



# 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>

**APR 24 2018**

In Reply Refer To:  
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0111 8477 06

## DECISION

WildEarth Guardians  
Jeremy Nichols, Climate & Energy Director  
2590 Walnut Street  
Denver, CO 80205

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

### **Protest Dismissed** **Parcels Offered For Sale**

On January 26, 2018, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest<sup>1</sup> from WildEarth Guardians (Guardians). Guardians protested all of the 40 parcels scheduled to be offered at the March 13, 2018 Competitive Oil and Gas Lease Sale (the Sale) and the Elko District Office's (ELDO) Oil and Gas Lease Sale Environmental Assessment (EA), DOI-BLM-NV-E000-2017-0017-EA, the Ely District Office's (EYDO) Oil and Gas Lease Sale EA, DOI-BLM-NV-L030-2017-0021-EA, and the Carson City District Office's (CCDO) Determination of NEPA Adequacy (DNA), DOI-BLM-NV-C010-0038-DNA.<sup>2</sup>

## **BACKGROUND**

The BLM received 40 nominated parcels for the Sale through June 16, 2017. The 40 nominated parcels included land in Federal mineral estate located in the BLM Nevada's CCDO, ELDO, and EYDO. After the NVSO completed preliminary adjudication<sup>3</sup> 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.

On August 2, 2017, the NVSO sent preliminary parcel lists to the CCDO, ELDO, and EYDO for review. This review included interdisciplinary team review by BLM specialists, field visits to

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<sup>1</sup> 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>

<sup>2</sup> The EAs and DNA are posted to the BLM's ePlanning website with links to the documents located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

<sup>3</sup> 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 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 Field Office for NEPA analysis and leasing recommendations.

nominated parcels (where appropriate), review of conformance with the Land Use Plans, and preparation of an EA documenting National Environmental Policy Act (NEPA) compliance.<sup>4</sup> The preliminary parcel list was also posted in the NVSO Public Room on August 2, 2017 for public review. 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 preliminary EA, ELDO notified the public of the proposed action by posting the project on eplanning<sup>5</sup> and publishing a press release announcing a public comment period (October 17, 2017 through November 17, 2017). Once the comment period closes, the ELDO reviews all comments (including the scoping comments) and summarized them into a single document.

The EA tiered to the existing Land Use Plans (LUP)<sup>6</sup>, 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).<sup>7</sup> 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***

*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.*

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> The Carson City RMP, approved May 11, 2001, the Elko RMP, approved on March 11, 1987, the Wells RMP approved on June 28, 1986, and the Ely RMP/Final Environmental Impact Statement FEIS, approved September 2008, all as amended.

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

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.*

The parcels in CCDO (NV-18-03-001) and EYDO (NV-18-03-040) were addressed in separate NEPA documents, the above referenced DNA for Carson City, and a revised FONSI and Decision Record to the Ely December Lease Sale EA, as the presale parcel was left out of the December EA and Lease Sale due to an administrative error.

On December 27, 2017, the NVSO published a *Notice of Competitive Oil and Gas Lease Sale for March 13, 2018*<sup>8</sup> (Notice), resulting in a total of 40 parcels offered for lease. This protest challenges the EA, the Ely December Sale EA, and the CCDO DNA and all of the 40 parcels described in the Notice. In regards to the protest of parcel NV-18-03-040 in the Ely District the BLM incorporates the Protest Decision letter for Guardians protest of the December 2017 Lease Sale.<sup>9</sup>

### **ISSUES**

Guardians’ protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, the Minerals Leasing Act of 1920, as amended (MLA), 30 U.S.C. § 181 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.* The following addresses the Guardians’ protest related to the Sale.

<sup>8</sup> The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

<sup>9</sup> The December Competitive Oil and Gas Lease Sale Protest and Decision are posted on the BLM website, located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

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

**I. The Proposed Leasing Violates the Mineral Leasing Act.**

Guardians protests that the BLM violated its own statutory requirements for oil and gas leasing which only allows leasing where there is known or believed to be oil and gas deposits.

BLM Response:

The BLM is required by law under the Mineral Leasing Act of 1920, as amended, and under the regulations at 43 CFR 3100 to consider leasing areas that have been nominated for lease, if leasing is in conformance the BLM Land Use Plan (LUP). Each BLM state office is required by regulations to hold quarterly sales if lands are available for competitive leasing, 43 CFR 3120.1-2(a). The BLM makes allocation decisions regarding opening or closing lands to fluid minerals leasing and creating and applying stipulations through the land use planning process and the Districts' RMPs. The proposed lease sale is in conformance with the District RMPs, and the EA tiers to the District RMP EISs<sup>10</sup>. BLM is not required to determine whether the particular lease sale parcel would support viable development; that determination is left to industry and exceeds BLM statutory authority. In addition, the RMP(s) that underlie the activity in the March 2018 lease sale were issued in 1986, 1987, 2001, and 2008. They are not the proper subject of protest at this late date. In addition, leases require diligence in exploration and development and expire by their terms within their primary term if development and production does not occur.

The BLM complied with the Mineral Leasing Act and conducted the required NEPA review, as stated above. Therefore, the above Guardians' protest has been considered, found to be without merit and is dismissed.

**DECISION**

To the extent that Guardians 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, Guardians' 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.

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<sup>10</sup> The Carson City RMP, approved May 11, 2001, the Elko RMP, approved on March 11, 1987, the Wells RMP approved on June 28, 1986, and the Ely RMP/Final Environmental Impact Statement FEIS, approved September 2008, all as amended.

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. Rutts  
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, C. 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