



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155
<http://www.blm.gov>



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DECISION

Red Rock Forests	:	Protest to the Inclusion of Certain
Attn: Terry Shepherd	:	Parcels in the March 24, 2009
P.O. Box 298	:	Competitive Oil and Gas Lease Sale
Moab, Utah 84532	:	

Protest Denied

On February 6, 2009, the Bureau of Land Management (BLM) provided notice that 109 parcels of land (159,861.98 acres) would be offered in a competitive oil and gas lease sale on March 24, 2009. The notice also indicated that the protest period for the lease sale would end on March 9, 2009. By letter received at the BLM on March 9, 2009, the Red Rock Forests (RRF) protested the inclusion of 29¹ parcels in the sale, which parcels are located on public lands administered by the BLM's Moab Field Office (MFO), as follows:

- | | |
|-----------------------|-----------------------|
| UTU87185 (UT0309-112) | UTU87206 (UT0309-156) |
| UTU87188 (UT0309-123) | UTU87207 (UT0309-157) |
| UTU87189 (UT0309-124) | UTU87208 (UT0309-158) |
| UTU87190 (UT0309-126) | UTU87209 (UT0309-159) |
| UTU87191 (UT0309-129) | UTU87210 (UT0309-160) |
| UTU87192 (UT0309-130) | UTU87211 (UT0309-161) |
| UTU87193 (UT0309-132) | UTU87212 (UT0309-163) |
| UTU87194 (UT0309-134) | UTU87213 (UT0309-165) |
| UTU87195 (UT0309-137) | UTU87214 (UT0309-166) |
| UTU87196 (UT0309-139) | UTU87220 (UT0309-174) |
| UTU87197 (UT0309-140) | UTU87221 (UT0309-175) |
| UTU87202 (UT0309-152) | UTU87222 (UT0309-176) |
| UTU87203 (UT0309-153) | UTU87223 (UT0309-177) |
| UTU87204 (UT0309-154) | UTU87230 (UT0309-191) |
| UTU87205 (UT0309-155) | |

¹ RRF's protest identified 32 parcels, including the parcels addressed in this decision, and parcels UT0309-135, UT0309-162, and UT0309-230; however, these three parcels were not included in the BLM's notice, nor were they offered for sale. Therefore these three parcels are not subject to protest and are not covered by in this decision.

RRF Protest Contentions and the BLM Responses

RRF contention: The BLM violated the National Environmental Policy Act (NEPA) by failing to consider a no-leasing alternative.

BLM response: Leasing, exploration and development of oil and gas resources are discussed in the MFO Record of Decision (ROD) and Approved Resource Management Plan (RMP) on pages 25-27, 73-77, appendices A-C, Q and R and Map 12. A no-leasing alternative was considered but eliminated from further analysis in the MFO Proposed RMP and Final Environmental Impact Statement (EIS) (at Section 2.3.3). Given the potential range of decisions for oil and gas leasing in the four alternatives studied in the MFO Draft RMP/EIS, public lands were placed into one of four categories: 1) open for leasing subject to standard lease terms and conditions; 2) open for leasing subject to moderate constraints such as timing constraints; 3) open to leasing subject to major constraints such as no surface occupancy (NSO); and, 4) unavailable for leasing. This range of alternatives was reasonable and fully complied with NEPA. See Southern Utah Wilderness Alliance, 177 IBLA 29 (2009).

RRF contention: The recently updated Moab RMP did not adequately consider Class 1 Airshed designations, especially around National Parks, and parcels 112, 129, 132, 134, 135, 137, 139, 161, 162, 165, 166 and 230² should be permanently deferred.

BLM response: As the party challenging the BLM's inclusion of parcels in the lease sale, RRF bears the burden of demonstration with the objective of proof that the inclusion was premised on a clear error of law, error of material fact, or failure to consider a substantial environmental question of material significance. RRF has not met this burden. RRF provides no supporting evidence that leasing parcels 112, 129, 132, 134, 137, 139, 161, 165, and 166 would cause significant deterioration of the Class 1 Airshed designations of Arches and Canyonlands National Parks. Further the BLM has attached an air quality stipulation to all MFO lease parcels that requires the following:

“All new and replacement internal combustion gas field engines of less than or equal to 300 design-rated horsepower must not emit more than 2 gms of NO_x per horsepower-hour.”

and

“All new and replacement internal combustion gas field engines of greater than 300 design rated horsepower must not emit more than 1.0 gms of NO_x per horsepower-hour.”

RRF contention: Leasing the parcels violates the National Historic Preservation Act (NHPA) because the BLM has not consulted with interested members of the public (like RRF) as part of the NHPA process. The consultation conducted with Native American tribes is also flawed.

BLM response: The MFO completed Tribal consultation for the March 2009 lease sale. On January 27, 2009, letters were sent to the following Tribes (with maps depicting locations of the parcels and information describing the parcels and applicable stipulations): Navajo, Paiute, Hopi, Zuni, White Mesa Ute, Uintah and Ouray Ute, Southern Ute and Ute Mountain. No tribal

² As mentioned in Footnote 1 parcels 135, 162, and 230 were not offered for sale, and thus not addressed below in the BLM's response.

concerns were received. As demonstrated by the RRF Protest, members of the public had the opportunity to raise concerns to the BLM regarding parcels proposed for inclusion in the sale and the opportunity to protest such inclusion. Although RRF now argues that the BLM failed to adequately consult with members of the public, RRF has not informed the BLM what degree of public participation it believes is required under the NHPA or the Protocol, or provided any legal authority for its assertions. Moreover, RRF's protest does not demonstrate that the BLM's Section 106 consultation has overlooked a potentially eligible property.

RRF contention: The BLM has violated the Federal Land Policy and Management Act (FLPMA) because of the changed circumstances and a lack of public comment opportunity. The RMP's general analysis and leasing decisions are an insufficient basis for leasing. The parcel-specific identification represents "changed circumstances" requiring additional NEPA analysis.

BLM response: As stated in the Determination of NEPA Adequacy (DNA) prepared by the MFO at sections A-C, oil and gas leasing and development was thoroughly analyzed in the draft and final EIS documents for the MFO RMP. The RMP provided the basis for land use allocations including oil and gas leasing decisions. Based on its review, the MFO determined that the analysis sufficiently assessed the environmental consequences of leasing the parcels. A DNA is an appropriate means for the BLM to assess whether existing NEPA documents adequately analyze the anticipated impacts of an action so that the agency may proceed without performing further NEPA review. See Pennaco Energy v. U.S. Dep't of the Interior, 377 F.3d 1147, 1162 (10th Cir. 2004); Colorado Env'tl. Coal., 173 IBLA 362, 372 (2008); Ctr. for Native Ecosystems, 170 IBLA 331, 345-46 (2006); S. Utah Wilderness Alliance, 166 IBLA 270, 282-83 (2005).

RRF also contends that the public is unaware of the parcel locations and therefore cannot comment on site-specific locations. The BLM Utah posted the Notice of Competitive Lease Sale on February 6, 2009. This notice included the list of parcels with stipulations and notices and a map of the parcels. As demonstrated by the RRF Protest, members of the public had the opportunity to provide input to the BLM on any concerns regarding the specific parcels proposed for inclusion in the sale and the opportunity to protest such inclusion.

RRF contention: The BLM failed to provide a map of the lease parcels.

BLM response: The Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA), 30 U.S.C. § 226(f)), requires "terms or modified lease terms and maps or a narrative description of the affected lands." The BLM fully complied with the requirements of FOOGLRA by providing the public with information on the lease parcels with legal descriptions and maps showing their location, along with the stipulations and notices attached to each parcel. Additional maps were made available to the public for review at the BLM's Utah State Office Public Room in Salt Lake City, Utah and on the BLM's Utah internet site. RRF's contention that this information was inadequate lacks merit.

RRF contention: The BLM has not conducted a thorough cumulative impact analysis that includes the impacts to aquatic and terrestrial environments in recent drought years due to low stream flows, increased water temperatures and interruption of wildlife corridors. The BLM needs to conduct an assessment of the vulnerability of aquatic and terrestrial wildlife species and natural systems to global warming.

BLM Response: RRF makes general claims regarding the BLM's cumulative impact analysis in several areas. RRF does not, however, identify any particular cumulative impact that the BLM

failed to consider or establish that such impact would be significant. Consequently, RRF's Protest fails to show error in the RMP's cumulative impacts analysis. See San Juan Citizen's Alliance, 129 IBLA 1, 11 (1994).

The BLM assessed the potential impacts to the aquatic and terrestrial environments as a result of leasing. The BLM also coordinated extensively with and requested comments from U. S. Fish and Wildlife Service (USFWS) and Utah Division of Wildlife Resources (DWR) on the March 2009 Oil and Gas Lease Sale list on a parcel-specific basis. The USFWS and DWR each provided comments on a parcel-specific basis and all recommendations were incorporated into the final parcel list. The review by the two agencies' field specialists considered the effects of oil and gas leasing activity on aquatic and terrestrial species and habitats. The DWR also considers migration corridors and comments on any important migration pathways if and when affected by parcels being offered in a lease sale. Therefore, RRF's arguments concerning impacts to aquatic and terrestrial environments are groundless.

RRF contention: The BLM is inconsistent in handling and executing oil and gas lease sales in Utah and the BLM has failed to prepare adequate RMPs.

BLM response: RRF's contentions are simply generalizations that are factually inaccurate and that fail to meet RRF's burden in challenging the inclusion of parcels in the lease sale.

RRF contention: The No Surface Occupancy (NSO) Stipulation is not protective. The land around the NSO is not protected from drilling infrastructure and access roads adjacent to leases, and the NSO can be removed after the lease is issued.

BLM response: The application of NSO stipulation was analyzed in the RMP and applied to areas that warranted that level of protection, whereas adjacent or surrounding lands were determined to have adequate protection without the need to apply NSO stipulations. Drilling infrastructure and access roads are considered if and when they are proposed, along with proposed well locations. At the time site-specific development is proposed (subsequent to leasing), potential impacts and current resource conditions are analyzed. If waiver, exception or modification criteria were provided for in the RMP, they are considered as part of this analysis. Further, RRF has not provided any specific instance where NSO has been inappropriately removed from a lease after issuance.

RRF contention: Visual resource management (VRM) objectives might not be met along the access routes to the lease parcels.

BLM response: The BLM's VRM classifications were developed as part of the RMP process, and correctly applied to the lease parcels for the March 2009 lease sale. RRF's generalization regarding VRM objectives does not provide any evidence of error including the protested parcels in the lease sale.

RRF contention: The Department of the Interior has violated the Endangered Species Act by not including greater sage-grouse as an endangered species.

BLM response: Greater sage-grouse is not an endangered species at this time. The species is under review by the USFWS and until such time that a determination is made, the BLM will continue to manage it as a sensitive species and coordinate with the DWR and USFWS in doing so.

RRF contention: The BLM has violated the Clean Water Act and the Utah Water Code.

BLM response: At the leasing stage, the BLM works with the Utah Division of Environmental Quality (DEQ) to provide notice of protected Drinking Water Zones. BLM also utilizes appropriate lease stipulations, including setback requirements from springs, riparian areas, floodplains, and waterways, and Controlled Surface Use for steep slopes. Therefore, at the leasing stage, the BLM has adequately considered water quality protection.

RRF's concerns regarding water quality are more properly directed to the exploration and development stage (should activities be proposed) rather than at the leasing stage. Oil and gas operating orders and site-specific analysis of drilling proposals are considered at the time an Application for Permit to Drill (APD) is filed, and protection of water sources is considered at that time. RRF will have the opportunity to participate in that process, should a lease be proposed for exploration and development. The BLM has not violated the Clean Water Act or the Utah Water Code in its March 2009 lease offering.

Conclusion

For the above-stated reasons, the RRF protest is denied. The BLM has received offers on all of these parcels and will issue leases for these parcels after issuing this decision and any other necessary protest decisions.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B, §4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

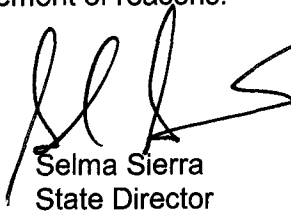
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to each party named in this decision and to the Office of the Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find attached a list of those parties who

purchased the subject parcels at the March 2009 sale and therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.



Selma Sierra
State Director

Enclosures

1. Form 1842-1 (2pp)
2. List of purchasers (1p)

cc: James Karkut, Office of the Solicitor, Intermountain Region,
125 South State Street, Suite 6201, Salt Lake City, UT 84138
Anderson Oil LTD, 5005 Woodway, #300, Houston, TX 77056
GADECO LLC, 5299 DTC Blvd., #500, Greenwood Villa, CO 80111
Impact Energy Resources, LLC, 621 17th St., Suite 1630, Denver, CO 80293
Kenneth K. Farmer, P.O. Box 2895, Casper, WY 82602
Par Five Exploration LLC, 1411 East 340 North, Orem, UT 84097
Petroleum Investment LLC, 58 Toppler Drive, Castle Rock, CO 80293
Pioneer Oil & Gas, 1206 W South Jordan Pkwy, # B, South Jordan, UT 84095-4551
Titan Energy Resources, 8765 N. Silver Spur Road, Park City, UT 84098
Vern K. Jones, P.O. Box 753, Salt Lake City, UT 84117
Wes State Lands, 301 Thelma Dr., #412, Casper, WY 82609-2325