



United States Department of the Interior



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In Reply Refer To:
3100 (NV920)

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DECISION

The Wilderness Society : Protest of Parcels in the
Bruce Pendery : March 24, 2020
440 East 800 North : Competitive Oil and Gas Lease Sale
Logan, UT 84321

Protest Dismissed Parcels Offered For Sale

On February 13, 2020, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from The Wilderness Society, et al (TWS), 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 (EA), 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 in 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, 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 TWS protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.* The following addresses TWS’s protest related to the Sale.

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

A. The Lease Sale EA for the Battle Mountain District does not adequately consider or provide for the protection of 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

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>

prevent change of the management or use of public lands. Lands with wilderness characteristics do not have any congressional or other legal requirements for management. The BLM manages lands with wilderness characteristics according to the RMP for an area, which in the BMDO manages all lands not specifically designated for conservation as open to multiple use. Any change to this policy would require a land use plan amendment. Additionally, the BLM Manual 6310 states “The BLM will determine when it is necessary to update its wilderness characteristics inventory.”

Based on the BLM’s most recent comprehensive wilderness characteristics inventory, 2011-2019 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 (*see* EA Sections 3.2.15 & 4.2.11). Protestant recommends alternatives that defer most or all parcels in areas of inventoried lands with wilderness characteristics, yet allocation decisions such as closing lands to leasing or designating areas for No Surface Occupancy (NSO) may only be made through the RMP amendment or revision process. BLM will continue to apply its land use plan and issue implementation decisions pursuant to the Tonopah and Shoshone-Eureka RMPs. Requiring revisions to the land use plan whenever a protest is received could result in a state of continued suspension in implementation of the land use plan, which is contrary to the clear language of the statute.

For these reasons, the above TWS protest is dismissed.

B. BLM has failed to consider a reasonable range of alternatives.

BLM Response:

In the BLM NEPA Handbook H-1790, and in Council on Environmental Quality (CEQ) guidance, the BLM is directed in NEPA documents to evaluate the proposed action, the no action alternative as a baseline, and other “Reasonable Alternatives” which meet the BLM’s Purpose and Need and are within the BLM’s authority. The BLM is not required to evaluate alternatives which do not meet the agency’s Purpose and Need, are not within the BLM’s discretion, or which are precluded by law. The EA analyzed the no action alternative and the proposed action. These alternatives provide a spectrum of effects for analysis and comparison, from not offering any parcels to offering all parcels nominated.

TWS recommends alternatives that defer most or all parcels in areas of inventoried lands with wilderness characteristics or low oil and gas potential, yet allocation decisions such as closing lands to leasing or designating areas for NSO may only be made through the RMP amendment or revision process. BLM will continue to apply its land use plans and issue implementation decisions pursuant thereto. Requiring revisions to the land use plan whenever a protest is received could result in a state of continued suspension in implementation of the land use plan, which is contrary to the clear language of the statute.

For these reasons, the above TWS protest is dismissed.

C. Facilitating speculative leasing is inconsistent with the MLA and FLPMA.

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 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 Expressions of Interest. 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. Oil and gas leasing is recognized as an acceptable use of public lands under the FLPMA.

In the BLM NEPA Handbook H-1790, and in CEQ guidance, the BLM is directed in NEPA documents to evaluate the proposed action, the no action alternative as a baseline, and other "Reasonable Alternatives" which meet the BLM's Purpose and Need and are within the BLM's authority. The BLM is not required to evaluate alternatives which do not meet the agency's Purpose and Need, are not within the BLM's discretion, or which are precluded by law. The EA analyzed the no action alternative and the proposed action. These alternatives provide a spectrum of effects for analysis and comparison, from not offering any parcels to offering all parcels nominated.

Additionally, 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. The Reasonably Foreseeable Development (RFD) analysis states that conservatively, based on historic information and anticipated activity, approximately 65-100 acres of surface disturbance associated with potential oil and gas exploration and production activities could be expected to occur in the Battle Mountain District over the next ten years (*see* Supplemental Information, Section 9). 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 TWS protest is dismissed.

D. Prioritizing oil and gas leasing is inconsistent with FLPMA's multiple-use mandate.

BLM Response:

Please see above response to Protestant's point "*C. Facilitating speculative leasing is inconsistent with the MLA and FLPMA.*" above.

For this reason, the above TWS protest is dismissed.

E. BLM has inadequately analyzed and mitigated climate change impacts.

BLM Response:

The EA addressed the potential impacts and environmental consequences to greenhouse gas emissions (GHG) and climate change, including mitigation measures, to the extent possible at this stage in sections 3.2.1 and 4.2.1. This analysis included a history of emissions, including CH₄, from well drilling activities and an estimate of potential oil production and downstream CO₂ generated based on the Reasonably Foreseeable Development scenario (*see* EA Tables 5,6, & 7). BLM would coordinate with the Environmental Protection Agency (EPA) and State agencies early in the APD process to determine how best to model and mitigate for impacts to air quality. Measures may also be required as Conditions of Approval (COAs) on permits by either the BLM or the applicable state air quality regulatory agency. Additionally, in the EA cumulative effects analysis section 4.2.1, the analysis compared the GHG emissions (MMT/year CO₂e) from the Proposed Action to total estimated all sectors GHG emissions in Nevada and the U.S. (*see* EA Table 11). Analysis on the effects of hydraulic fracturing on Air Quality and Human Health and Safety is provided in the Hydraulic Fracturing Technology Paper.

As stated in the March 2020 EA (DOI-BLM-NV-B000-2020-0001-EA):

The NDEP completed the Nevada Statewide Greenhouse Gas Emissions Inventory and Projections, 1990-2030 in 2016 which shows both historical trends of GHG emissions from several sectors in Nevada as well as projections of GHG emissions out to 2030 (NDEP 2016). This report shows that GHG emissions from the fossil fuel industry sector have historically comprised approximately 2% of Nevada's total estimated GHGs. Due to the absence of a coal industry in Nevada and the limited natural gas and oil production that does take place in the state, emissions from production, processing, transmission, and distribution represent a very small fraction of the state's overall GHG emissions. In 2015, estimated emissions from this sector were 0.866 MMT CO₂e with approximately 0.003 MMT attributed to oil production. Most of the emissions from this sector are from natural gas delivery systems that run within and through Nevada. The report also predicts that emissions from oil and gas production will remain flat through 2030 as these emissions have largely gone unchanged over the last 20 years. Total GHG emissions from the fossil fuel industry sector are projected to increase by about 0.075 MMTCO₂e by 2030 and total GHG emissions from all sectors are projected to remain flat through 2030 and increase by less than 1 MMT CO₂e.

The potential impacts of GHG emissions from oil and gas operations in Nevada are extremely low, based on the low amount of current production and projected production based on the Reasonably Foreseeable Development scenario, as compared to state, national, and worldwide consumption. The US Geological Survey recently published a report on GHG emissions from the extraction and use of fossil fuels produced on Federal lands and GHG sinks (carbon storage by terrestrial ecosystems) on Federal lands in the US over a 10-year period from 2005-2014. Nevada ranked fifth for total ecosystem carbon flux (sink), with average of 4,882 MMT CO₂e stored per year. The net emissions of GHGs from federal lands in Nevada for 2014 was -14.7 MMT CO₂e indicating that more carbon was stored than emitted. If production drastically increases in the future, it could increase the effects from GHG, and additional mitigation derived

from project analysis may be required. The BLM's analysis in the EA of the effects of leasing and development is sufficiently detailed to support issuance of oil and gas leases.

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 TWS protest is dismissed.

F. BLM must consider the climate change impact study done by Utah State University.

BLM Response:

Thank you for supplying this study, a review of the document has not yielded any new information regarding emissions from oil and gas development on public lands, for the BLM's quantitative review of potential impacts to air quality, emissions, and climate change please see the EA, section 3.2.1 and 4.2.1.

For this reason, the above TWS protest is dismissed.

DECISION

To the extent that TWS 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, TWS'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

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Lease Sale Book March 2020
Reading File: NV-922