



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Nevada State Office
1340 Financial Boulevard
Reno, Nevada 89502-7147
<http://www.blm.gov/nv>

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In Reply Refer To:
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CERTIFIED MAIL 9171 9690 0935 0111 8477 13

DECISION

The Wilderness Society
Juli Slivka, Planning Specialist
11050 Pioneer Trail, Suite 202
Truckee, CA 96161

: Protest of Parcels in the
: March 13, 2018
: Competitive Oil and Gas Lease Sale

Friends of Nevada Wilderness
Kirk Peterson, Inventory Coordinator
PO Box 9754
Reno, NV 89507
9171 9690 0935 0111 8477 20

Protest Dismissed Parcels Offered For Sale

On January 26, 2018, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from The Wilderness Society (TWS) and the Friends of Nevada Wilderness (FNW). TWS and FNW protested 3 of the 40 parcels scheduled to be offered at the March 13, 2018 Competitive Oil and Gas Lease Sale (the Sale) as analyzed in the Elko District Office's (ELDO) Oil and Gas Lease Sale Environmental Assessment (EA), DOI-BLM-NV-E000-2017-0017-EA.²

BACKGROUND

The BLM received 40 nominated parcels for the Sale through June 16, 2017. Thirty-eight of the 40 nominated parcels included land in Federal mineral estate located in the BLM Nevada's ELDO. After the NVSO completed preliminary adjudication³ of the nominated parcels, the

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 The EA was revised November 17, 2017 and January 4, 2018 to further address public comments and concerns and is located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

³ Preliminary adjudication is the first stage of analysis of nominated lands conducted by the State Office to prepare preliminary sale parcels for Field Office review. During preliminary adjudication, the State Office reviews master title plats, use plats, mineral estate patents, wilderness and wilderness study areas that may be effected, as well as Sage Grouse GIS data and confirms availability of nominated lands for leasing pursuant to 30 U.S.C. § 181 *et seq.*,

NVSO screened each parcel to determine compliance with national and state BLM mineral policies, including BLM's efforts related to the management of Greater Sage Grouse on public lands.

On August 2, 2017, the NVSO sent a preliminary parcel list to the ELDO for analysis. This review included interdisciplinary team review by BLM specialists, field visits to nominated parcels (where appropriate), external outreach to the public, review of conformance with the current Land Use Plans, and preparation of an EA documenting National Environmental Policy Act (NEPA) compliance.⁴ A Public scoping period (August 7, 2017 - September 24, 2017) allowed the public an opportunity to provide comments before the BLM developed the EA. Scoping comments were then analyzed and incorporated into the EA. During preparation of the EA, ELDO notified the public of the proposed action by posting the project on eplanning⁵ and publishing a press release announcing a public comment period, (October 17, 2017 through November 17, 2017). Once the comment period ended the ELDO reviewed all comments (including scoping comments) and summarized them into a single document.

The EA tiered to the existing Land Use Plans (LUP)⁶, in accordance 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, (analyzed in a Resource Management Plan), nor a specific implementation action (e.g., a permit to drill, analyzed in a site specific NEPA document).⁷ The federal action is to conduct an oil and gas lease sale and is supported by its own NEPA document. BLM described its purpose and need for the action in the EA as follows:

1.2 Purpose and Need for the Proposed Action

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 Field Office for NEPA analysis and leasing recommendations.

⁴ 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.

⁵ Eplanning is BLM national register for LUP and National Environmental Policy Act NEPA documents. The register allows you to review and comment online on BLM NEPA and planning projects.

⁶ The Elko RMP, approved on March 11, 1987, and the Wells RMP approved on June 28, 1986 both as amended.

⁷ See BLM, H-1624-1, *Planning for Fluid Minerals Handbook*, (Feb. 2018)

The purpose of the Proposed Action is to consider opportunities for private individuals or companies to explore and develop oil and gas resources on specific public lands through a competitive leasing process.

The need for the action is to respond to the nomination or expression of interest for leasing, consistent with the BLM's responsibility under the MLA [Mineral Leasing Act, 30 U.S.C. 181 et seq.], as amended, to promote the development of oil and gas on the public domain. 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 FLPMA and other applicable laws, regulations, and policies.

The Elko EA considered two (2) alternatives analyzed in full and one alternative that was dismissed from full analysis:

- The “Proposed Action” alternative, which included offering all 38 nominated parcels that were sent to the ELDO for review, with stipulations from the existing RMPs.
- The “No Action” alternative, which considered rejecting all parcels nominated for the lease sale in March 2018. This alternative is included as a baseline for assessing and comparing potential impacts.

2.3. Alternatives Considered, but Eliminated from Further Analysis

Withdraw Parcels Due to Proximity to Historic Trails, SRMAs, and Conservation Areas

Historic Trail enthusiasts requested that parcels near the trails be removed from the offered list due to proximity to historic trails, SRMAs, and conservation areas. However, BLM determined that these resource values would be protected in the Proposed Action by lease stipulation OG-010-05-10 (I-80 “Low Visibility Corridor”), lease stipulation OG-010-05-11 (Special Recreation Management Areas), and lease stipulation OG-010-05-13 (Congressionally Designated Historic Trails) (see Appendix B for full text of these stipulations). As such, it is not necessary for these parcels to be withdrawn in order to be protected.

Lease stipulations are developed to allow responsible and sustainable development, while protecting sensitive resources through the land use planning process.⁸ These stipulations are applied during the parcel review by the Inter-Disciplinary Parcel Review Team based on RMP management decisions and best available science.⁹ On December 27, 2017, the NVSO published

⁸ See BLM, H-1601-1, *Land Use Planning Handbook*, (Mar. 2005) and BLM, H-1624-1, *Planning for Fluid Minerals Handbook*, (Feb. 2018)

⁹ See BLM, Instruction Memorandum 2010-117 and BLM, IM 2018-034

a *Notice of Competitive Oil and Gas Lease Sale for March 13, 2018*¹⁰ (Notice), resulting in a total of 40 parcels offered for lease. This protest challenges the EA and 3 of the 40 parcels described in the Notice.

ISSUES

TWS/FNW's protest generally alleges that the BLM failed to comply with 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 TWS/FNW's protest related to the Sale. The BLM has reviewed TWS/FNW's protest in its entirety; the substantive protests are numbered and provided in bold with BLM responses following.

I. Lands with Wilderness Characteristics

a. BLM has failed to respond to significant new information submitted by the public regarding lands with wilderness characteristics.

BLM Response:

Section 201 of FLPMA requires the BLM to maintain on a continuing basis an inventory of all public lands and their resources and other values, which includes wilderness characteristics. It also provides that the preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of public lands. The BLM Manual 6310 states "The BLM will determine when it is necessary to update its wilderness characteristics inventory."

As stated in the EA, section 3.2.12:

The ELDO [Elko District Office] BLM began updating the lands with wilderness characteristics (LWC) inventory in 2011 on a project driven basis. The 38 parcels up for lease intersect 16 LWC inventory areas. There are 15 units in the Tuscarora Field Office and 1 unit in the Wells Field Office. Of those 15 inventory units, 3 have been previously analyzed under other projects. Units NV-EK-02-546 was inventoried in 2012. NV-EK-02-816 and NV-EK-02-818 were inventoried in 2014. The remaining 13 units were inventoried in September of 2017. During the LWC inventories conducted in 2017 portions of 5 units were determined to contain wilderness characteristics. These units are NV-EK-02-533A, NV-EK-02-558, NV-EK-02-536A, NV-EK02-555A and NV-EK-03-278.

The Proposed Action could result in several indirect activities that may cause serious impacts to wilderness character within each inventory area. Exploration, development, and decommission could all impact the naturalness of a LWC unit as well as opportunities to experience solitude and participate in primitive or unconfined types of recreation. Oil and Gas activities could also

¹⁰ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

reduce the size of a study area through the development of access roads and other supporting actions leading to the area not meeting the size requirement outline in BLM Manual 6310 Conducting Wilderness Characteristics Inventory on BLM Lands.

Currently, the Elko District Office does not have a land use plan amendment to determine if or how these LWC units would be managed to protect wilderness characteristics. The Table 3.2-3 shows LWC units cover an area of 141,161 acres. If exploration activities are conducted on the lease parcels, the unsuccessful exploration wells are plugged and abandoned and they would be reclaimed immediately after drilling or construction. Therefore, in the long term, it is possible that the potential disturbances would be reclaimed allowing the area to return to a natural state; and opportunities for solitude or a primitive and unconfined type of recreation would return.

Impacts to size may also be reclaimed after exploration, but depending on the extent of wells and associated facilities (roads, gravel pits, etc.) impacts may remain that could continue to eliminate LWCs based on size. For any producing wells, the impacts would be long term (20 years) or much longer. At that point, the impacts to LWC would be considered permanent.

Based on the BLM's most recent comprehensive wilderness characteristics inventory, 2012-2017 inventory data, the analysis in the EA with respect to the Reasonably Foreseeable Development scenario, the BLM has determined that the proposed action and alternatives would not have a significant impact on lands with wilderness characteristics beyond those considered in the EA.

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

b. "BLM must defer leasing in lands with wilderness characteristics until management decisions are made for those areas."

BLM Response:

Section 201 of FLPMA requires the BLM to maintain on a continuing basis an inventory of all public lands and their resources and other values, which includes wilderness characteristics. It also provides that the preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of public lands. It 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.

Based on the BLM's most recent comprehensive wilderness characteristics inventory, 2012-2017 inventory data, the allocation and management decisions in the existing RMPs, and the analysis in the EA with respect to the Reasonably Foreseeable Development scenario, the BLM has

determined that the proposed action and alternatives would not have significant impacts on lands with wilderness characteristics beyond those considered in the RMPs.

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

II. “BLM has failed to consider alternatives for protecting wilderness resources in the Elko District, in violation of NEPA.”

BLM Response:

The BLM analyzed the specific parcels offered for oil and gas leasing, and the reasonably foreseeable impacts to the resources on these parcels, including effects on wilderness resources. ELDO reviewed and performed site-specific analysis on all 38 nominated parcels in the Elko District. After conducting onsite reviews for each parcel by a team of resource specialists, and disclosing to the public any potential impacts to resources from leasing these lands, ELDO was able to recommend the leasing of all of the 38 nominated parcels in the ELDO, in conformance with regulations. BLM makes several references throughout the EA stating that once an APD is submitted, additional project and site-specific NEPA analysis would be performed in addition to the leasing EA. This should not be misconstrued that the leasing EA is not site-specific. During leasing review, each parcel is reviewed, scrutinized, and evaluated for any potential impacts, and whether the lease of any parcel may directly or indirectly affect resources. If there is scientific evidence that indicates that exploration and development of a particular parcel may have a substantial impact to a resource, it is not recommended for leasing, only if no reasonable mitigation is available.

The ELDO considered potential impacts to lands with wilderness characteristics during scoping and preparation of the EA, and in revisions of the draft EA. Based on the BLM’s most recent comprehensive wilderness characteristics inventory, 2012-2017 inventory data, and the analysis in the EA with respect to the Reasonably Foreseeable Development scenario, the BLM has determined that the proposed action and alternatives would not have significant impacts on lands with wilderness characteristics beyond those considered in the EA.

The BLM permits responsible development of the public lands in accordance with Federal, State, and local laws and regulation. The BLM does not permit any activity that would violate federal laws or regulations or cause unnecessary or undue degradation of public lands. The above TWS/FNW protest has been considered, found to be without merit and is dismissed.

DECISION

To the extent that TWS/FNW has raised any allegations not specifically discussed herein, they have been considered as part of the above response and are found to be without merit. For this reason, and for those previously discussed, TWS/FNW’s protest of the Sale and the EA is dismissed and 39 parcels were offered for sale on March 13, 2018.

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.



John F. Ruhs
State Director

Enclosure:

1- Form 1842-1

cc (electronic):

WO310 (C. Cook)
NVE0000 (J. Silvey)
NVE0200 (M. Peterson)
NVE0300 (M. Jackson)

NV0920 (B. Amme)

NV0922 (K. Anderson, F. Kaminer, J. Menghini, A. Reynolds)

bcc: Erica Niebauer, Office of the Solicitor, Pacific Southwest Region,
2800 Cottage Way, Room E-1712, Sacramento, California, 95825
Lease Sale Book March 2018
Reading File: NV-922