



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>

In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0138 2966 31

DECISION

Mary Greene : Protest of Parcels in the
National Wildlife Federation : March 24, 2020
303 E 17th Ave, Suite 210 : Competitive Oil and Gas Lease Sale
Denver, Colorado 80203

Protest Dismissed Parcels Offered For Sale

On February 14, 2020, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from the National Wildlife Federation, et al (NWF), which protested all 45 of the parcels scheduled to be offered in the Battle Mountain District at the March 24, 2020 Competitive Oil and Gas Internet Lease Sale (the Sale), which relies on the Battle Mountain District Office's (BMDO) Environmental Assessment, DOI-BLM-NV-B000-2020-0001-EA, and Finding of No Significant Impact (FONSI).

BACKGROUND

The BLM posted the Sale Notice on February 7, 2020 offering 45 parcels for the March 2020 Lease Sale. The 45 nominated parcels included land in federal mineral estate located in the BLM Nevada's Battle Mountain District. 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.

On August 28, 2019, the NVSO sent a preliminary parcel list to the BMDO for review. This interdisciplinary parcel review included internal scoping by a team of BLM specialists; review of

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.

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 EA 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 the Federal Land Policy and Management Act (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 and assure full compliance with the spirit and objectives of NEPA and other federal environmental laws and regulations.

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 EA is in conformance with 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)

The EA considered two (2) alternatives:

- The “Proposed Action” alternative, which included offering all nominated parcels that were sent for review, with stipulations from the existing Resource Management Plans (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 EA 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 EA in Public Involvement, Public Comments and Responses, and Alternatives sections (*see* Supplemental Information, Section 15).

On February 7, 2020, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for March 24, 2020*⁶ (Notice), resulting in a total of 45 parcels offered for lease. This protest challenges the Sale, BMDO EA, and FONSI, and all 45 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), no parcels scheduled to be offered at the March 24, 2020 sale are located in Greater Sage-grouse habitat.

ISSUES

The NWF protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, and the FLPMA 43 U.S.C. § 1701 *et seq.* The following addresses NWF’s protest related to the Sale.

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

A. By leasing in low potential lands, BLM is not complying with its multiple use mandate under the Federal Lands Management Act.

BLM Response:

The BLM’s Purpose and Need as stated in section 1.2 of the EA 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

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

⁷ The March 2020 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>

proposed lease sale is in conformance with the Battle Mountain District RMPs, as amended. The Purpose and Need is consistent with the BLM's responsibility under the MLA as amended, to promote the development of oil and gas on the public domain by responding to properly submitted 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.

Multiple use management continues on leased lands. Leasing does not preclude other uses, such as renewable energy, exploration for other minerals, wildlife habitat management, recreation, etc. Additionally, 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.

For these reasons, the above NWF protest is dismissed.

B. BLM has not complied with the National Environmental Policy Act.

BLM Response:

The EA addressed potential impacts to wildlife, including big game, in sections 3.2.8 and 4.2.6. The EA analysis determined that there were no significant impacts to wildlife from the selected alternative. However, there could be indirect impacts to wildlife from oil and gas development on these leases in the future. To reduce potential conflicts with wildlife habitat and populations from oil and gas leasing, the BMDO evaluated parcels located within high-value habitat and proposed to apply additional stipulations and mitigation measures to future development activities. Timing limit stipulations (*see* DOI-BLM-NV-B000-2020-0001-Stipulations) protect mule deer crucial winter range (NV-B-02-A-TL) and desert bighorn sheep lambing and summer habitat (NV-B-04-D-TL) identified by the Nevada Department of Wildlife (NDOW) and during seasons identified by NDOW for each of these species. Additionally, a lease notice has been attached to any parcels overlapping mule deer migration corridors (NV-B-02-B-LN) recommended as suitable for protection by NDOW. BLM coordinates closely with NDOW to meet the goal of sustainability for the species and to identify areas of sensitivity for the species. If such areas are identified, the BLM, in consultation with NDOW, would propose specific mitigation to ensure the habitat would be protected.

The Tonopah and Shoshone-Eureka RMPs and Final Environmental Impact Statements (FEISs) proposed and analyzed a Reasonably Foreseeable Development scenario (RFD) for oil and gas exploration and development (*see* Supplemental Information, Section 9). The RFD was based on known and potential oil and gas resources, and historic development in Nevada. The RFD was used to analyze potential and reasonably foreseeable direct, indirect, and cumulative impacts to other resources in the RMPs, and to make land use planning allocations and develop stipulations to prevent or reduce resource conflicts. Lengthy public comment periods were provided during the preparation of each of the two RMPs. Since neither the level of development in the RMPs or the impacts analyzed in the FEISs have been exceeded, the RFD remains a valid analysis tool for ongoing oil and gas explorations and development. The area within which the 45 nominated

parcels are found was analyzed in the FEISs and was allocated as open to oil and gas leasing in the RMPs with stipulations, thus the proposed action is in conformance with the RMPs. The BLM has no new data or information about changed circumstances that would require it to analyze the potential impacts of leasing in greater detail than that provided in the EA, FEISs, and the analysis in the existing FEISs/RMPs for the BMDO is comprehensive and sufficient. While the protestant claims the BLM defers environmental analysis to the Application to Permit to Drill (APD) stage, and relies on environmental analysis from the RMP stage, Protestant ignores the environmental review that BLM relies on for the leasing stage of the oil and gas development process that is found in the EA.

The small acreage of surface disturbance anticipated under the RFD scenario is not expected to contribute substantially to habitat loss or fragmentation for big game (*see* Supplemental Information, Section 9). Stipulations developed in cooperation with NDOW protect wildlife from disturbance in crucial seasonal habitats. Once lease development is proposed, additional project and site-specific NEPA will be conducted to address wildlife 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 (COAs).

For these reasons, the above NWF protest is dismissed.

C. BLM has failed to take the necessary “hard look” at potential environmental impacts on big-game.

BLM Response:

The BLM analyzed the Proposed Action using a RFD scenario (*see* Supplemental Information, Section 9). Since neither the level of development in the BMDO RMPs or the impacts analyzed in the FEISs have been exceeded, the RFD remains a valid analysis tool for ongoing oil and gas explorations and development. Please see response to Protestant’s point “*B. BLM has not complied with the National Environmental Policy Act*” above.

For these reasons, the above NWF protest point is dismissed.

D. Lease Notices and timing limitation stipulations do not sufficiently protect mule deer migratory corridors.

BLM Response:

The BLM creates stipulations through the LUP process and Resource Management Plans. The Shoshone-Eureka and Tonopah RMPs and FEISs have analyzed mule deer habitat and impacts and provided timing stipulations for mule deer crucial winter range (*see* Stipulations; NV-B-02-A-TL). Additional analysis of potential impacts to mule deer and habitat will be analyzed in a separate project and site-specific NEPA document at the exploration and development stages when a specific project proposal is available for analysis. Lease Notices serve to notify the public and lessees of existing federal or state laws or regulations which may affect operations on the lease. Any future development activities with potential to impact mule deer populations or habitat will result in consultation with NDOW. Additionally, please see response to Protestant’s point “*B. BLM has not complied with the National Environmental Policy Act*” above.

For these reasons, the above NWF protest is dismissed.

DECISION

To the extent that NWF 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, NWF's protest of the Sale, Battle Mountain District EA, and FONSI is dismissed and 45 parcels were offered for sale on March 24, 2020.

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: Robert Gaudet
President, Nevada Wildlife Federation
P.O. Box 71238
Reno, NV 89570

cc (electronic):

WO310
NVB0000
NVB0100
NVB0200
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 March 2020
Reading File: NV-922