



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Utah State Office
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Salt Lake City, UT 84145-0155
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DECISION

Theodore Roosevelt Conservation Partnership : Protest to the Inclusion of Certain
Attn: Joel Webster : Parcels in the March 24, 2009
2321 Gerald Ave. : Competitive Oil and Gas Lease Sale
Missoula, Montana 59801 :

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 Theodore Roosevelt Conservation Partnership (TRCP) protested the inclusion of 67 parcels in the sale, which parcels are located on public lands administered by the BLM in the Fillmore, Moab, Monticello, Price, Richfield and Vernal Field Offices (FOs), as follows:

Fillmore FO

UTU87125 (UT1108-001)	UTU87137 (UT1108-017)
UTU87126 (UT1108-007)	UTU87138 (UT1108-026)
UTU87127 (UT1108-009)	UTU87139 (UT1108-028)
UTU87128 (UT1108-010)	UTU87140 (UT1108-033)
UTU87129 (UT1108-011)	UTU87141 (UT1108-034)

Moab FO

UTU87185 (UT0309-112)	UTU87197 (UT0309-140)
UTU87187 (UT0309-121)	UTU87202 (UT0309-152)
UTU87188 (UT0309-123)	UTU87211 (UT0309-161)
UTU87189 (UT0309-124)	UTU87212 (UT0309-163)
UTU87190 (UT0309-126)	UTU87214 (UT0309-166)
UTU87191 (UT0309-129)	UTU87220 (UT0309-174)
UTU87192 (UT0309-130)	UTU87221 (UT0309-175)
UTU87193 (UT0309-132)	UTU87222 (UT0309-176)
UTU87194 (UT0309-134)	UTU87223 (UT0309-177)
UTU87195 (UT0309-137)	UTU87230 (UT0309-191)
UTU87196 (UT0309-139)	

Monticello FO

UTU87199 (UT0309-142)	UTU87225 (UT0309-180)
UTU87200 (UT0309-143)	UTU87226 (UT0309-181)
UTU87201 (UT0309-145)	UTU87227 (UT0309-182)
UTU87216 (UT0309-168)	UTU87228 (UT0309-183)
UTU87217 (UT0309-169)	UTU87229 (UT0309-184)
UTU87218 (UT0309-170)	UTU87231 (UT0309-195)
UTU87219 (UT0309-171)	UTU87232 (UT0309-196)
UTU87224 (UT0309-178A)	

Price FO

UTU87171 (UT0309-078)	UTU87175 (UT0309-082)
UTU87172 (UT0309-079)	UTU87176 (UT0309-083)
UTU87173 (UT0309-080)	

Richfield FO

UTU87130 (UT0309-002)	UTU87143 (UT0309-040)
UTU87131 (UT0309-003)	UTU87144 (UT0309-041)
UTU87132 (UT0309-004)	UTU87145 (UT0309-042)
UTU87133 (UT0309-005)	UTU87146 (UT0309-043)
UTU87134 (UT0309-006)	UTU87147 (UT0309-044)
UTU87135 (UT0309-008)	UTU87148 (UT0309-045)
UTU87136 (UT0309-009)	UTU87149 (UT0309-046)
UTU87142 (UT0309-039)	

Vernal FO

UTU87186 (UT0309-120)

By errata notice dated March 20, 2009, the BLM deferred offering the following 10 parcels covered by the TRCP protest: UTU87125, UTU87126, UTU87127, UTU87128, UTU87129, UTU87137, UTU87138, UTU87139, UTU87140 and UTU87141. Consequently, TRCP's protest concerning these 10 parcels is denied as moot.

This decision addressed the TRCP protest as it pertains to the remaining 57 protested parcels.

As a preliminary matter, many of the protest points express TRCP's concern about the potential effects to wildlife, including big game and sage-grouse, of oil and gas development on public lands. These protest points also discuss TRCP's stated organizational goal of working to ensure that oil and gas development in the western states is balanced with the needs of fish and wildlife resources and with the recreational needs of TRCP's members. Further, most of the TRCP protest points set forth only very general statements or conclusions. For the BLM to have a reasonable basis to consider protests that TRCP may submit in the future, TRCP should be as specific as possible in its protest and should identify for each protested parcel the specific ground for protest and explain how it applies to the parcel. Any allegations of error based on fact must be supported by competent evidence. A protest should not merely state general concerns or conclusions, or simply incorporate by reference arguments or factual information. Further, TRCP must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to its allegations and explain why TRCP believes that such stipulations

or notices do not obviate the allegations. Failure to comply with any of the foregoing may result in the summary dismissal of the protest.¹

TRCP Protest Contentions and the BLM Responses

TRCP contention: The BLM has not considered the importance of, nor is it protecting, the habitats of species as outlined in comprehensive habitat management planning for mule deer, elk, greater sage-grouse and Gunnison sage-grouse. The BLM is also negligent in managing habitats to meet the Utah Division of Wildlife Resources (DWR) objectives for populations, because leasing and subsequent surface development and road construction will render these lands unsuitable for management of mule deer and elk crucial winter range and migration routes along with overall habitat for greater sage-grouse and Gunnison sage-grouse.

BLM response: The BLM coordinated extensively with and requested comments from the DWR on the March 2009 Oil and Gas Lease Sale Parcel List on a parcel-specific basis. The DWR provided comments on a parcel-specific basis and each of its recommendations was incorporated into the final parcel list. The review by the DWR's field specialists considered the effect of oil and gas leasing activity on elk, mule deer, and big game in general (winter range and fawning or calving), greater sage-grouse, and Gunnison sage-grouse, along with other species. The DWR also participated in the development of the relevant stipulations and notices in the Resource Management Plans (RMPs) and other decisions related to oil and gas leasing, and is aware of field offices' decisions. No migration corridors issues were identified on any of the subject parcels by either the BLM or DWR. Consequently, based on review and input from the DWR, the BLM believes that development of protested parcels, in accordance with the stipulations that are attached to the parcels, will not have significant impacts on elk, mule deer, greater sage-grouse and Gunnison sage-grouse.

TRCP contention: The BLM is not following the recommendations of the Western Governors' Association Policy Resolution 07-01, which recommends protection of wildlife migration corridors and state wildlife agency designated crucial habitats.

BLM response: TRCP's contention is incorrect, as the BLM is following and will continue to follow the recommendations of Policy Resolution 07-01. The BLM has coordinated with the DWR throughout the pre-leasing process and continues to inform the DWR of relevant proposals and solicits its input on wildlife matters. In the pre-leasing review process conducted for the March 2009 sale, the BLM consulted with the DWR regarding the potential for impacts to big game (and other species). Both agencies concluded that there are no migration corridors currently identified on any of the subject parcels. The BLM will continue to cooperatively manage habitats and take every opportunity to communicate with the DWR and consider any concerns that may arise.

TRCP contention: The most recently updated information on designated big game crucial winter ranges, fawning, migration routes, and sage-grouse strutting and nesting areas developed by the DWR has provided the BLM with significant new information concerning these and other special surface values of these areas that needs to be studied in supplemental National Environmental Policy Act (NEPA) analyses.

¹ It is well established that the BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant's allegations are unsupported by facts in the record or competent evidence. See, e.g., Southern Utah Wilderness Alliance, 122 IBLA 17, 20-21 (1992); John W. Childress, 76 IBLA 42, 43 (1983); Patricia C. Alker, 70 IBLA 211, 212 (1983); Geosearch, Inc., 48 IBLA 76 (1980).

BLM response: The BLM carefully considered current DWR information in determining what parcels to include in the March 2009 lease sale. In that process, the BLM determined that although some information is relatively new, it is not the type of "significant new information" that requires the BLM to complete supplemental NEPA analyses prior to sale and lease of the subject parcels. As set forth in the Council of Environmental Quality regulations implementing NEPA, the duty to supplement arises when there is new information showing that the proposed action will affect the quality of the environment in a significant manner or to a significant extent not already considered. See 43 C.F.R. § 1502.9; Marsh v. Or. Natural Res. Council, 490 U.S. 360, 374 (1989). The DWR information does not fall within those parameters and nothing in the general allegations in the TRCP protest establishes otherwise. Moreover, the BLM contacted the DWR in January 2009 to ensure that it did not have additional information that might give rise to the duty to supplement, and the DWR did not have any such information.

Throughout the section of the protest referencing sage-grouse, TRCP attempts to use various studies and claimed "new information" to its benefit, including Wyoming research on full-field development (which is obviously a very different stage of development than leasing). This section of the protest also focuses on certain sage-grouse stipulations (involving leks) in the different FO RMP's, while failing to acknowledge other protective RMP stipulations involving sage-grouse habitat. All of the sage-grouse stipulations were developed in the RMP process in cooperation with the DWR and other agencies. Moreover, TRCP fails to recognize there is no need to attach the ¼ mile sage-grouse stipulation to any of the Vernal FO parcels included in the March 2009 sale. Finally, TRCP provides no basis for establishing that the BLM's current stipulations, which were developed in coordination with the DWR and FWS during the RMP process, will not be effective.

TRCP contention: The BLM violated NEPA by failing to consider no surface occupancy (NSO) and no-leasing alternatives.

BLM response: The generality of TRCP's contention underscores both the lack of value in generalized protest points that are mere conclusions lacking any underlying analysis, and the well-established precedent that the BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or where the protestant's allegations are unsupported by facts in the record or competent evidence. TRCP's present contention regarding the alternatives it believes the BLM should have considered clearly falls within these principles. For the BLM to consider and respond to this contention, the TRCP protest should have identified which FO NEPA analysis it is referencing and explain why TRCP believes the underlying analysis is inadequate. In that sense, TRCP had the burden of providing objective evidence and explaining why: 1) the alternatives it believes should have been studied (NSO and no-leasing) would have accomplished the purpose of the proposed action; 2) would have been technically and economically feasible; and 3) would have a lesser impact than the leasing categories the BLM studied. Since TRCP was unwilling to shoulder that burden, the BLM has no duty to respond to TRCP's general contention. The BLM also notes that the TRCP contention is not factually accurate. For example, the Fillmore FO's Oil and Gas Environmental Assessment (UT-010-2008-050) analyzed the no-leasing alternative in detail but did not choose that as the preferred alternative.

TRCP contention: The BLM violated the Federal Lands Policy and Management Act (FLPMA) by failing to prevent undue or unnecessary degradation of mule deer crucial ranges, elk winter ranges, mule deer and elk migration routes, and active sage-grouse leks and associated habitat.

BLM response: TRCP correctly recognizes that FLPMA requires the BLM to prevent unnecessary or undue degradation in its management of public lands. However, TRCP's contention that the BLM has violated FLPMA relies entirely on TRCP's unsupported assumption

that the sale and leasing of the protested parcels will cause unnecessary or undue degradation. The TRCP protest provides no evidence to support its contention. Nothing in the NEPA analyses, on which the BLM relied in determining which parcels to include in the sale, in any way supports TRCP's arguments. Contrary to TRCP's assumption, the mere issuance of leases does not constitute unnecessary or undue degradation of the public lands. See Colorado Envtl. Coalition, et al., 165 IBLA 221, 229 (2005) (oil and gas development is not per se unnecessary or undue degradation). Further, for one to show that oil and gas development would have this detrimental effect, one must at a minimum show that a lessee's operations would be conducted in a manner that does not comply with applicable law or regulations, prudent management and practice, or reasonably available technology. See id. at 229. TRCP's mere assertion that leasing of the protested parcels will cause unnecessary or undue degradation is groundless. For the same reason, TRCP's assertion elsewhere in its protest that the reasonable foreseeable development scenarios utilized by the relevant FOs are unreasonable is groundless.

TRCP contention: The RMP's and the environmental assessment on which the BLM relied to include protested parcels in the sale do not acknowledge Executive Order 13443 ("Facilitation of Hunting Heritage and Wildlife Conservation,") and do not explain how inclusion of the parcels in the sale would comply with the Executive Order.

BLM response: Implementation and compliance with Executive Order 13443 is important to the BLM. The past and present cooperative relationship between the BLM and DWR has resulted in exceptional recreational hunting and fishing opportunities throughout the State. The expansion of these opportunities will continue as current partnerships and initiatives, like the Healthy Lands Initiative and the Utah Partnership for Conservation and Development (which work to enhance habitats) move forward. The results of these efforts continue to improve the health of existing habitats and provide for expansion and improvement of habitats for important and sensitive species of wildlife. Based on its review and input from the DWR in determining what parcels to include in the lease sale, the BLM believes that the inclusion of the protested parcels in the sale is fully consistent with the Executive Order.

Conclusion

For the above-stated reasons, the TRCP protest is denied as to the remaining parcels. The BLM has received offers on all 57 protested 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 (2pp)

cc: James Karkut, Office of the Solicitor, Intermountain Region,
125 South State Street, Suite 6201, Salt Lake City, UT 84138
Bro Energy, LLC, 4824 S. Highland Circle, #200, Salt Lake City, UT 84117
Central Petroleum, Inc., P.O. Box 1823, Jackson, MS 39215
GADECO LLC, 5299 DTC Blvd., #500, Greenwood Villa, CO 80111
Impact Energy Resources, LLC, 621 17th St., Suite 1630, Denver, CO 80293
International Petroleum, 4824 S. Highland Circle, #200, Salt Lake City, UT 84117
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
Robert L. Bayless Producer, 621 17th St., #2300, Denver, CO 80293
Sonja V. McCormick, 1481 S Preston St, Salt Lake City, UT 84108
Thames River LLC, 3402 Evergreen PL, Salt Lake City, UT 84106
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