# FAX COVER SHEET

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| TO | BLM Nevada State Director |
| COMPANY | WildEarth Guardians |
| FAXNUMBER | 17758616711 |
| FROM | WildEarth Guardians |
| DATE | 1/26/2018 1:48:43 PM MST |
| RE | Protest of March 2018 Oil and Gas Lease Sale |

## COVER MESSAGE

Attached, please find WildEarth Guardians' protest of the Bureau of Land Management's proposed March 2018 competitive oil and gas lease sale. Thank you.

Sincerely,

Jeremy Nichols
WildEarth Guardians
(303) 437-7663

WildEarth Guardians
A FORCE FOR NATURE

January 26, 2018

*By Fax*

John Ruhs
State Director
U.S. Bureau of Land Management
Nevada State Office
1340 Financial Blvd.
Reno, NV 89502
(775) 861-6711

**Re: Protest of March 2018 Competitive Oil and Gas Lease Sale**

Dear Mr. Ruhs:

Pursuant to 43 C.F.R. § 3120.1-3, WildEarth Guardians hereby protests the Bureau of Land Management's ("BLM's") proposal to offer 40 publicly owned oil and gas lease parcels covering 69,691.64 acres of land in the Carson City, Elko, and Ely District Offices of the State of Nevada for competitive sale on March 13, 2018. These protested lease parcels include the following, as identified by the BLM's in its Final March 2018 Oil and Gas Sale List:[1]

| Lease Serial Number | Acres | District Office | County |
|---|---|---|---|
| NV-18-03-001 | 1900.15 | Carson City | Nye |
| NV-18-03-002 | 1829.24 | Elko | Eureka |
| NV-18-03-003 | 2194.32 | Elko | Eureka |
| NV-18-03-004 | 2490.06 | Elko | Eureka |
| NV-18-03-005 | 2087.04 | Elko | Eureka |
| NV-18-03-006 | 1920.00 | Elko | Eureka |
| NV-18-03-007 | 1200.00 | Elko | Eureka |
| NV-18-03-008 | 642.08 | Elko | Eureka |
| NV-18-03-009 | 1675.37 | Elko | Eureka |
| NV-18-03-010 | 160.00 | Elko | Eureka |
| NV-18-03-011 | 1280.80 | Elko | Elko |
| NV-18-03-012 | 1993.06 | Elko | Elko |
| NV-18-03-013 | 1989.68 | Elko | Elko |

[1] This list is available on the BLM's website at https://www.blm.gov/sites/blm.gov/files/NV_OG_20180313_ELDO_Sale_Notice_Signed.pdf.

| | | | |
|---|---|---|---|
| NV-18-03-014 | 2560.00 | Elko | Elko |
| NV-18-03-015 | 1920.00 | Elko | Elko |
| NV-18-03-016 | 1422.50 | Elko | Elko |
| NV-18-03-017 | 2560.00 | Elko | Elko |
| NV-18-03-018 | 1982.64 | Elko | Elko |
| NV-18-03-019 | 655.44 | Elko | Elko |
| NV-18-03-020 | 2528.84 | Elko | Elko |
| NV-18-03-021 | 2560.00 | Elko | Elko |
| NV-18-03-022 | 640.00 | Elko | Elko |
| NV-18-03-023 | 2560.00 | Elko | Elko |
| NV-18-03-024 | 1481.56 | Elko | Elko |
| NV-18-03-025 | 880.00 | Elko | Elko |
| NV-18-03-026 | 1295.04 | Elko | Elko |
| NV-18-03-027 | 1360.00 | Elko | Elko |
| NV-18-03-028 | 1684.10 | Elko | Elko |
| NV-18-03-029 | 1800.00 | Elko | Elko |
| NV-18-03-030 | 2080.00 | Elko | Elko |
| NV-18-03-031 | 2554.60 | Elko | Elko |
| NV-18-03-032 | 1045.09 | Elko | Elko |
| NV-18-03-033 | 1868.48 | Elko | Elko |
| NV-18-03-034 | 2360.00 | Elko | Elko |
| NV-18-03-035 | 2250.34 | Elko | Elko |
| NV-18-03-036 | 760.07 | Elko | Elko |
| NV-18-03-037 | 2560.00 | Elko | Elko |
| NV-18-03-038 | 2560.00 | Elko | Elko |
| NV-18-03-039 | 1921.14 | Elko | Elko |
| NV-18-03-040 | 480.00 | Ely | Nye |

We protest the BLM's proposal to offer all of the aforementioned oil and gas lease parcels for competitive sale on the basis that the proposed leasing runs afoul of the agency's own statutory requirements for oil and gas leasing, which allow leasing only where there is known or believed to be oil and gas deposits. Here, by BLM's own admission, most, if not all, of the proposed oil and gas lease parcels will not be developed if they are offered for sale, indicating there are no viable oil and gas reserves that would authorize leasing. At a minimum, the BLM appears to be proposing to lease lands where lessees do not intend to diligently develop, which is absolutely cause to withdraw most, if not all, parcels from the proposed sale.

For the following reasons, the BLM has no legal basis to proceed with leasing the aforementioned parcels. Accordingly, we urge the agency to cancel its lease sale.

## STATEMENT OF INTEREST

WildEarth Guardians is a nonprofit environmental advocacy organization dedicated to protecting the wildlife, wild places, wild rivers, and health of the American West. On behalf of our members, Guardians has an interest in ensuring the BLM fully protects public lands and resources as it conveys the right for the oil and gas industry to develop publicly-owned minerals. More specifically, Guardians has an interest in ensuring the BLM meaningfully and genuinely takes into account the climate implications of its oil and gas leasing decisions and objectively and robustly weighs the costs and benefits of authorizing the release of more greenhouse gas emissions that are known to contribute to global warming.

WildEarth Guardians submitted comments on the BLM's proposed March 2018 oil and gas lease sale on November 19, 2017. Further, Guardians has extensively commented on, protested, and otherwise engaged the BLM on its oil and gas leasing in Nevada, as well as in other BLM State Offices in the western U.S. On August 24, 2017, we called on the BLM to halt further oil and gas leasing in Nevada given oil and gas industry statements indicating there was no legitimate industry interest in leasing in the state. *See* Exhibit 1. In all of our prior and ongoing engagement, Guardians has raised similar concerns over the agency's failure to adequately address climate impacts pursuant to NEPA. The BLM is well aware of our concerns and has been properly notified in advance of our issues.

The mailing address for WildEarth Guardians to which correspondence regarding this protest should be directed is as follows:

WildEarth Guardians
2590 Walnut St.
Denver, CO 80205

## STATEMENT OF REASONS

WildEarth Guardians protests the BLM's proposed oil and gas lease sale on the basis that moving forward to offer the 40 parcels for sale would violate the U.S. Mineral Leasing Act, 30 U.S.C. § 181, *et seq.*, and associated BLM oil and gas leasing regulations and directives.

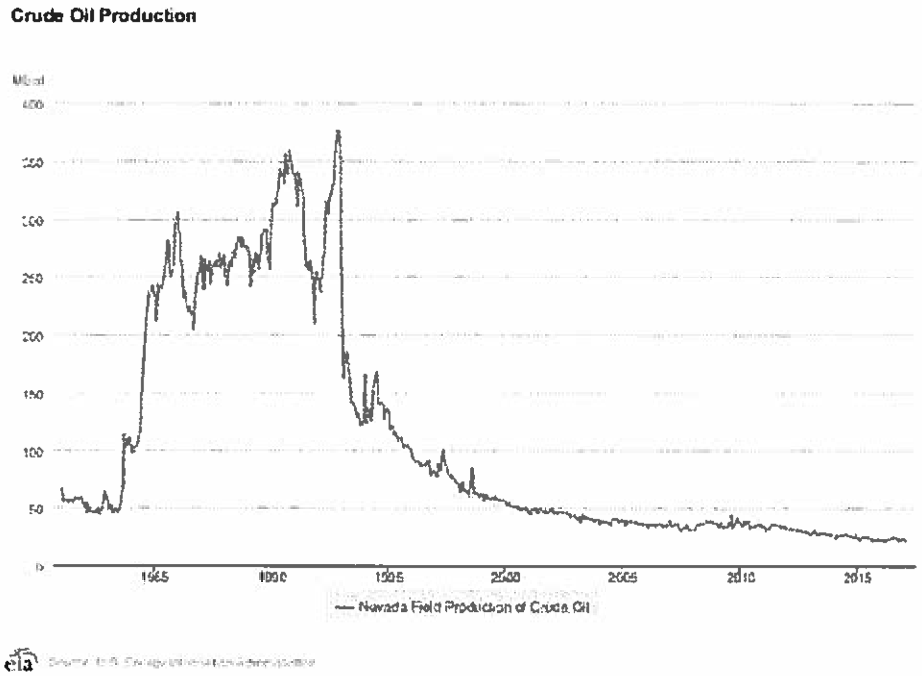
In support of the agency's proposed leasing, the BLM prepared an EA and draft Finding of No Significant Impact ("FONSI") for parcels in the Elko District (EA No. DOI-BLM-NV-E003-2017-0017-EA) and a Determination of National Environmental Policy Act Adequacy ("DNA") for the parcel in the Carson City District Office (DNA No. DOI-BLM-NV-C010-2017-0038-DNA). The BLM does not appear to have prepared any analysis under the National Environmental Policy Act for the parcel in the Ely District Office. As will be explained, the BLM has failed to demonstrate that moving forward with the proposed leasing is legally acceptable.

Before detailing our Statement of Reasons, it is critical to note that the BLM is moving forward with the proposed leasing despite every indication that most, if not all, of the leases will never be developed. Already, Nevada is extremely marginal for oil and gas production. While there are 627 leases covering 1,124,320 acres in the state only 37 of these leases—or 2.4% of all leased acreage—is actually producing oil and gas. On average nationally, 46% of all leased federal oil and gas acreage is in production, meaning Nevada is far, far below what is normal at the moment. *See* Table below.

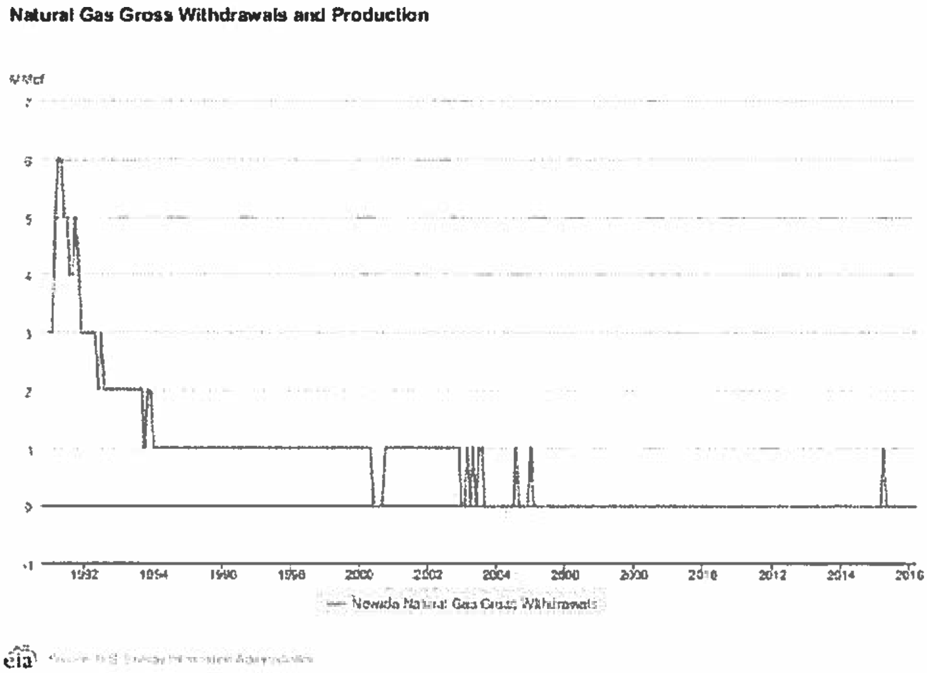
**Oil and Gas Leases in Nevada**
**(based on BLM oil and gas lease statistic data,**
**https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics)**

| Number of Leases | Leased Acres | Number of Producing Leases (%) | Acres in Production (%) |
|---|---|---|---|
| 627 | 1,124,320 | 37 (5.9%) | 27,001 (2.4%) |

This reflects the fact that Nevada's oil and gas production is essentially a blip in terms of overall U.S. production. While the state produced upward of 350,000 barrels a month in the early 1990's, its production has hovered below 50,000 barrels monthly since 2000. *See* Chart below. Furthermore, the state's natural gas production rate is described by the U.S. Energy Information Administration ("EIA") as "NA" as it is effectively zero. *See* Chart below.




**Above, Oil Production in Nevada, 1980's to the Present. Data available at https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_m.htm. Below, Natural Gas Production in Nevada, 1990's to the Present. Data available at https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_FGW_mmcf_m.htm.**

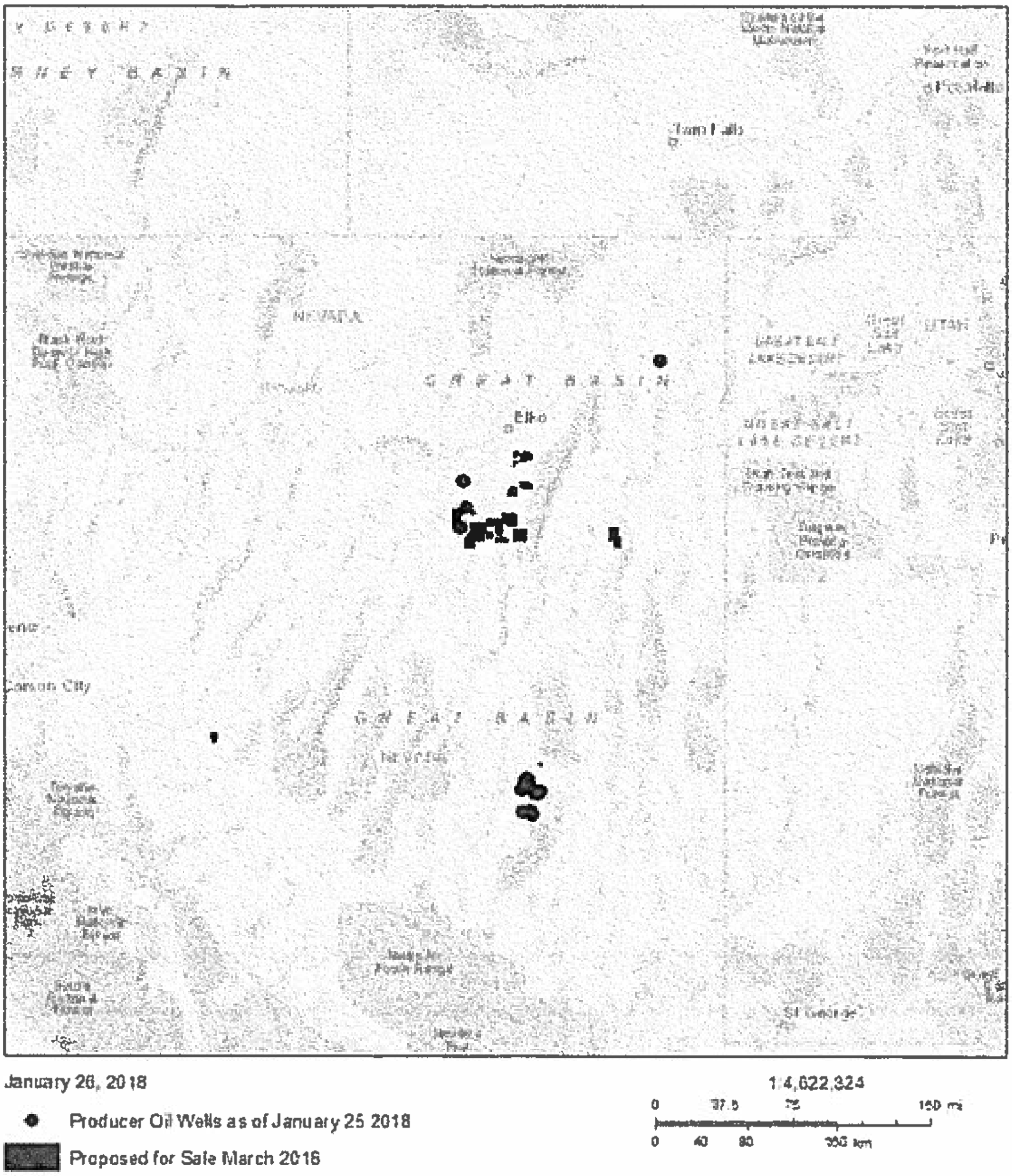



Although there are less than 100 oil and gas wells that are considered to be "producers" by the State of Nevada, as of 2015, the EIA reports there was one producing natural gas well and four producing oil wells. *See* https://www.eia.gov/dnav/ng/ng_prod_wells_s1_a.htm and https://www.eia.gov/dnav/ng/ng_prod_oilwells_s1_a.htm.

The areas where the BLM is proposing to lease are largely not near where any "producer" oil and gas wells are even located. The only "producer" oil and gas wells that exist in the area are in the Blackburn, North Willow Creek, and Tomera Ranch oil fields in the Elko District and the Trap Spring oil field in the Ely District.[2] According to the State of Nevada, the North Willow Creek field isn't currently producing and the Blackburn, Tomera Ranch, and Trap Spring field are producing only minimal amounts of oil. *See* Nevada Division of Minerals, "Oil Production in Nevada," available online at http://minerals.nv.gov/uploadedFiles/mineralsnvgov/content/Programs/OG/OilProductionNVByProducingField2016.pdf. Only a handful of parcels appear to be near enough to the Blackburn, Tomera Ranch, and Trap Spring oil fields that development may be reasonably foreseeable. These include parcels NV-18-03-002, NV-18-03-003, NV-18-03-004, NV-18-03-010, and NV-18-03-040. *See* Maps below.

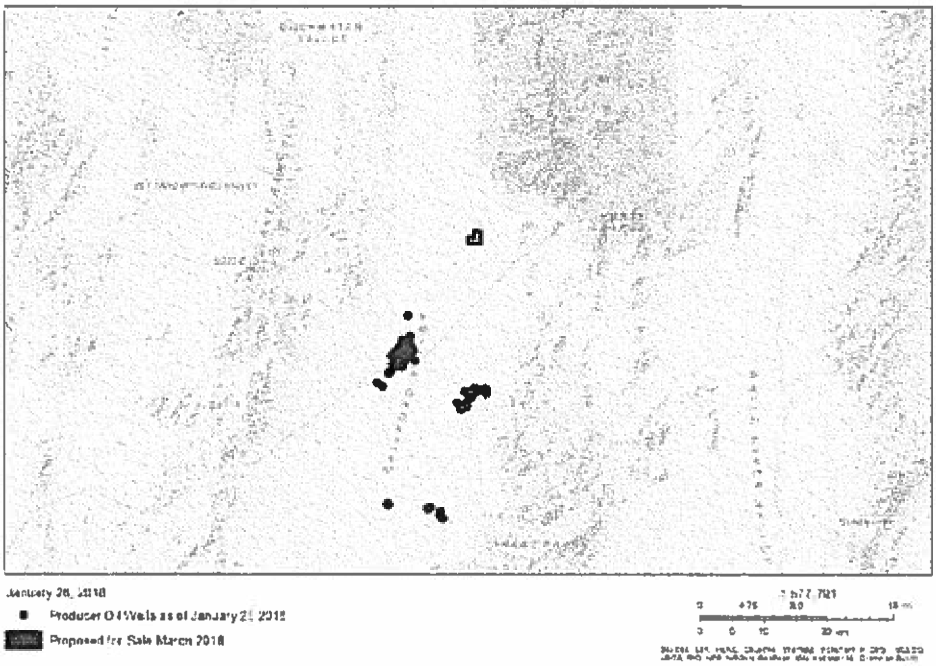
[2] Although the BLM asserts in the Elko District Office EA that the Huntington Valley oil field is producing (*see* EA at 19), according to the State of Nevada, the field is not currently producing and there are no "producer" wells located in this field.

## Public Lands Oil and Gas Leasing in Nevada



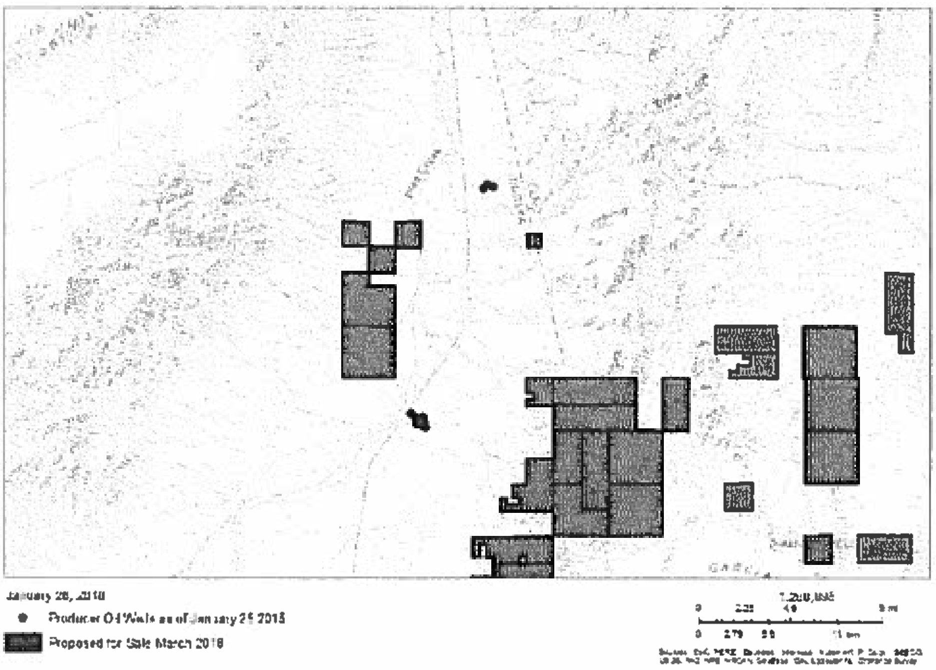

**Proposed Oil and Gas Lease Parcels and "Producer" Oil and Gas Wells in Nevada.**

Public Lands Oil and Gas Leasing in Nevada



**Above, Proposed Lease Parcel Near Trap Spring Oil Field. Below, Parcels Near Blackburn and Tomera Ranch Oil Fields.**

Public Lands Oil and Gas Leasing in Nevada



The BLM's own analysis in the EA only confirms the unlikelihood of any development ever occurring on the proposed lease parcels.[3] While the agency normally presumes that at least one well will be developed per lease parcel given that diligent development is a prerequisite for issuance, here, the BLM has not even estimated that one well will be developed per lease parcel. Instead, in its EA, the BLM discloses it expects only 8 wells to be drilled and put into production in the entire Elko District, where 38 of the proposed lease parcels are located. *See* EA at Appendix C at 7. This means at most, the BLM expects only around 1/5 of the proposed leases to ever be developed. However, given that the BLM's estimate of reasonably foreseeable development is District-wide, it seems likely that even fewer, if any, parcels are likely to see any development.

To say the least, it is confusing that the BLM sees a need and/or an imperative to lease additional lands for oil and gas development in Nevada. While the agency may believe it is generating revenue for the American public, the reality is the BLM is spending more taxpayer dollars to manage and administer its oil and gas leasing program in Nevada than it is gaining in return. It is important to note that nationally, revenue from federal oil and gas is primarily driven by royalty payments associated with production. As the U.S. Government Accountability Office noted in a 2013 report, only 10% of all federal oil and gas revenue was generated by bonus bids associated with leasing and only 3% of all revenue was generated by rental payments for existing leases. The vast majority of revenue—87%—was generated through royalty payments. *See* GAO, "Oil and Gas Resources: Actions Needed for Interior to Better Ensure a Fair Return," GAO-14-50 (Dec. 2013), available online at https://www.gao.gov/products/GAO-14-50. This means that at best, the BLM in Nevada may generate only 13% of what is normally recovered when there is production of oil and gas.

The oil and gas industry itself has commented that interest in leasing in Nevada is "weird." As WildEarth Guardians highlighted in its request to the BLM to halt new leasing in the state, actual and credible industry representatives have commented that there is no reputable industry interest in leasing in the state. *See* Exhibit 1 at Exhibit 1.

Put another way, the BLM seems to be proposing more oil and gas leasing in Nevada that will certainly cost Americans more than it benefits. The only reason for the agency to move forward with the proposed leasing is to appease industry demands to acquire and hold publicly owned oil and gas leases as assets. This is not a valid reason to lease and as will be explained, appears to run afoul of the agency's obligations under federal laws, regulations, and directives.

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

The BLM's proposed leasing runs afoul of the Mineral Leasing Act in two key regards. First, it does not appear that all or a majority of the lease parcels contain lands that are known or believed to contain oil or gas deposits. Second, it does not appear that there is any intent of any lessee to diligently develop most, if not all, of the proposed parcels.

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[3] The DNA for the Carson City District parcel contains no analysis of reasonably foreseeable development The parcel in the Ely District office similarly is not accompanied by any analysis of reasonably foreseeable development.

On the first matter, the Mineral Leasing Act allows leasing only where there are lands that are "known or believed to contain oil or gas deposits." 30 U.S.C. § 226(a). Here, it appears that there are lands included in many of the proposed lease parcels that do not contain or are not known to contain oil and gas deposits. At the least, these appear to include all lease parcels outside of the Blackburn, Tomera Ranch, and Trap Spring oil fields.

At a minimum, the BLM has a duty to confirm that lands proposed for leasing are known or believed to contain oil and gas deposits. Here, the agency appears to have undertaken no such diligence in confirming whether the oil and gas industry's supposed interest in the proposed lease parcels is rooted in the existence or believed existence of oil and gas deposits. Although the BLM may claim its underlying Resource Management Plan ("RMP") conducted such diligence, this is not reflected in the RMP.

On the second matter, the BLM cannot lease lands for oil and gas development if there is no intent to diligently develop. The agency confirmed this in a recent decision denying the issuance of an oil and gas lease to a lessee, explaining:

> A fundamental requirement of every oil and gas lease, as stated in Section 4 on page 3 of Form 3100-1, is the requirement that the "Lessee must exercise reasonable diligence in developing and producing, and must prevent unnecessary damage to, loss of, or waste of leased resources." This diligent development requirement has its basis in the Mineral Leasing Act of 1920, as amended. See 30 U.S.C. § 187. Thus, an expressed intent by a person offering to purchase a lease to not develop and produce the oil and gas resources on the leasehold would directly conflict with the diligent development requirement and require that the offer be rejected.

*See* Exhibit 1 to WildEarth Guardians' November 19, 2017 Comments. Here, the BLM appears to explicitly acknowledge that there is no explicit intent to develop any of the proposed lease parcels. The agency itself discloses in the EA that it is reasonable to presume that most, if not all, of the parcels, will never be developed. Given this, it is completely evident that any lessee would have no intent to diligently develop most, if not all, of the proposed lease parcels and that the BLM is not legally justified in proceeding to offer all the proposed parcels for sale.

More recently, the BLM confirmed that leasing in areas with low development potential and little to no industry interest warrants removing parcels from proposed sales. In Colorado, the agency recently removed 20 parcels totaling 27,529 acres in Grand County from a proposed lease sale, citing "low energy potential and reduced industry interest in the geographic area[.]" *See* Exhibit 2 to WildEarth Guardians' November 19, 2017 Comments.

At a minimum, the BLM cannot proceed to lease the proposed lands without conducting some kind of verification that there is intent to develop. Here, the agency appears to have undertaken no such verification. In fact, in response to a Freedom of Information Act request in which WildEarth Guardians requested records pertaining to any instance in which the BLM evaluated the likelihood of development of oil and gas leases in Nevada, the agency responded that "there are no records responsive[.]" *See* Exhibit 3 to WildEarth Guardians' November 19, 2017 Comments. The BLM cannot blindly offer to lease public lands for oil and gas development without undertaking some steps to confirm that there exists reasonable development potential. If the agency does not, then it is failing to verify that potential lessees will exercise diligent development in accordance with the Mineral Leasing Act.

As it stands, there is no basis for concluding that the lands proposed for leasing are known or believed to contain oil and gas deposits, or that there is any intent to diligently develop any of the proposed leases. Accordingly, the BLM is not legally justified under the Mineral Leasing Act in proceeding with the proposed leasing and the March 2018 lease sale must be canceled.

Although the BLM may claim it is mandated to offer the proposed leases for sale due to the submission of an "expression of interest," this is absolutely not true. The Mineral Leasing Act provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits ***may be*** leased by the Secretary." 30 U.S.C. § 226(a)(emphasis added). In 1931, the Supreme Court found that the MLA "goes no further than to empower the Secretary to lease [lands with oil and gas potential] which, exercising a reasonable discretion, he may think would promote the public welfare." *U.S. ex rel. McLennan v. Wilbur*, 283 U.S. 414, 419 (1931). And in 1965, the Supreme Court held the Mineral Leasing Act "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 85 S.Ct. 792, 795 (1965) *reh. den.* 85 S.Ct. 1325.

When a leasing application is submitted to the federal government but before the actual lease sale, no right has been vested in the applicant or potential bidders. At this stage, BLM retains full authority not to lease. "The filing of an application which has been accepted does not give any right to lease or generate a legal interest which reduces or restricts the discretion vested in the Secretary whether or not to issue leases for the lands involved." *Duesing v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), *cert. den.* 383 U.S. 912 (1966). *See also Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988) ("[R]efusing to issue [certain petroleum] leases ... would constitute a legitimate exercise of the discretion granted to the Secretary of the Interior"); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [MLA] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory"); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975) ("[T]he Secretary has discretion to refuse to issue any lease at all on a given tract"); *Pease v. Udall*, 332 F.2d 62 (9th Cir) (Secretary of Interior has discretion to refuse to make any oil and gas leases of land); *Geosearch, Inc. v. Andrus*, 508 F. Supp. 839 (D.Wy. 1981) (leasing of land under Mineral Leasing Act is left to discretion of the Secretary of Interior). Similarly, Interior Board of Land Appeals decisions consistently recognize that BLM has "plenary authority over oil and gas leasing" and broad discretion with respect to decisions to lease. *See Penroc Oil Corp., et al.*, 84 IBLA 36, 39, GFS (O&G) 8 (1985).

Thus, BLM has authority to reject the proposed leases and not move forward with the March 2018 lease sale. In this case, it is especially appropriate for the BLM to exercise its authority to deny the proposed leasing, particularly given that the oil and gas industry has described interest in leasing in Nevada as not reflecting actual industry interest.

Given that the BLM cannot demonstrate any reasonable likelihood that any of the proposed lease parcels will be developed, the agency not only has the authority, but the duty, to refrain from moving forward with the proposed leasing. Accordingly, we request the BLM ancel

Sincerely,

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
2590 Walnut St.
Denver, CO 80205
(303) 437-7663
jnichols@wildearthguardians.org

# Exhibit 1

WildEarth Guardians
A FORCE FOR NATURE

August 24, 2017

*By E-mail*

Mike Nedd
Acting Director
U.S. Bureau of Land Management
1849 C St. Rm. 5665
Washington, D.C. 20240
mnedd@blm.gov

Marci Todd
Acting State Director
U.S. Bureau of Land Management
Nevada State Office
1340 Financial Blvd.
Reno, NV
m1todd@blm.gov

**Re: Interest in Oil and Gas in Nevada is a Sham, Pause on New Leasing Needed**

Dear Mr. Nedd and Ms. Todd:

We are writing to urge the Bureau of Land Management ("BLM") to immediately put a halt to new onshore oil and gas leasing in the Nevada State Office and to reassess the State Office's approach to reviewing and proposing oil and gas leases in Nevada. According to the oil and gas industry, there is no legitimate interest in leasing publicly owned oil and gas reserves in the State. The BLM must immediately halt new oil and gas leasing and conduct an assessment of the appropriateness of spending taxpayer dollars to conduct any further leasing in Nevada.

As you are aware, millions of acres of public lands and minerals in Nevada have drawn interest for their supposed oil and gas development potential. Interests purporting to represent the oil and gas industry have submitted numerous "expressions of interest" to the BLM, in effect identifying lands they believe should be offered for competitive sale. Many of these expressions of interest have come from anonymous sources. These "expressions of interest" have prompted the BLM to hold several recent competitive lease sales that have failed to generate any meaningful amount of oil and gas industry participation. In June of this year, the agency attempted to auction off 106 oil and gas lease parcels in Nevada, yet only 3 received any bids. Although the BLM reported it generated a little more than $38,000 in revenue, records indicate the agency spent far more to prepare for and conduct the lease sale.

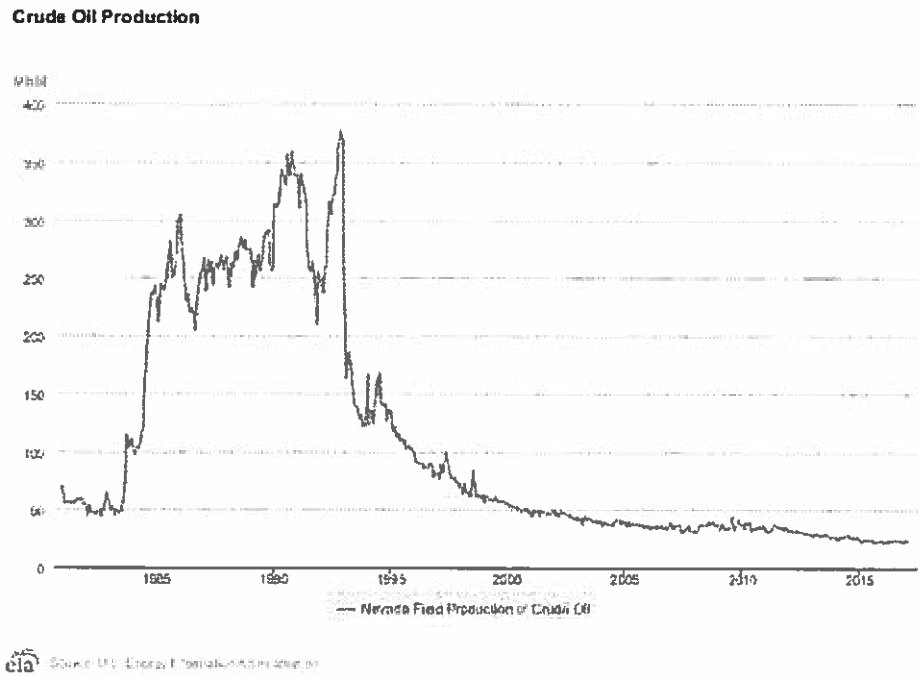
Actual and credible oil and gas industry representatives have described the expressions of interest in leasing in the Nevada State Office as not representing any legitimate industry interest. In fact, Kathleen Sgamma, the President of the Western Energy Alliance, a leading oil and gas trade association, stated that the expressions of interest currently pending in Nevada were not submitted by reputable companies. In a news article, Sgamma commented, "Something very weird is going on in Nevada[.]" *See* Exhibit 1.

Industry's observations are not a surprise. Nevada is marginal, at best, for oil and gas production. While there are 627 leases covering 1,124,320 acres in the state only 37 of these leases—or 2.4% of all leased acreage—is actually producing oil and gas (as of the end of FY 2016). On average nationally, 46% of all leased federal oil and gas acreage is in production, meaning Nevada is far, far below what is normal at the moment. *See* Table below.

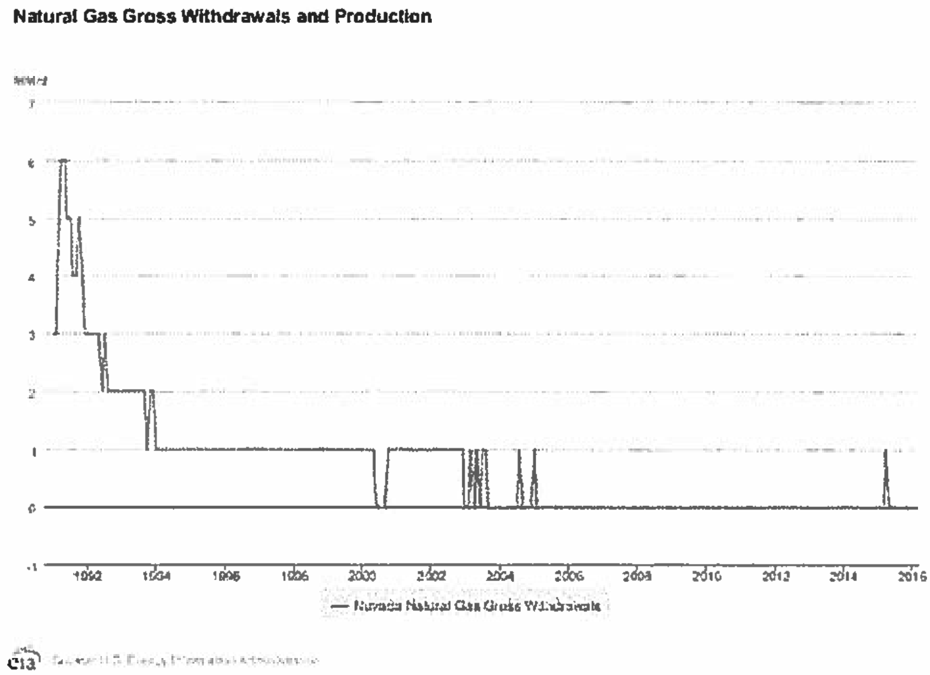
**Oil and Gas Leases in Nevada**

| Number of Leases | Leased Acres | Producing Leases (%) | Acres in Production (%) |
|---|---|---|---|
| 627 | 1,124,320 | 37 (5.9%) | 27,001 (2.4%) |

This reflects the fact that Nevada's oil and gas production is smaller than a blip in terms of overall U.S. production. While the state produced upward of 350,000 barrels a month in the early 1990's, its production has hovered below 50,000 barrels monthly since 2000. To put this into perspective, total U.S. oil production amounted to 3.3 billion barrels in 2016. Furthermore, the state's natural gas production rate is described by the U.S. Energy Information Administration ("EIA") as "NA," or effectively zero. *See* Charts below.




**Oil Production in Nevada, 1980's to the Present. Data available at [https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_m.htm](https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_m.htm).**




**Below, Natural Gas Production in Nevada, 1990's to the Present. Data available at https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_FGW_mmcf_m.htm.**

Although there are less than 100 oil and gas wells that are considered to be "producers" by the State of Nevada, as of 2015, the EIA reports there was one producing natural gas well and four producing oil wells. *See* https://www.eia.gov/dnav/ng/ng_prod_wells_s1_a.htm and https://www.eia.gov/dnav/ng/ng_prod_oilwells_s1_a.htm.

Furthermore, the areas where purported oil and gas industry representatives have expressed "interest" in leasing are not remotely near where any "producer" oil and gas wells are even located. The only location where any amount of oil and gas development is occurring appears to be in the Railroad Valley of southern Nevada. Only a handful of proposed leases and expressions of interest have been located in this area.

In spite of this, the BLM has proposed to sell oil and gas leases in areas outside the Railroad Valley, including in areas considered to have low to no oil and gas development potential. For instance, in the June 2017 lease sale, the BLM attempted to auction off oil and gas leases in the Big Smokey Valley area of Nye and Lander Counties, a region considered to have effectively no oil and gas potential. Not surprisingly, none of these leases received any bids.

It is telling that in prior lease sales held in Nevada, there has also been exceptionally low interest and activity. In March of 2017, the BLM offered 67 parcels for sale in the Elko District, yet only 20—or less than 30%—received bids. *See* https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_20170314_COMP_SALE_RESULTS.pdf. Further, of the 20 parcels that received bids, 19—or 95%—received only the minimum bid of $2.00 per acre. *See* https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_20170314_Elko_Sale_Summary.pdf. Similarly, in June of 2016, the BLM offered 42 parcels for sale in the Ely District, yet only four received bids. *See* https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_BMDO_Sale_Competitve_Results_20160614.pdf. The BLM received bids of $2.00, $3.00, $4.00, and $21.00 per acre for the four parcels. *See id.*

As reported, there are millions of acres of expressions of interest that have been submitted by purported industry interests since 2014 (all expressions of interest submitted for Nevada public lands are available at https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada). Just since January 20, 2017, more than 2,300 expressions of interest have been submitted. *See* map below.

For the BLM to spend taxpayer dollars and agency time and energy to process these expressions of interest, which the oil and gas industry itself says are not coming from reputable interests, would represent a serious miscarriage of public stewardship. Yet BLM appears poised to do just that.

Already, the agency is scheduled to offer competitive oil and gas leases for sale on September 12, 2017. According to the BLM, a sale is also scheduled for the week of December 11. We also presume that additional sales will be scheduled in 2018 and in future years. As is evident, in spite of industry acknowledging that there is no legitimate interest in oil and gas n Nevada, the BLM is still proceeding to propose lease sales. This is beyond irresponsible and it has to stop.

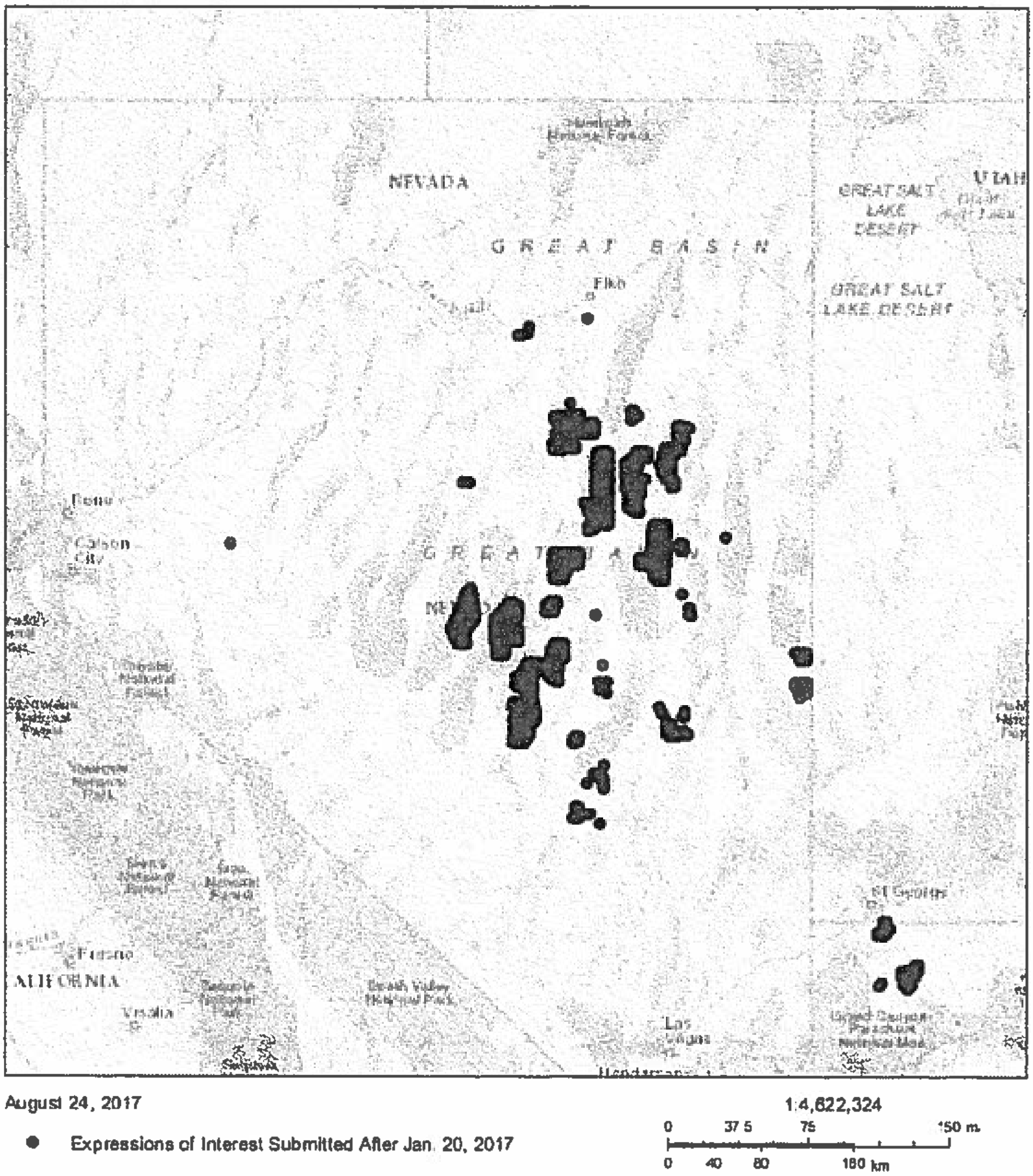
Accordingly, we call on you to immediately take the following actions in order to effectively confront the sham oil and gas leasing that is unfolding in the Nevada State Office:

1. **Institute a pause**. Immediately institute a pause on new oil and gas leasing in and on accepting new expressions of interest in the Nevada State Office. To this end, we call on you to cancel the September 12, 2017 oil and gas lease sale and the sale scheduled for the week of December 11.

2. **Reject all submitted expressions of interest**. All indications are that all expressions of interest currently before the Nevada State Office are sham expressions of interest that do not reflect legitimate industry desire to develop by reputable companies. These expressions of interest should be rejected by the BLM.

3. **Reassess the appropriateness of oil and gas leasing in Nevada**. Before accepting any new expressions of interest and undertaking any new oil and gas leasing, the BLM must conduct a rigorous and objective assessment of the viability and legitimacy of future oil and gas leasing in the Nevada State Office. We would urge the agency to conduct this assessment as part of a statewide Resource Management Plan revision that ultimately leads to a new Record of Decision governing oil and gas leasing in Nevada.

## 2017 Expressions of Interest in Nevada




Location of Expressions of Interest submitted in Nevada since January 20, 2017. Data from BLM's National Fluids Lease Sale System database, https://nflss.blm.gov/eoi/list.

These actions are more than justified under the U.S. Mineral Leasing Act. Indeed, leasing is only allowed where there are lands that are "known or believed to contain oil or gas deposits." 30 U.S.C. § 226(a). Here, it appears that the lands in Nevada being eyed by purported oil and gas industry interests do not contain oil and gas deposits, or at least do not contain any viable oil and gas deposits. Given BLM's duty under the Mineral Leasing Act, the agency is more than justified in instituting a pause and initiating greater scrutiny of future leasing.

Furthermore, as the BLM itself has acknowledged, under the Mineral Leasing Act, it cannot lease lands for oil and gas development if there is no intent to diligently develop. The agency confirmed this in a recent decision denying the issuance of an oil and gas lease to a lessee, explaining:

> A fundamental requirement of every oil and gas lease, as stated in Section 4 on page 3 of Form 3100-1, is the requirement that the "Lessee must exercise reasonable diligence in developing and producing, and must prevent unnecessary damage to, loss of, or waste of leased resources." This diligent development requirement has its basis in the Mineral Leasing Act of 1920, as amended. See 30 U.S.C. § 187. Thus, an expressed intent by a person offering to purchase a lease to not develop and produce the oil and gas resources on the leasehold would directly conflict with the diligent development requirement and require that the offer be rejected.

*See* Exhibit 2. Given this, there is further ample justification under the Mineral Leasing Act for the BLM to exert heightened scrutiny around leasing and expressions of interest in Nevada.

We agree with the oil and gas industry that something very weird is going on in Nevada with respect to the BLM's oil and gas leasing program. What's more, given the oil and gas industry's comments, it would appear that what is going on in Nevada is also a waste of taxpayer dollars and agency resources, and not warranted under federal law. It behooves the BLM to step up and do something about this, rather than allow disreputable interests undermine the public interest and the agency's own credibility and integrity.

Once again, we call on you to institute a pause on new oil and gas leasing, reject all outstanding expressions of interest, and to reassess the appropriateness of oil and gas leasing in the BLM's Nevada State Office.

Sincerely,

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
2590 Walnut St.
Denver, CO 80205
jnichols@wildearthguardians.org

# Exhibit 1

THE DAILY CALLER

**'Something's Fishy': Oil Speculation Skyrockets In State With 'Very Little Oil'**

Posted By Tim Pearce On 7:49 PM 08/19/2017 In | No Comments

Millions of acres worth of requests for oil
speculation on federal lands were submitted in Nevada just years before former President Barack Obama designated two national monuments in the state, the Center for Biological Diversity (CBD) found Friday.

Expression of Interest (EOI) documents are submitted to state Bureau of Land Management (BLM) agencies for any parcel of federal land that prospectors think may produce oil. The BLM is then required by law to study the area and decide whether it should be leased to an oil company for development.

The Nevada EOIs are mostly worthless and a waste of taxpayer money, however, according to CBD Nevada state director, Patrick Donnelly.

CBD is using the information as evidence President Donald Trump's review of national monument designations, and its potential to roll back some of those, is "a complete sham," Donnelly told TheDCNF.

"It appears there could be multiple motives for the monument review including potentially opening up lands that are currently protected for oil and gas," Donnelly said. "There are certain places that should be off limits to oil and gas and these monuments ... are too special to be developed for oil and gas."

The oil industry's actual interest in Nevada is "very small" and not representative of the massive amount of EOIs submitted to Nevada BLM, Western Energy Alliance president Kathleen Sgamma told The Daily Caller News Foundation.

EOIs, while usually covering one or two million acres in Nevada, exploded in 2014, covering a total of 28 million acres, according to BLM data.

"Something very weird is going on in Nevada with those [EOIs]," Sgamma said. "The [EOIs] of just millions of acres at a time ... do not appear to be from reputable companies. They do not reflect any industry interest."

While millions of acres of federal land in Nevada is supposedly drawing interest for oil development, oil companies purchase very few leases that are auctioned off by the BLM. In 2015, BLM's most current data, of the 248 parcels of land BLM offered to lease to oil companies, only 14 were bought.

"The interest in Nevada is very small," Sgamma said. "There are some companies, there are a few number of wells that have been drilled over the last couple of years, but they are not in these monument areas [of Gold Butte and Basin and Range]."

CBD cannot explain why EOIs spiked in 2014. While blaming oil companies for wanting to downsize national monuments, CBD and the oil industry agree that developing the vast amount of land in Nevada would be a waste of money.

"There is very little oil and gas in Nevada, very little. Its not Wyoming here. We just don't have a ton of oil and gas potential so it sort of is all the more jarring to see this level of speculation," Donnelly said. "I think these speculators are waiting for some geopolitical crisis where the price of oil spikes dramatically, and then, potentially, its economically feasible to extract."

Donnelly blamed "speculators" in Texas operating out of "one man shops" for the million of acres of supposed oil interest.

Positively knowing who has been requesting the EOIs is strictly dependent on how much information is filled out on the form and released by the BLM. Many forms lack enough information to get even a general sense of the request's origin, Sgamma said.

"It could be a bad industry actor. It could be an environmental group nominating things so that they can later say, 'Hey, we need this monument designation to protect from the greedy oil and gas industry,'" Sgamma said. "[CBD is] looking at very fishy data that just are not reflective of industry interest."

*Follow Tim Pearce on Twitter*

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# Exhibit 2

# United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Utah State Office
440 West 200 South, Suite 500
Salt Lake City, UT 84101
http://www.blm.gov/ut/st/en.html

IN REPLY REFER TO:
3120
(UT-922000)

APR 15 2016

CERTIFIED MAIL – 91 7199 9991 7035 9043 6708
Return Receipt Requested

Terry Tempest Williams
dba Tempest Exploration
P.O. Box 40
Moose, Wyoming 83012-0040

Dear Ms. Williams:

I am writing to you concerning your pending noncompetitive lease offers for oil and gas parcels UTU91481 (on February 16, 2016) and UTU91574 (on February 18, 2016). I want to ensure that you understand your obligations under the leases if issued, and to request that you clarify statements you made about your intentions with respect to these leases in your essay entitled "Keeping My Fossil Fuel in the Ground," which appeared in the opinion pages of the New York Times on March 29, 2016.

Your offers to lease were made by signing and dating Form 3100-11 ("Offer to Lease and Lease for Oil and Gas"), which contains the basic terms and conditions of an issued oil and gas lease, and may be supplemented by stipulations attached to the lease parcel. Paragraph 4 on page 2 of Form 3100-11 sets out the qualifications necessary to be an offeror, and the offeror's agreement to all of the terms and conditions of the lease that is the subject of the offer and to the stipulations attached to the lease.

One of the basic terms of such a standard oil and gas lease, found in Section 4 on page 3 of Form 3100-11, is the requirement that the lessee must exercise reasonable diligence in developing and producing the leased resource. In light of that requirement, I wanted to follow up on your statements in your essay that "[w]e have every intention of complying with the law, even as we challenge it. . . . We will pay the annual rent for the duration of the 10-year lease and keep whatever oil and gas lies beneath these lands in the ground."

The diligent development requirement set forth in Section 4 of your lease forms is a requirement that is mandated by the Mineral Leasing Act of 1920, as amended. See 30 U.S.C. §187. Therefore, please advise me in writing within 30 days of your receipt of this letter whether you would accept the duty to exercise reasonable diligence in developing and producing oil and gas from the two leases you have offered to purchase rather than keeping the resources "in the ground" as stated in your essay.

I also want to make you aware of the stipulation attached to one of your lease parcels -- UTU91481 -- which is part of a unit plan for development previously established by owners of the resource pool. See 43 C.F.R. Subpart 3180. In such situations, the lease offeror is required to either join the established unit or to show the Bureau of Land Management (BLM) why such joinder is not required. In any event, a lessee in a unit is required to conform to the terms and provisions of the unit agreement with respect to operations. See 43 C.F.R. § 3101.3-1.

This requirement is in Stipulation UT-S-317 attached to Parcel UTU91481, as set forth on the Canyon Country District's February 2016 Final Oil & Gas Lease Sale List. It provides: "The successful bidder will be required to join the Crescent Unit Agreement or show reason why a joinder should not be required." The operator of the Unit is Tidewater Oil & Gas Co., 110 16th Street, Suite 405, Denver, Colorado 80202-5206. Thus, before any lease could be issued for the parcel, it would be necessary for you to join the Crescent Unit Agreement, or demonstrate why joinder should not be required. Please inform me in writing within 30 days of your receipt of this letter whether you have contacted the Unit operator to begin the process of joining the Unit or if not why joinder should not be required.

If I do not receive a response to this letter within 30 days of your receipt of it that provides the necessary information discussed above and demonstrates your compliance with the requirements that must be a part of such leases, the BLM may reject your two noncompetitive lease offers. In that case, a refund will be made of all funds submitted in connection with the offers.

If you have any questions regarding this letter or would like to discuss any aspect of it, please contact Kent Hoffman, Deputy State Director for Lands and Minerals, at (801) 539-4063.

Sincerely,

JWhitlock

Jenna Whitlock
Acting State Director