels from the sale; and a lease everything alternative, which would offer for lease all or nearly all proposed parcels. An EA offering a choice between leasing every proposed parcel, and leasing nothing at all, does not present a reasonable range of alternatives. *See TWS v. Wisely*, 524 F. Supp. 2d 1285, 1312 (D. Colo. 2007) (BLM violated NEPA by failing to consider “middleground compromise between the absolutism of the outright leasing and no action alternatives”); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (NEPA analysis failed to consider reasonable range of alternatives where it “considered only a no action alternative along with two virtually identical alternatives”).

For this lease sale, BLM has not analyzed any alternatives that fall between the two

extremes. Instead, it is only proposing the No Action Alternative, and two alternatives at the other extreme: the Proposed Action (which would lease the large majority of available parcels), and a “Lease All Available Parcels Alternative,” offering even more than the proposed alternative. EA at 2-1 to 2-3. BLM’s Proposed Action would offer for sale 568 parcels covering 768,942 acres, as shown in the Notice of Competitive Oil and Gas Lease Sale. This represents the large majority of the 674 parcels that are available. *See* EA at 1-2 (map showing the massive reach of the parcels proposed for sale). Choosing between leasing more than 560 parcels, or leasing nothing at all, is not a reasonable range of alternatives.

BLM is failing to consider reasonable middle-ground alternatives. For example, the EAs fail to evaluate an alternative that would defer leasing in PHMA and/or GHMA for Greater sage-grouse, despite a legal obligation to do so under the Approved RMP Amendments (September 2015) and associated policy guidance. *See* Wyoming BLM ARMPA at 24, Management Objective No. 14 (“Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMAs and GHMAs.”); *see also* ROD and ARMPA for the Rocky Mountain Region at 1-25 (“the ARMPs . . . prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs. . . . This objective is intended to guide development to lower conflict areas and as such protect important habitat. . . .”). The BLM has also failed to fully consider deferring parcels in Lands with Wilderness Characteristics (LWC) and big game migration corridors and crucial winter ranges. Because BLM has not evaluated these or any other “middle-ground” alternatives, it has violated NEPA.

BLM’s statements in the EA that deferring parcels in PHMA and GHMA was not considered as an alternative because such deferrals would not conform with the applicable RMPs is simply wrong. EA at 2-3. As discussed above in the prioritization section, designating lands as open to leasing in an RMP makes them *available* to lease but does not *require* that they be leased. Moreover, the prioritization requirement of the RMPs applies here, and clearly requires deferring at least some leasing in sage-grouse habitat. And again, under the Rocky Mountain ROD, “[p]roposals for future actions, such as oil and gas leasing . . . will be reviewed against these RMP decisions to determine if the proposal is in conformance with the plan.” Rocky Mountain ROD at 1-39.

Even if lands at issue here are open for leasing under the RMPs, it would be entirely reasonable for BLM to consider deferring parcels with important sage-grouse habitat. *See* Exhibit 2 (Dr. Holloran’s comments) In this special February 2019 lease sale, virtually all of the 674 parcels considered for sale are in sage-grouse habitat. Given the importance of these areas to the conservation of this imperiled species, the EA should have analyzed an alternative that deferred leasing in PHMA and GHMA. In addition, in light of ongoing and significant resource conflicts regarding proper management of big game migration corridors, and the significant threats posed by oil and gas development within these corridors, the BLM should have analyzed an alternative that deferred leasing in the Red Desert to Hoback migration corridor and the Baggs area migration corridor.

Seventeen parcels would be offered in the Red Desert to Hoback migration corridor. EA at 3-25 to 3-28. BLM would attach a Special Lease Notice to the 17 parcels. However, in electing this approach, the BLM failed to disclose the substantive limitations of the lease notice,

failed to consider applying a much stronger lease stipulation, and failed to develop an alternative that would have deferred leasing within the corridor. This needlessly narrow approach to a pressing resource management concern fails to satisfy NEPA's requirement to analyze alternatives to "any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). Quite clearly, the BLM should have considered an alternative that deferred leasing inside the migration corridors.

Similarly, BLM should have considered an alternative that deferred leasing in crucial winter range. Three hundred parcels would be offered in crucial winter range. EA at 3-28. New and significant peer reviewed science from Wyoming suggests the adverse impacts to ungulates from oil and gas leasing are more far reaching and longer term than BLM's scant NEPA analysis presumes. BLM should have evaluated an alternative that defers leasing in this habitat, at least until the best available science can be incorporated into NEPA review. Migration corridor and crucial winter range issues are discussed in more detail in the section on these issues.

Finally, the BLM should have considered an alternative that deferred the leasing of parcels within the Rock Springs Field Office (RSFO) in order to preserve decision space for the upcoming RMP revision in that Field Office, especially so as to protect wilderness quality lands, as discussed in detail in that section of this protest.

In its response to comments on the EA the BLM dismissed our concern that a reasonable range of alternatives had not been considered. Comment Response Number 109 and 110. All BLM can say is it appropriately considered alternatives and directs us to several other responses. These other responses mostly discuss how BLM has attached its special lease notice to parcels in the migration corridor and considered crucial winter range in stipulations. It also says the RMPs sufficiently analyzed impacts to big game crucial winter range. Nothing is said about the failure to consider sage-grouse habitats in an alternative. Thus, these responses do not meet BLM's obligation to provide a response to concerns raised regarding the EA.

D. BLM has not Taken a Hard Look at Environmental Impacts in the EA.

BLM has not taken the required "hard look" at potential environmental impacts in the EA. Under NEPA, BLM must evaluate the "reasonably foreseeable" site-specific impacts of oil and gas leasing, prior to making an "irretrievable commitment of resources." *New Mexico ex rel. Richardson*, 565 F.3d at 718; *see also Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (agencies are to perform hard look NEPA analysis "before committing themselves irretrievably to a given course of action so that the action can be shaped to account for environmental values"); *Sierra Club v. Peterson*, 717 F.2d 1409, 1411 (D.C. Cir. 1983) ([o]n land leased without a No Surface Occupancy Stipulation the Department cannot deny the permit to drill; it can only impose 'reasonable' conditions which are designed to mitigate the environmental impacts of the drilling operations.). Courts have held that BLM makes such a commitment when it issues an oil and gas lease without reserving the right to later prohibit development. *New Mexico ex rel. Richardson*, 565 F.3d at 718.

Here, BLM is in fact making an "irretrievable commitment of resources" by offering

leases without reserving the right to prevent all future development; the site-specific impacts are “reasonably foreseeable” and should be analyzed in this EA, rather than waiting until a leaseholder submits an application for permit to drill (APD). Unfortunately, the EA takes exactly the wrong approach and does not adequately evaluate impacts. The EA claims that leasing is merely an administrative action and entails no environmental impacts or consequences. EA at 1-3 and 4-1. Therefore, BLM expressly defers a site-specific analysis on key resource values, including wildlife, recreation, visual resources, and useable water resources. This approach violates NEPA, and BLM must take the site-specific impacts of leasing into account at this stage.

The EA failed to consider the landscape scale impacts to sage-grouse, as scientists say is needed. Exhibit 2 at 1-2. At a minimum, if BLM used the AIM Strategy and the Greater Sage-Grouse Monitoring Framework it could provide an analysis of landscape scale impacts. *Id.*

NEPA requires that BLM analyze and disclose all reasonably foreseeable impacts from development before it issues the leases. The environmental effects of reasonably foreseeable future actions analyzed in the 2015 ARMPA were premised on the implementation of the conservation measures contained in the plan amendments, including, importantly, prioritizing oil and gas leasing and development outside of PHMAs and GHMAs, implementing the net conservation gain requirement, requiring compensatory mitigation, requiring effective noise controls in GHMA as well as PHMA, mineral withdrawals in sagebrush focal areas, compliance with required design features, etc. For the analysis of impacts to be accurate, it must examine the direct, indirect and cumulative effects of habitat-disturbing actions in sage-grouse habitat without the implementation of those conservation measures, which have recently been abandoned by BLM or may be abandoned in the near future. *See, e.g.,* Instruction Memorandum (IM) 2018-093 (eliminating the compensatory mitigation requirement). *See also* Wyoming Greater Sage-Grouse Resource Management Plan Amendment and Final Environmental Impact Statement (proposing many imminent weakenings of the 2015 sage-grouse plans).

Moreover, BLM cannot rely for this sale on the plan-level analysis conducted for the ARMPA. Tiering is only appropriate when a subsequent NEPA document incorporates by reference earlier general matters into a subsequent narrower statement; but it does not allow a subsequent analysis to ignore the *specific* environmental issues that are presented in the later analysis. 40 C.F.R. § 1508.28. The ARMPA does not address the site-specific impacts associated with issuing these particular lease parcels. On the contrary, by requiring a prioritization analysis the ARMPA contemplates that such an analysis will occur at the leasing stage. *See S. Fork Band Council of W. Shoshone of Nevada v. U.S. Dep’t of the Interior*, 588 F.3d 718, 726 (9th Cir. 2009) (holding that while tiering is sometimes permissible, “the previous document must actually discuss the impacts of the project at issue”). *See also* Exhibit 2 at 3 (Dr. Holloran points out how the ARMPAs cannot be the sole basis for this analysis).

BLM responded to these concerns in the Response to Comments numbers 111 and 112. It essentially said the RMPs had considered impacts and it is complying with the RODs. It also said we had not identified any potential impacts. But the RMPs clearly did not consider the potential impacts that could result from issuing these particular leases. BLM recognizes that operations on leases can “result in surface-disturbance and other impacts.” EA at 1-3. BLM also recognizes that under *N.M. ex rel. Richardson* reasonably foreseeable site-specific impacts must be

considered in a NEPA analysis. *Id.* It also recognized it can “impose reasonable measures not otherwise provided for in lease stipulations, to minimize adverse impacts on other resource values.” *Id.* BLM asserts that there is “uncertainty” regarding impacts when BLM offers a lease and these are “crucial factors that will affect potential impacts.” *Id.* at 4-1. Relative to wildlife and special status species, “operations could result in population impacts and habitat fragmentation and loss.” *Id.* at 4-16. Relative to sage-grouse and big game migration corridors and crucial winter range, BLM claims “[i]mpacts associated within offering these lands are consistent with those analyzed in the applicable RMP” but it offers no analysis supporting that claim. *Id.* at 4-17 and 4-18.

Overall, it is clear that BLM could provide a hard look at potential environmental impacts that could result from leasing, but it has refused to do so. For example, BLM has extensive data on existing wells, which are located on 42 percent of the existing leases in Wyoming. *See* EA at 4-1. Given the scope of the proposed sale, it is highly likely that many of the parcels lie near or adjacent to existing development. An assessment of existing wells would allow BLM to forecast the number of wells likely to be drilled, the well spacing likely to occur in those areas, and make a forecast of reasonably foreseeable impacts, which BLM must do to meet its hard look obligation.

D. BLM has Failed to Consider the Cumulative Impacts of Leasing.

NEPA requires BLM to evaluate the cumulative impacts of this lease sale “resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R. § 1508.27(b)(7); *Kern v. Bureau of Land Management*, 282 F.3d 1062, 1075-77 (9th Cir. 2002). To satisfy this requirement, BLM’s NEPA analysis must consider the cumulative impact of all the recent and currently-planned oil and gas auctions in which BLM has offered hundreds of leases affecting sage grouse habitat protected under the RMPs. These sales include, but are not limited to:

- December 2017 and March and June 2018 Montana sales;²⁵
- December 2017 and March, June and September 2018 Wyoming sales;²⁶
- Utah 2018 and 2019 lease sales;²⁷ and
- Nevada 2018 and 2019 lease sales.²⁸

These lease sales have proposed to sell hundreds of parcels and hundreds of thousands of acres in sage-grouse habitats. Yet none of these sales are considered in the EA, which violates the obligation to consider cumulative impacts.

²⁵ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/montana-dakotas>.

²⁶ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/wyoming>.

²⁷ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/utah>.

²⁸ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>.

In addition, the cumulative impacts from the following oil and gas projects have not been considered in the EA:

- Continental Divide-Creston Oil and Gas Project (8,950 new wells proposed),
- Normally Pressured Lance Oil and Gas Project (3,500 new wells proposed),
- Converse County Oil and Gas Project (5,000 new wells proposed),
- Moneta Divide Natural Gas and Oil Development Project (4,250 new wells proposed),
and
- Greater Crossbow Oil and Gas Project (1,500 new wells proposed).

These massive projects – which together will involve drilling over 23,000 new oil and gas wells and constructing thousands of miles of new roads and pipelines, will have significant impacts on sage-grouse and sage-grouse habitats. *See, e.g.*, Converse County Oil and Gas Project Draft EIS at 3.18-57 (estimating that 54 leks will be abandoned due to project activities; “[d]espite the recent upward trend in peak male attendance, all greater sage-grouse leks in the analysis area are at risk of being abandoned as development continues to increase.”). These projects need to be considered as part of a cumulative impacts analysis.

BLM must analyze and disclose the cumulative impacts of this wave of leasing and oil and gas projects on the Greater sage-grouse and its habitat. BLM (in the Rocky Mountain Region Record of Decision and Wyoming “Nine Plan” Amendments and Revisions) and numerous authorities, such as Dr. Holloran (see Exhibit 2), have recognized the importance of addressing sage-grouse conservation on a comprehensive range-wide basis, and accounting for connectivity between state and regional populations and habitats, habitat fragmentation, and other impacts. As stated in the Rocky Mountain ROD, for the grouse plans collectively: “The cumulative effect of these measures is to conserve, enhance, and restore GRSG habitat across the species’ remaining range in the Rocky Mountain Region and to provide greater certainty that BLM resource management plan decisions in GRSG habitat in the Rocky Mountain Region can lead to conservation of the GRSG and other sagebrush-steppe-associated species in the region.” Rocky Mountain ROD, p. S-2.

Under NEPA, BLM cannot lease hundreds of parcels covering many thousands of acres in Montana, Wyoming and other states without considering the cumulative and trans-boundary impacts to the greater sage-grouse and other resources. It also cannot ignore the cumulative impacts of 23,000 new oil and gas wells that are proposed to be drilled in Wyoming.

Moreover, the cumulative (as well as direct and indirect) impacts from issuing these leases and permitting these wells may result in significant impacts to the environment. It is not plausible for BLM to assert that leasing 768,942 acres (over 1,200 square miles), in addition to BLM’s numerous other recent and planned large lease sales, will not have any significant impact. Thousands of new oil and gas wells will also have significant impacts. Properly analyzing those impacts will require a full Environmental Impact Statement (EIS), not just an EA. Issuing a finding of no significant impact (FONSI) for this lease sale would be arbitrary and capricious and violate NEPA.

BLM claims “[c]umulative impacts are addressed in the underlying RMP FEIS’.” EA at 4-22. But the RMPs did not consider the impacts of these specific leases—no leasing was even proposed in these areas when the RMPs were developed. *See also* Exhibit 2 (raising this issue). The RMPs only considered leasing in a general sense, not at a site or lease-specific level. The EA claims relative to both sage-grouse and big game crucial winter range cumulative impacts that, “[i]mpacts (direct and/or indirect) beyond those analyzed in the underlying RMP FEIS’ and the ARMPA FEIS, are not expected due to the continual expiration of existing federal leases whether because they lack production in paying quantities or are never explored.” *Id.* But this contention ignores the millions of acres of new leases that BLM is proposing to issue, and the potential for impacts from those leases. BLM cannot rely on projections that leases will expire to avoid a cumulative impacts analysis when it provides no data showing the level of expirations, and just as important, the acreages that are kept under lease despite a lack of development activities through actions such as lease suspensions which have caused millions of acres of leases to be “stockpiled” at a cost to taxpayers.²⁹

BLM’s response to our cumulative impacts concerns was contained in response number 113 in the Comment Response. It had nothing to say about our concerns other than directing us to responses 31 and 106. BLM says the cumulative impacts analysis was done in the RMPs, particularly the Rocky Mountain ROD. It also says proposed leasing actions in other states are not reasonably foreseeable; only the parcels in this lease sale matter. But the leasing in other states has already occurred in many instances, there is nothing hypothetical about it. And as discussed, the earlier RMPs did not consider the impacts that might occur from issuing these specific lease parcels; there was no consideration of the “uncertainty” that exists regarding impacts when BLM offers a lease or the “crucial factors that will affect potential impacts.” EA at 4-1.

E. BLM has not Complied with the Multiple Use Mandate of the Federal Land Policy and Management Act.

Under FLPMA, BLM is required to manage the public lands on the basis of multiple use and sustained yield. 43 U.S.C. § 1732(a). As the Supreme Court has noted, “[m]ultiple use management is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.” *Norton v. S. Utah Wilderness Alliance*, 542 U.S. at 58 (internal quotations omitted).

In recognition of the environmental components of the multiple use mandate, courts have repeatedly held that under FLPMA’s multiple use mandate, development of public lands is not required, but must instead be weighed against other possible uses, including conservation to protect environmental values. *See, e.g., New Mexico ex rel. Richardson*, 565 F.3d at 710 (“BLM’s obligation to manage for multiple use does not mean that development *must* be allowed. . . . Development is a possible use, which BLM must weigh against other possible uses — including conservation to protect environmental values, which are best assessed through the

²⁹ *See* The Wilderness Society, Land Hoarders: How Stockpiling Leases is Costing Taxpayers.” <https://www.wilderness.org/articles/blog/land-hoarders-oil-and-gas-companies-are-stockpiling-your-public-lands>.

NEPA process.”); *Rocky Mtn. Oil & Gas Ass’n v. Watt*, 696 F.2d 734, 738 n.4 (10th Cir. 1982) (“BLM need not permit all resource uses on a given parcel of land.”). And, just as BLM can deny a project outright in order to protect the environmental uses of public lands, it can also condition a project’s approval on the commitment to mitigation measures that lessen environmental impacts. *See, e.g., Pub. Lands Council v. Babbitt*, 167 F.3d 1287, 1300-01 (10th Cir. 1999) (“FLPMA unambiguously authorizes the Secretary to specify terms and conditions in livestock grazing permits in accordance with land use plans”); *Grynberg Petro*, 152 IBLA 300, 306-07 (2000) (describing how appellants challenging conditions of approval bear the burden of establishing that they are “unreasonable or not supported by the data”).

The multiple use framework’s emphasis both on environmental resources and on the need to balance between present and future generations are highly relevant to consideration of impacts to wildlife and recreation. For example, multiple use includes “the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; . . . a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources . . . ; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment. . . .” 43 U.S.C. § 1702(c).

The mere fact an RMP makes lands *available* for leasing does not mean that actually leasing the lands meets BLMs’ multiple use obligations. Given BLM’s acknowledged discretion to engage in leasing, or not leasing, under the Mineral Leasing Act, it is clear the leasing stage, as much as the planning stage, is when multiple use decisions should be made. Since land use plan decisions only set a basic framework for land management, and do not make project-specific decisions, it is clear the leasing stage is when decisions should be made about whether issuing a lease parcel would meet BLM’s multiple use responsibilities, and this must be reflected in the NEPA analysis at the leasing stage, which has not occurred here.

None of the overarching legal mandates under which BLM operates – be it multiple-use or non-impairment – authorize the Department of the Interior (DOI) to establish energy development as the dominant use of public lands. On our public lands, energy development is an allowable use that must be carefully balanced with other uses. Thus, any action that attempts to enshrine energy development as the dominant use of public lands is invalid on its face and inconsistent with the foundational statutes that govern the management of public lands. As discussed above in the Prioritization section, the courts have held unequivocally that BLM must meet its statutory obligations prior to erecting any administrative walls to meeting the statutory mandate.

Federal courts have consistently rejected efforts to affirmatively elevate energy development over other uses of public lands. In the seminal case, *New Mexico ex rel. Richardson v. BLM*, the Tenth Circuit put to rest the notion that BLM can manage chiefly for energy development, declaring that “[i]t is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses.” 565 F.3d 683, 710 (10th Cir. 2009); *see also S. Utah Wilderness Alliance v. Norton*, 542 U.S. 52, 58 (2004) (defining “multiple use management” as “striking a balance among the many competing uses to which land can be put”). Other federal courts have agreed. *See, e.g., Colo. Env’tl. Coalition v. Salazar*, 875 F. Supp. 2d

1233, 1249 (D. Colo. 2012) (rejecting oil and gas leasing plan that failed to adequately consider other uses of public lands). Thus, any action by BLM that seeks to prioritize oil and gas leasing and development as the dominant use of public lands would violate FLPMA. BLM must therefore consider a reasonable range of alternatives for this lease sale that considers and balances the multiple uses of our public lands, consistent with NEPA and FLPMA.

BLM's energy dominance thrust removes the public from decision making. Moreover, it fails to recognize that natural resources protection, particularly for support hunting opportunities, is a multi-billion-dollar industry in Wyoming. Elevating energy development to the level that BLM is engaging in ignores past agreements to avoid leasing in sensitive areas and ignores current research regarding the impacts of oil and gas activities on wildlife and wildlife habitats. Across the West oil and gas companies hold leases that they are not developing. About 50 percent of currently approved federal oil and gas leases are not producing energy. Yet this push by industry, which is being accommodated by BLM, locks up our public lands and prevents them from being managed for multiple use. If BLM listened to the public, it would scale back this massive leasing rush so that multiple use values could be more fully recognized and accommodated, and it particularly must prevent the rush to garner noncompetitive leases at rock-bottom prices by avoiding bidding at competitive sales. *See* Exhibit 6 (New York Times article on massive increase in speculators garnering massive lease holdings through unscrupulous noncompetitive sale gambits).

BLM claims in the Response to Comments (Number 117) that the RMPs considered multiple use and that "those [decisions] cannot be addressed here and the time for administrative appeal has expired." But even if multiple use decisions were made in the RMPs, that does not mean that multiple use should not be considered at the leasing stage. BLM is to "*manage*" the public lands to achieve multiple use, 43 U.S.C. § 1732(a) (emphasis added), not just *plan* for multiple use. *See also id.* at § 1702(c) (defining multiple use as "the management of the public lands"). New policies, such as the energy dominance theory of the President were not considered in the RMPs, so they must be considered now in the context of meeting BLM's multiple use mandate, which has not occurred.

F. Issues Related to Wilderness Quality Lands and Historic Trails.

1. The EA lacks appropriate leasing stipulations to parcels overlapping the Cherokee Trail, in violation of the Approved Rawlins RMP and NEPA.

The EA and Notice of Competitive Oil & Gas Lease Sale for this sale do not accurately attach leasing stipulations for the Cherokee Trail. The 2008 signed ROD for Rawlins RMP states: "An area within one-quarter mile or the visual horizon of the trails, whichever is closer, is open to oil and gas leasing with an NSO stipulation." 2008 Approved Rawlins RMP at page 2-13. When the shape file for the final parcel list is overlaid with the shape file for the Cherokee Trail (provided by the state BLM office), we identify the following parcels that are 1/4 mile or less from the Cherokee Trail: 2, 39, 40, 41, 49, 50, 51, 63, 84, 88, and 103, all of which should have the NSO stipulation that states: protecting historic values within 1/4 mile of contributing segments of the Cherokee Trail. However, the Notice of Competitive Oil & Gas Lease Sale notes that the following parcels as having the NSO stipulation within 1/4 mile of the Cherokee trail: 2, 51, 56, 57, 58, 65, and 71. We are wondering why the sale notice applies the NSO stipulation to parcels not even

near the Cherokee Trail and why parcels 39-50, 63, 84, 88, and 103 are missing the NSO stipulation altogether. We request that the BLM attach the correct stipulation as outlined in the Rawlins RMP for parcels 39-50, 63, 84, 88, and 103 or simply defer the parcels due to this inaccuracy.

2. The EA Has Not Adequately Addressed Lands with Wilderness Characteristics, in Violation of NEPA and FLPMA.

We have reviewed the BLM's response to our comment regarding the Fourth Quarter 2018 Competitive Oil & Gas Lease Sale regarding lease parcels that conflict with Lands With Wilderness Characteristics (LWCs). We identified several concerns with the EA in our initial comment: 1.) The EA Incorrectly identifies parcels that overlap lands with wilderness characteristics. 2.) The EA does not analyze the impacts to the Wilderness Resource. 3.) Parcels are within areas that have ongoing plan amendments. We thank the BLM for responding to our concerns. However, our concerns regarding points 1, 2, and 3 are yet to be resolved in the EA for this sale.

a. The EA still incorrectly identifies parcels that overlap lands with wilderness characteristics.

The EA identifies 54 parcels (87-95, 105-113, 232-235, 245-247, 287, 288, 309, 310, 312, 313, 315-318, 320, 321, 326-331, 650, 679 and 686) as possessing LWC in the High Desert District. EA at page 3-4. These have been renumbered as 66-74, 84-91, 191, 192, 194, 195, 197-200, 202, 206-211, 524, 544, and 551 in the crossover list. We identified 3 additional parcels that overlap LWCs: 79, 85, and 118. In response to this concern, the BLM stated:

BLM has reviewed the subject parcels. Parcel 79 overlaps the Rotten Springs LWC. It was incorrectly identified as not containing lands with wilderness characteristics on page 5-67. This information has been corrected at page 5-67 and 3-4. Parcel 85 also overlaps the Rotten Springs LWC. It was correctly identified as containing lands with wilderness characteristics on page 5-67 but was not listed on page 3-4. The EA at page 3-4 has been corrected. Parcel 118 overlaps the North Cow Creek LWC. It was incorrectly identified as not containing lands with wilderness characteristics. This information has been corrected at page 5-70 and 3-4.

BLM Comment Response at page 57. The final EA at pages 3-4, 5-67, and 5-70 still does not address the edits that the above response states. These pages inaccurately identifies parcels 79, 85, and 118 as not possessing LWCs, when in fact they do possess LWCs. The crossover list renumbers these parcels as 58, 64, and 96. These parcels should be deferred from the sale as a result of this inaccuracy.

The BLM is required to accurately identify the presence of LWCs prior to deciding to make the proposed leases available for sale. FLPMA requires the BLM to inventory and consider public lands resources during the land use planning process. 43 U.S.C. § 1711(a). The U.S. Court of Appeals for the Ninth Circuit has held: "wilderness characteristics are among the 'resource and other values' of the public lands to be inventoried under § 1711. BLM's land use plans, which provide for the management of these resources and values, are to 'rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.'" 43 U.S.C. § 1712(c)(4)." *Ore. Natural Desert Ass'n v. Bureau of Land Management*, 531 F.3d 1114, 1119 (9th Cir. 2008).

Further, in order to evaluate impacts under NEPA, the BLM must analyze those impacts from an accurate understanding of conditions on the ground. 40 C.F.R. § 1502.15 (agencies must “describe the environment of the areas to be affected or created by the alternatives under consideration.”); *see also Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988) (“without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.”).

We request that the BLM defer parcels all the parcels (58, 64, 87-96, 105-113, 232-235, 245-247, 287, 288, 309, 310, 312, 313, 315-318, 320, 321, 326-331, 650, 679 and 686) that overlap LWCs as the EA violates NEPA and FLPMA.

b. The EA still does not properly analyze potential impacts to LWCs and WSAs.

The BLM’s response to our comment letter and the EA does not mention the impacts that leasing would have on the Wilderness resource. Most of the LWCs are also located on the border of the Adobe Town Wilderness Study Area (WSA), and leasing will have a significant impact on the wilderness character of this landscape. The parcels that are most detrimental to the Wilderness character of Adobe Town include: 111-118, 88-93, 106-110, 118, 638, 640 (renumbered as 66-74, 85-91, 96, 512, and 514 in the parcel crossover list). Given the overlap of the proposed lease parcels with LWCs, and their proximity to Adobe Town, the BLM should provide a thorough analysis of the potential impacts that development would have on the wilderness character of this landscape.

We recommend that the leases located on Skull Rim and on the southern, eastern, and western boundaries of the WSA not be offered in future sales. Skull Rim is the access point for visitors to the heart of Adobe Town. Development of these leases will impact the suitability of Adobe Town for wilderness designation and harm the backcountry recreation experience, cultural resources, and sensitive desert species like mountain plovers, burrowing owls, raptors, sage grouse, pygmy rabbits, and amphibian/reptile species. We request that the BLM not offer the lease parcels in these areas.

The purpose of an EA is to evaluate and minimize adverse environmental effects before they occur. *See*, 40 C.F.R. §§ 1508.8, 1508.9. An EA should provide “sufficient evidence and analysis” to justify this determination, in part by taking a “hard look” at potential direct, indirect and cumulative impacts of the proposed action. *See, e.g. Wilderness Soc. v. Forest Serv.*, 850 F. Supp. 2d 1144, 1155 (D. Idaho 2012). BLM must fully evaluate the impacts of leasing on LWCs in the EAs.

Simply listing the LWC units that overlap with the proposed lease parcels, as the BLM has done in the EA, does not constitute environmental impact analysis under NEPA. NEPA requires federal agencies to consider “any adverse environmental effects which cannot be avoided.” 42 U.S.C. § 4332(C)(ii). Effects that must be considered include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8.

Federal agencies must comply with NEPA before there are “any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(C)(v); *see also* 40 C.F.R. §§ 1501.2, 1502.5(a). Federal courts have held that site-specific analysis is required prior to issuing oil and gas leases where there is surface that is not protected by no-surface occupancy (NSO) stipulations and where there is reasonable foreseeability of environmental impacts. *See e.g., New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009); *Pennaco Energy, Inc. v. United States DOI*, 377 F.3d 1147, 1160 (10th Cir. 2004). This is because oil and gas leases confer “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” and therefore would constitute an “irreversible and irretrievable commitment of resources.” *New Mexico ex rel. Richardson*, 565 F.3d at 718; 40 C.F.R. § 3101.1-2; *see also Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (agencies are to perform hard look NEPA analysis “before committing themselves irretrievably to a given course of action so that the action can be shaped to account for environmental values”).

c. Parcels are within areas that have ongoing plan amendments.

Parcel 118 (parcel 96 in the crossover list) conflicts with decisions pending the completion of a plan amendment. This parcel is located within the Monument Valley Management Area, overlaps the Rawlins and the Rock Springs Field Office, and is an LWC.

The Rock Springs Field Office does not have management direction for the LWCs. The field office is undergoing a management revision process that will decide their future management. The BLM responded to this concern by stating:

The BLM continues to comply with Section 201(a) of FLPMA, and periodically updates its inventory of public lands. Regardless of whether or not the citizen-identified LWCs are determined by the BLM to contain wilderness characteristics, the approved RMP does not prioritize protection of the wilderness characteristics over other multiple uses (outside of WSAs). As Section 201(a) of FLPMA also explains, “[t]he preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.” The approved Green River RMP does not prioritize protection of wilderness characteristics (outside of WSAs) over other multiple uses (see RMP at pages 23-24). Offering the lands intersecting LWCs is in conformance with the approved RMP. As BLM Washington Office IM 2018-034 states: “[i]t is BLM policy that existing land use plan decisions remain in effect until an amendment or revision is complete or approved. Therefore, the BLM will not routinely defer leasing when waiting for an RMP amendment or revision to be signed. Rather, when making leasing decisions, the BLM will exercise its discretion consistent with existing RMPs...” Offering the subject lands has been reviewed for conflicts with management actions being considered in the RMP revision; no conflicts were found and the field office recommended offering the subject lands.

BLM Comment Response at page 45.

In the ongoing RMP revisions, the BLM is required to evaluate management approaches, but if the BLM leases these lands, those alternatives would be foreclosed. Accordingly, pursuant to NEPA and the BLM’s Land Use Planning Handbook, the BLM may defer leasing to avoid

limiting the range of alternatives in an ongoing planning process. *See*, 40 C.F.R. § 1506.1; Land Use Planning Handbook 1601-1, § VII (E). While we understand that the BLM has discretion in this regard, the current RMP went into effect in 1990—almost 40 years ago—and never evaluated options to protect LWC.

We request that the BLM use wise discretion to not lease LWCs and allow the planning process for the Rock Springs RMP to determine the future their management. These areas provide wildlife essential habitat and visitors a rare opportunity for solitude on BLM lands. We respectfully ask that you do not take away the opportunity for the public to decide how these lands should be managed in the next plan. The Green River RMP is over 20 years old and does not contain management direction for LWCs. The LWCs inventories are new information that should be considered during this lease sale and incorporated in the next plan.

The BLM has in the past deferred parcels pending the completion of the VRM RMP in the RFO. A court-ordered remand constrains the ability of the BLM to take actions, which are in conflict with the decisions of this lease sale. The BLM states: “Two whole parcels (113 and 599) are recommended for deferral pending completion of the Visual Resource Management RMP amendment in the Rawlins Field Office. The amendment is the result of a court-ordered remand and constrains the ability of BLM to take actions which may be in conflict with this planning effort.” EA at page 2-1.

The BLM should defer parcel 96 based on the BLM’s obligations under FLPMA to manage the public lands based on principles of multiple use and sustained yield. The multiple-use mandate directs DOI to achieve “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations.” 43 U.S.C. § 1702(c). Sustained yield further requires the BLM to seek “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.” 43 U.S.C. § 1702(h). This mandate is clear that uses such as outdoor recreation, fish and wildlife, grazing, and wilderness are to be equally considered as multiple uses, along with energy development. 43 U.S.C. § 1702(l); *see also, Ore. Natural Desert Ass’n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2010). Consequently, the BLM may not manage public lands primarily for energy development. Notably, the BLM also may not manage public lands in a manner that unduly or unnecessarily degrades other uses. *See* 43 U.S.C. § 1732(b). By failing to consider how to protect LWCs and foreclosing opportunities to protect them in the ongoing Rock Springs RMP revision, the BLM is not complying with its obligations under FLPMA and NEPA.

VI. CONCLUSION.

For the reasons stated above, we protest the sale of all 568 parcels proposed for sale at the February, 2019 special lease sale, principally because these parcels are located in crucial sage-grouse habitats as well as big game migration corridors and crucial winter ranges. The proposed leasing would also improperly impact wilderness quality lands. Moreover, the environmental assessment prepared for this lease sale includes many other flaws, including not considering a reasonable range of alternatives, not providing a hard look at environmental impacts, a failure to consider cumulative impacts, and a failure to meet the multiple use obligation of the Federal Land Policy and Management Act.

Sincerely,

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List of Exhibits:

1. List of parcels protested in mule deer migration corridors and crucial winter ranges.
2. Sage-grouse comments of Dr. Matt Holloran.
3. Solicitor's Memorandum M-37039.
4. Letter from WOC to Mary Jo Rugwell, December 3, 2018.
5. Maps of parcels in migration corridors and crucial winter ranges:
 - 5.a. Statewide map -Special February parcels overlap with mule deer migration corridors.
 - 5.b. Baggs mule deer migration corridor overlap with Special February parcels.
 - 5.c. Red Desert to Hoback mule deer migration corridor overlap with Special February parcels.
 - 5.d. Red Desert to Hoback mule deer migration corridor overlap with parcels from three lease sales: 3Q2018, Special February 2019, and 1Q2019.
 - 5.e. Statewide map - Special February parcels overlap with mule deer crucial winter ranges.
 5. f. Southwest Wyoming – Special February parcels overlap with crucial winter ranges.
 5. g. Bighorn Basin - Special February parcels overlap with crucial winter ranges.
6. New York Times article on massive speculative leasing that is occurring.

Unnumbered. Exhibit to be hand delivered: "Wild Migrations: Atlas of Wyoming's Ungulates".

Appendix A

Lease Parcels Protested—As Listed in the BLM Wyoming Notice of Competitive Oil and Gas Lease Sale, February 25—March 1, 2019

WY-184Q-Feb19-001	WY-184Q-Feb19-042	WY-184Q-Feb19-083
WY-184Q-Feb19-002	WY-184Q-Feb19-043	WY-184Q-Feb19-084
WY-184Q-Feb19-003	WY-184Q-Feb19-044	WY-184Q-Feb19-085
WY-184Q-Feb19-004	WY-184Q-Feb19-045	WY-184Q-Feb19-086
WY-184Q-Feb19-005	WY-184Q-Feb19-046	WY-184Q-Feb19-087
WY-184Q-Feb19-006	WY-184Q-Feb19-047	WY-184Q-Feb19-088
WY-184Q-Feb19-007	WY-184Q-Feb19-048	WY-184Q-Feb19-089
WY-184Q-Feb19-008	WY-184Q-Feb19-049	WY-184Q-Feb19-090
WY-184Q-Feb19-009	WY-184Q-Feb19-050	WY-184Q-Feb19-091
WY-184Q-Feb19-010	WY-184Q-Feb19-051	WY-184Q-Feb19-092
WY-184Q-Feb19-011	WY-184Q-Feb19-052	WY-184Q-Feb19-093
WY-184Q-Feb19-012	WY-184Q-Feb19-053	WY-184Q-Feb19-094
WY-184Q-Feb19-013	WY-184Q-Feb19-054	WY-184Q-Feb19-095
WY-184Q-Feb19-014	WY-184Q-Feb19-055	WY-184Q-Feb19-096
WY-184Q-Feb19-015	WY-184Q-Feb19-056	WY-184Q-Feb19-097
WY-184Q-Feb19-016	WY-184Q-Feb19-057	WY-184Q-Feb19-098
WY-184Q-Feb19-017	WY-184Q-Feb19-058	WY-184Q-Feb19-099
WY-184Q-Feb19-018	WY-184Q-Feb19-059	WY-184Q-Feb19-100
WY-184Q-Feb19-019	WY-184Q-Feb19-060	WY-184Q-Feb19-101
WY-184Q-Feb19-020	WY-184Q-Feb19-061	WY-184Q-Feb19-102
WY-184Q-Feb19-021	WY-184Q-Feb19-062	WY-184Q-Feb19-103
WY-184Q-Feb19-022	WY-184Q-Feb19-063	WY-184Q-Feb19-104
WY-184Q-Feb19-023	WY-184Q-Feb19-064	WY-184Q-Feb19-105
WY-184Q-Feb19-024	WY-184Q-Feb19-065	WY-184Q-Feb19-106
WY-184Q-Feb19-025	WY-184Q-Feb19-066	WY-184Q-Feb19-107
WY-184Q-Feb19-026	WY-184Q-Feb19-067	WY-184Q-Feb19-108
WY-184Q-Feb19-027	WY-184Q-Feb19-068	WY-184Q-Feb19-109
WY-184Q-Feb19-028	WY-184Q-Feb19-069	WY-184Q-Feb19-110
WY-184Q-Feb19-029	WY-184Q-Feb19-070	WY-184Q-Feb19-111
WY-184Q-Feb19-030	WY-184Q-Feb19-071	WY-184Q-Feb19-112
WY-184Q-Feb19-031	WY-184Q-Feb19-072	WY-184Q-Feb19-113
WY-184Q-Feb19-032	WY-184Q-Feb19-073	WY-184Q-Feb19-114
WY-184Q-Feb19-033	WY-184Q-Feb19-074	WY-184Q-Feb19-115
WY-184Q-Feb19-034	WY-184Q-Feb19-075	WY-184Q-Feb19-116
WY-184Q-Feb19-035	WY-184Q-Feb19-076	WY-184Q-Feb19-117
WY-184Q-Feb19-036	WY-184Q-Feb19-077	WY-184Q-Feb19-118
WY-184Q-Feb19-037	WY-184Q-Feb19-078	WY-184Q-Feb19-119
WY-184Q-Feb19-038	WY-184Q-Feb19-079	WY-184Q-Feb19-120
WY-184Q-Feb19-039	WY-184Q-Feb19-080	WY-184Q-Feb19-121
WY-184Q-Feb19-040	WY-184Q-Feb19-081	WY-184Q-Feb19-122
WY-184Q-Feb19-041	WY-184Q-Feb19-082	WY-184Q-Feb19-123

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