



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Nevada State Office
1340 Financial Boulevard
Reno, Nevada 89502-7147
<http://www.blm.gov/nevada>

FEB 10 2020

In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0137 7354 45

DECISION

Robin Wetherbee : Protest of Parcels in the
1884 Continental : December 17, 2019
Las Vegas, NV 89156 : Competitive Oil and Gas Lease Sale

List of Individuals
Attached;

Protest Dismissed Parcels Offered For Sale

On November 29, 2019, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from Wetherbee, et al (Wetherbee), protested all of the parcels scheduled to be offered at the December 17, 2019 Competitive Oil and Gas Lease Sale (the Sale), which relies on the Battle Mountain District Office's (BMDO) Environmental Assessment (EA), DOI-BLM-NV-B000-2019-0010-EA, the Ely District Office's (EYDO) Environmental Assessment, DOI-BLM-NV-L000-2019-0005-EA, and associated FONSIs. The Wetherbee protest consists of eight total form letters with identical substantive content.

BACKGROUND

The BLM posted the Sale Notice on November 1, 2019 offering 272 parcels for the December 2019 Lease Sale, subsequently reduced to 156 in errata. The 272 nominated parcels included land in Federal mineral estate located in the BLM Nevada's Ely and Battle Mountain Districts. After the NVSO completed preliminary adjudication² of the nominated parcels, the NVSO screened each parcel to determine compliance with national and state BLM policies, including BLM's efforts related to the management of Greater Sage Grouse on public lands.

¹ The protest is posted on the BLM website, located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

² Preliminary adjudication is the first stage of analysis of nominated lands conducted by the State Office to prepare preliminary sale parcels for District/Field Office review. During preliminary adjudication, the State Office confirms availability of nominated lands for leasing pursuant to 30 U.S.C. § 181 *et seq.*, 43 CFR 3100 *et seq.*, and BLM policies. Once the State Office completes preliminary adjudication, it consolidates the nominated land available for leasing into a preliminary parcel list to send to the District/Field Office for National Environmental Policy Act (NEPA) analysis and leasing recommendations.

On June 14, 2019, the NVSO sent a preliminary parcel list to the EYDO and BMDO for review. This interdisciplinary parcel review included internal scoping by a team of BLM specialists; review of GIS data; satellite imagery and other previously collected wildlife, habitat and other resource data; field visits to nominated parcels (where appropriate); review for conformance with the Land Use Plans; and preparation of an EA documenting National Environmental Policy Act (NEPA) compliance.³

The EAs tiered to the existing Land Use Plans (LUP),⁴ in accordance with the BLM's NEPA Handbook, H-1790-1, and with the Code of Federal Regulations (CFR) at 40 CFR 1502.20:

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review . . . the subsequent . . . environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.

The federal action, an oil and gas lease sale, is not a planning level action making resource allocation decisions (which are analyzed in a Resource Management Plan NEPA document), nor a specific implementation action (e.g., a permit to drill, analyzed in a site specific NEPA document).⁵ The federal action is to conduct an oil and gas lease sale and is supported by its own or existing NEPA documents.

The purpose for the federal action is to provide opportunities for private individuals or oil and gas companies with new areas to explore and potentially develop. Leasing is authorized under the Mineral Leasing Act of 1920 (MLA), as amended and modified by subsequent legislation, and regulations found at 43 CFR part 3100. Oil and gas leasing is recognized as an acceptable use of public lands under FLPMA. BLM authority for leasing public mineral estate for the development of energy resources, including oil and gas, is described in 43 CFR 3160.0-3.

The need for the proposed action is to respond to the nomination of parcels by Expressions of Interest (EOIs) for leasing, consistent with the BLM's responsibility under the Mineral Leasing Act, as amended, to promote the development of oil and gas on the public domain. The public, BLM, or other agencies may nominate parcels for leasing. The BLM is required by law to consider leasing of areas that have been nominated for lease if leasing is in conformance with the applicable BLM land use plan, FLPMA, and other applicable laws, regulations, and policies. Offering parcels for competitive oil and gas leasing provides for the orderly development of fluid mineral resources under BLM's jurisdiction in a manner consistent with multiple use management and consideration of the natural and cultural resources that may be present. This requires that adequate provisions are included with the leases to protect public health and safety

³ See BLM, H-1601-1, *Land Use Planning Handbook*, (Mar. 2005) (p. 42): "after the RMP is approved, any authorizations and management actions approved based on an activity-level or project-specific EIS (or EA) must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP." See also 43 CFR 1610.5-3.

⁴ The EAs are in conformance with the Ely District RMP, approved in 2008, the Tonopah RMP, approved 1997, and the Shoshone Eureka RMP, approved in 1986, their associated Records of Decision, and all subsequent applicable amendments.

⁵ See BLM, H-1624-1, *Planning for Fluid Minerals Handbook*, (Feb. 2018)

and assure full compliance with the spirit and objectives of NEPA and other federal environmental laws and regulations.

The EAs considered two (2) alternatives:

- The “Proposed Action” alternative, which included offering all nominated parcels that were sent for review, with stipulations from the existing RMPs.
- The “No Action” alternative, which considered rejecting all parcels nominated for the lease sale. This alternative is included as a baseline for assessing and comparing potential impacts.

The EAs analyzed the proposed action and no action alternatives. These alternatives provided a spectrum of effects for analysis and comparison, ranging from no parcels offered to offering all nominated parcels. Additional alternatives were proposed in internal scoping and public comments; however, they were not carried forward for further analysis as they would not provide a basis for evaluation of effects not encompassed by the analyzed range of alternatives. The additional proposed alternatives did not meet the Purpose and Need for the federal action and were not in compliance with BLM policy regarding the Land Use Planning process and the Oil and Gas leasing process. These alternatives were discussed in the EAs in Public Involvement, Public Comments and Responses, and Alternatives sections.

On November 1, 2019, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for December 17, 2019*⁶ (Notice), resulting in a total of 272 parcels offered for lease. This protest challenges the Sale, EYDO EA, BMDO EA, and FONSIs, and all of the 272 parcels described in the Notice.⁷ To comply with the Preliminary Injunction (PI) in *Western Watersheds Project et al. v. Schneider et al.* dated October 16, 2019 (Case No. 1:16-CV-83-BLW), all 26 parcels in Greater Sage-Grouse habitat scheduled to be offered at the December 17, 2019 sale have been deferred for further analysis. Additionally, 34 parcels have been removed from the sale due to an existing energy corridor, and 56 parcels have been deferred for further review. Therefore this Decision addresses the remaining 156 parcels and Wetherbee’s protest of them.

ISSUES

The Wetherbee protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.* The following addresses Wetherbee’s protest related to the Sale.

The BLM has reviewed Wetherbee’s protest in its entirety; the substantive protests are numbered and provided in bold with BLM responses following.

- A. Wetherbee generally alleges that the December 2019 Competitive Oil and Gas Lease Sale threatens the critical habitat for the Desert Bighorn, Moapa Dace, Meadow Valley Wash Desert Sucker, Meadow Valley Wash Speckled Dace, Desert Tortoise, Southwest Willow Flycatcher, Yellow Billed Cuckoo, and big game migration corridors.**

⁶ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

⁷ The December 2019 Competitive Oil and Gas Lease Sale Protests and Protest Decisions are posted on the BLM website, located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

BLM Response:

The BLM did consider all of the threatened and endangered species known to be present on the parcels as well as BLM special status species lists for plants and animals in the EAs. Critical habitat only applies to threatened and endangered species listed by USFWS under the Endangered Species Act (ESA). This does not currently apply to Desert Bighorn Sheep, the Meadow Valley Wash Desert Sucker, and the Meadow Valley Wash Speckled Dace. The BLM notified the USFWS of the parcels in the proposed lease sale during internal scoping and corresponded with USFWS biologists to address any concerns. The BLM previously consulted with the USFWS regarding listed species in the BMDO and EYDO, in accordance with the ESA in developing the Land Use Plans, Stipulations, and Lease Notices to be applied to parcels in the district, receiving a Biological Opinion. Additionally, all BLM oil and gas lease sale proposals are reviewed by the Nevada Department of Wildlife (NDOW) to assist BLM in evaluating how development of parcels may affect wildlife species in Nevada and help ensure appropriate wildlife protection lease stipulations are applied to each parcel, including bighorn sheep, migration corridors, and other species (*see* Stipulations and Lease Notice Appendices). A timing limit stipulation (#NV-L-06-TL) and lease notice (#NV-L-06P-LN) have also been attached to any parcel overlapping desert tortoise critical habitat. Additionally, no parcels overlap critical habitat of the Moapa Dace.

The EAs, which tier to the RMPs and FEISs, state that the BLM can take actions to protect critical habitat for threatened and endangered species and BLM sensitive species up to but not including the approval of actions if the action will jeopardize the species (jeopardy). A lease notice (#NV-B,L-00-A-LN) was attached to all parcels to serve the lessee with notice that the lease and any future activities proposed on it are subject to the ESA and Migratory Bird Treaty Act (MBTA), and any attendant requirements for additional scrutiny, surveys, and potential mitigation to protect the specie(s) and or the specie's habitat. Stipulations and lease notices, like this one, serve a vital role at the leasing stage by putting the BLM, lessee, and the public on notice that developing this lease may be difficult and may require additional mitigation and conformance, or may result in the denial of development as proposed on the lease.

Potential impacts to surface and ground water quantity, quality, and the fish and wildlife that rely on those water resources, are addressed in the EAs and in the Hydraulic Fracturing Technology Paper to the extent possible at the leasing stage. Once lease development is proposed, the direct and other effects of the development project will be addressed and site-specific NEPA will be conducted to address any water resource issues and potential impacts specific to the site not addressed at the leasing stage. Furthermore, these activities would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval. If exploration and development are proposed that may affect Threatened and Endangered Species known to be present on specific parcels, consultation with USFWS will be reinitiated as needed.

Therefore, the above Wetherbee protest has been considered, found to be without merit and is dismissed.

B. Wetherbee generally alleges the December lease sale overlaps with established Areas of Critical Environmental Concern and areas closed to leasing in the 2008 Ely District RMP.

BLM Response:

In conformance with the Ely District RMP, a No Surface Occupancy (NSO) stipulation (NV-L-06-O-NSO) has been applied to any parcels overlaying an Area of Critical Environmental Concern (ACEC). Additionally, on December 2, 2019 the BLM NVSO issued an errata to the November 1, 2019 Notice of Competitive Oil and Gas Internet Lease Sale that removed 34 parcels from the Sale due to an existing energy corridor that is closed to leasing.

Therefore, the above Wetherbee protest has been considered, found to be without merit and is dismissed.

C. Wetherbee generally alleges that the parcels being offered in the December lease sale would affect the water quality and quantity of the aquifer and hydrobasins.

BLM Response:

Potential impacts to water quality and quantity are addressed in the EA sections on Water Resources and the Hydraulic Fracturing Technology Paper. Once specific lease development is proposed, the direct effects of the project will be addressed and additional site-specific analysis will be conducted to address any water resource issues and potential impacts specific to the site not addressed at the leasing stage. BLM does analyze a Reasonably Foreseeable Development scenario in the EAs, which is based upon recent and historic development within the Districts and provides the best available estimate of future development and disturbance on the proposed parcels. Any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Water Act, Safe Drinking Water Act, Hazardous Waste regulations, OSHA regulations, and the State of Nevada Hydraulic Fracturing Rules. In addition to any lease stipulations the BLM reserves the right to move the site of a proposed project up to 200 meters due to resource concerns, to include water and wildlife resource issues (43 CFR 3101.1-2).

Any proposed hydraulic fracturing (HF) project would be required to comply with the State of Nevada HF regulations, including casing and cementing design, and disclosure of chemicals through FracFocus. In addition, an operator is required to comply with BLM regulations for Onshore Oil and Gas Operations 43 CFR 3160 et. Seq., and the Onshore Orders, which regulate the drilling and construction of a well, as well as environmental and safety requirements. Oil reservoirs are substantially deeper than usable water resources in Nevada. Groundwater aquifers are protected through construction requirements, requiring their isolation, and through ongoing testing of the integrity of the well. The first measure of protection against polluting groundwater is the use of adequate, competent well casing and cementing of the casing strings. Water quality is further protected by extending cementing to below the ground water. Well casing integrity testing is performed on oil and gas wells prior to use and during prescriptive maintenance to ensure isolation from groundwater aquifer formations. The Nevada Administrative Code 522.728 further defines duties of the operator for conducting hydraulic fracturing operations. Furthermore, these activities would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs).

The BLM would perform additional project and site-specific NEPA review for any proposed exploration or development projects; this analysis would include any proposed consumptive use

of water as it relates to the proposed activity. Waters of the State, including groundwater and water rights are managed by the NV Division of Water Resources and the NV State Engineer. Any water required for drilling or completion operations would be acquired by the operator in accordance with State law from an existing permitted appropriation, or from a temporary diversion or water well permit from the NV State Engineer.

As formulated, and as addressed in the EAs, the combination of existing Federal and State laws including the Clean Water Act, the Safe Drinking Water Act, and the Endangered Species Act, as well as existing BMPs and the requirement of additional engineering reviews in sensitive areas are intended to prevent any substantial impacts from reasonable foreseeable development. Once specific lease development is proposed, additional project and site-specific NEPA will be conducted to address critical water and wildlife issues and potential impacts specific to the site that cannot be addressed at the leasing stage.

Therefore, the above Wetherbee protest point has been considered, found to be without merit, and is dismissed.

D. Wetherbee generally alleges that BLM's oil and gas leasing program is not a good return on investment as compared to Nevada's outdoor economy and would have impacts on the Swamp Cedars traditional cultural site and tourism in Great Basin National Park.

BLM Response:

The BLM recognizes that economic activity associated with tourism and recreation can be an important contribution to local communities and their economies. The level of inconvenience would depend on the activity affected, traffic patterns within the area, noise levels, the length of time and season in which these activities occurred, and other factors. Multiple use management continues on leased lands. Leasing does not preclude other uses, such as outdoor recreation, wildlife habitat management, renewable energy development, exploration for other minerals, etc. Any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Endangered Species Act, Hazardous Waste regulations, and OSHA regulations. Potential resource conflicts are addressed by stipulations and lease notices and by additional project and site-specific NEPA analysis when a project is proposed.

BLM's Purpose and Need as stated in the EAs is derived from the requirements of the Mineral Leasing Act of 1920 (MLA, 30 U.S.C. 181 et seq.), as amended, that the BLM consider leasing of nominated areas if in conformance with the applicable land use plan. The proposed lease sale is in conformance with the Ely and Battle Mountain District RMPs, as amended. The Purpose and Need is consistent with the BLM's responsibility under the Mineral Leasing Act (MLA), as amended, to promote the development of oil and gas on the public domain by responding to properly submitted Expressions of Interest (EOIs). Parcels may be nominated by the public, the BLM, or other agencies. The MLA establishes that deposits of oil and gas owned by the United States are subject to disposition in the form and manner provided by the MLA under the rules and regulations prescribed by the Secretary of the Interior, where consistent with land use planning, FLPMA, and other applicable laws, regulations, and policies.

Additionally, in conformance with the Ely District RMP, a No Surface Occupancy (NSO) stipulation (NV-L-06-O-NSO) has been applied to any parcels overlaying the Swamp Cedar Area of Critical Environmental Concern (ACEC) and any other ACEC designated in the RMPs.

Therefore, the above Wetherbee protest has been considered, found to be without merit and is dismissed.

E. Wetherbee generally states that the BLM should be prioritizing solar, wind, and geothermal energy resources over oil and gas development to prevent future atmospheric warming and extreme weather events.

BLM Response:

The BLM appreciates Wetherbee's comments and opinion on prioritizing renewable energy resources over oil and gas development. This request is outside the scope of the proposed action. Therefore, the above Wetherbee comment has been considered, found to be without merit and is dismissed.

DECISION

To the extent that Wetherbee has raised any allegations not specifically discussed herein, they have been considered in the context of the above response and are found to be without merit. For this reason, and for those previously discussed, Wetherbee's protest of the Sale, EAs, and FONSI is dismissed and 156 parcels were offered for sale on December 17, 2019.

APPEAL INFORMATION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (enclosed). If an appeal is taken, a notice of appeal and/or request for stay must be filed in writing, on paper, in this office, either by mail or personal delivery within 30 days after the date of service. Notices of appeal and/or request for stay that are electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as timely filed. The notice of appeal is considered filed as of the date our office receives the hard copy and places our BLM date stamp on the document.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision 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 is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate office of the Solicitor (*see* 43 CFR 4.413) at the same time the original documents are filed with this office. 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 regulation, a petition for a stay of a decision pending appeal shall show sufficient justification 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.

If you have any questions regarding this decision, please contact Brian C. Amme, Deputy State Director, Minerals Division, at (775) 861-6585.



Brian C. Amme
Deputy State Director, Minerals Management
Nevada State Office

Enclosure:

1- Form 1842-1

cc (electronic):

WO310

NVB0000

NVB0100

NVB0200

NVL0000

NVL0100

NVL0300

NV0920 (B. Amme)

NV0922 (K. Anderson, F. Kaminer, J. Menghini, J. Estrella)

bcc: Kathryn Brinton, Office of the Solicitor, Pacific Southwest Region,
2800 Cottage Way, Room E-1712, Sacramento, California, 95825
Lease Sale Book December 2019
Reading File: NV-922

First Name	Last Name	Address	City	State	Zip Code
Michelle	Keiserman	4590 Cabo Lane	Las Vegas	NV	89121
Karen	Harry	2716 La Solana Way	Las Vegas	NV	89102
Sayuri	Rupani-Hayes	5553 Markley Avenue	Las Vegas	NV	89141
Gianna	De Luchi Lomellini	1357 Elizabeth Street, Unit 4	Las Vegas	NV	89119
Pamela	Barker	1929 Altivo Drive	Henderson	NV	89074
Adam	Hayes	5553 Markley Avenue	Las Vegas	NV	89141
Karen	Gruber	2667 Holy Cross Street	Las Vegas	NV	89156