



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Eastern States

20 M Street, SE Suite 950

Washington, DC 20003

<http://www.es.blm.gov>

In Reply Refer To:

3120 (930 JRK)

December 2016 Lease Sale

**DEC 12 2016**

**CERTIFIED MAIL—RETURN RECEIPT REQUESTED**

Roxanne Groff, Bern Township Trustee

14222 Marietta Run Road

Amesville, Ohio 45711

**DECISION**

:  
:  
:

December 13, 2016  
Competitive Oil and Gas  
Lease Sale

**PROTEST DENIED**

On November 14, 2016, the Bureau of Land Management (BLM) Eastern States Office (Eastern States) timely received a protest filed on behalf of the above cited parties (Protesters) disputing the inclusion of thirty-three Ohio<sup>1</sup> parcels (Ohio Parcels) in the BLM Eastern States December 13, 2016 Competitive Oil and Gas Lease Sale (December Lease Sale). For the reasons stated below, the protest is hereby denied.

However, the BLM Eastern States is withdrawing 16 Ohio Parcels<sup>2</sup> from the December 13th Lease Sale to resolve questions of ownership and existing rights for minerals acquired by the United States government during the formation of the Wayne National Forest. Once these questions are resolved, the Ohio Parcels may be offered at the next available competitive lease sale.

<sup>1</sup>OHES 058185, OHES 058186, OHES 058187, OHES 058188, OHES 058189, OHES 058190, OHES 058191, OHES 058192, OHES 058193, OHES 058194, OHES 058195, OHES 058196, OHES 058197, OHES 058198, OHES 058199, OHES 058200, OHES 058201, OHES 058202, OHES 058203, OHES 058204, OHES 058205, OHES 058206, OHES 058207, OHES 058208, OHES 058209, OHES 058210, OHES 058211, OHES 058212, OHES 058213, OHES 058214, OHES 058215, OHES 058216, OHES 058217.

<sup>2</sup> OHES 058185; OHES 058189; OHES 058192; OHES 058193; OHES 058194; OHES 058195; OHES 058196; OHES 058197; OHES 58206; OHES 58207; OHES 058208; OHES 058209; OHES 058210; OHES 058211; OHES 058212; OHES 058214

## BACKGROUND

After Eastern States conducted a preliminary adjudication of the Ohio Parcels, the parcels were forwarded to the Northeastern States District (NSD) for review of environmental concerns, including interdisciplinary analyses and field visits, in compliance with the *National Environmental Policy Act of 1969* (NEPA) and BLM national policy codified in BLM manuals, handbooks, and Instruction Memorandums. The NSD conducted site visits on October 26 and 27, 2015 within portions of the Marietta Unit and consulted with the FS and all applicable federal and state agencies during preparation of the NEPA document: Environmental Assessment DOI-BLM-Eastern States-0030-2016-0002-EA, Oil and Gas Leasing, Wayne National Forest, Marietta Unit of the Athens Ranger District (Marietta EA).

Eastern States, NSD, and FS conducted a series of public meetings. Beginning on November 1, 2015, public notices regarding these meetings appeared in local newspapers, including the Marietta Times, Athens Messenger, and the Ironton Tribune, for two consecutive weeks. The BLM also issued a press release to other news outlets on November 2, 2015, notifying the public of dates, times, and locations of the public meetings. Public meetings were held on November 17, 2015 in Marietta, November 18, 2015 in Athens, and November 19, 2015 in Ironton. The primary purpose for these public meetings was to provide information and gather public input regarding issues that the BLM should consider in this Marietta EA. At each meeting, the BLM and the FS provided information regarding proposed oil and gas leasing activities throughout the Wayne NF, displayed maps showing locations of nominated parcels for proposed leasing and posters detailing the administrative processes associated with Expressions of Interest (EOIs), leasing, the NEPA, and answered other inquiries regarding the project.

In November 2015, the BLM also created a project website for the Marietta EA to provide the public links to documents, additional project information and comment opportunities, including methods for comment submission, maps and EOI information.

The Marietta EA is in conformance with the 2006 *Final Revised Land and Resource Management Plan, Wayne National Forest* and the 2012 Supplemental Information Report (2012 SIR) on oil and gas prepared by the Forest Service in coordination with the BLM. The BLM was a cooperating agency in development of the 2006 Forest Plan and its related Final Environmental Impact Statement. The Marietta EA incorporates by reference the relevant information from the 2006 Forest Plan, Final Environmental Impact Statement and the 2012 SIR, in accordance with 40 CFR 1502.21.

On April 28, 2016, the draft Marietta EA was posted on the Eastern States website in accordance with applicable BLM Manual and Handbook 3120 Competitive Leasing and Washington Office IM No. 2010-117. As a result of the public review period, the BLM received approximately 13,700 comments by email and 480 comments by U.S. postal service or FedEx. Approximately 300 comments were identified as substantive in accordance with NEPA. Public comments were addressed by either expanding existing sections EA, providing clarification, or adding additional information. The changes made to the draft Marietta EA are summarized in a comment matrix attached as Appendix A in the Final Marietta EA.

The final Marietta EA for the Ohio parcels describes its purpose and need as follows (Page 17):

The purpose of the Proposed Action is to support the development of oil and natural gas resources that are essential to meeting the nation's future needs for energy while minimizing adverse effects to natural and cultural resources. The BLM minimizes adverse effects to resources by identifying appropriate lease stipulations and notices, best management practices, and mitigations. It is the policy of the BLM as mandated by various laws, including the Mineral Leasing Act of 1920, as amended (30 United States Code [USC] 181 et seq.), the Federal Land Policy and Management Act of 1976 (FLPMA), and the Energy Policy Act of 2005 to make mineral resources available for development to meet national, regional, and local needs. The oil and gas leasing program managed by the BLM encourages the sustainable development of domestic oil and gas reserves which reduces the dependence of the United States on foreign sources of energy as part of its multiple-use and sustainable yield mandate.

The leasing of federal minerals is vital to the United States as it seeks to maintain adequate domestic production of this strategic resource. Industry uses the BLM EOI process to nominate federal minerals for leasing. The Proposed Action is consistent with the BLM's mission and requirement to evaluate nominated parcels and hold quarterly competitive lease sales for available oil and gas lease parcels.

The Marietta EA considered two alternatives in detail (Page 22):

#### **Alternative 1- No Action Alternative**

Under the No Action Alternative, the BLM would not offer federal minerals in the Marietta Unit for oil and gas leasing, including both the parcels requested in currently pending EOIs and all other federal minerals in the Marietta Unit. Without a lease (No Action Alternative), operators would not be authorized to access federal minerals at the time of development but could develop adjacent privately owned minerals, potentially resulting in drainage of federal minerals without benefit to the government.

#### **Alternative 2- Lands Available for Leasing Alternative**

Under this alternative, the Bureau of Land Management (BLM) proposes to make available for lease up to approximately 40,000 acres of federally-owned mineral estate located in the Marietta Unit of the Athens Ranger District, Wayne National Forest, in Monroe, Noble, and Washington Counties in Ohio. This approximate acreage represents the total amount of federally-owned minerals that could be nominated and potentially be made available for leasing on the Marietta Unit. Although this EA analysis assumes that both oil and gas may be produced in the future within the Marietta Unit, natural gas is more likely to be produced.

The Marietta EA considered but eliminated from detailed analysis an additional alternative (page 30):

### **Offer all leases with a no-surface-occupancy stipulation**

Offering all leases with a no-surface-occupancy (NSO) stipulation was suggested through public comment. However, this alternative would not fulfill the purpose and need described in Chapter 1. This alternative would unnecessarily constrain oil and gas occupancy, especially in this highly fragmented landscape, where the ability to cross federal land may be critical to enabling an operator to develop. A No Surface Occupancy stipulation has been incorporated for all slopes in excess of 55 percent and a Controlled Surface Use stipulation applies to slopes between 35 and 55 percent.

### **Lease minerals for vertical drilling only**

Offering all leases with a vertical drilling only stipulation was suggested through public comment. However, this alternative would not fulfill the purpose and need described in Chapter 1. A vertical drilling only stipulation would likely result in far greater surface disturbance as more wells would likely be drilled, and result in the least efficient extraction of Federal minerals.

The rule of capture is an oil and gas doctrine that allows one to produce oil and gas from their lands even though said oil and gas flows from the lands of their neighbors. In Ohio, the rule of capture entitles landowners to “offset” wells, or wells that do not need to conform with state conservation standards, when one's neighbor is draining their mineral interest. Second, a vertical drilling only alternative is equivalent to a ban on directional drilling, which in turn would be tantamount to a ban on development of the Utica, Marcellus, and other tight formations underlying the forest. Such tight formations require horizontal drilling to extract trapped oil and gas.

Through the analysis in the Final Marietta EA, the NSD determined whether the proposed parcels were appropriate for leasing and what mitigation measures (stipulations) should be applied to the leases for the protection of natural and cultural resources. In so doing, the NSD determined whether the 2006 FP/FEIS and 2012 SIR evaluation of various resource values, potential impacts to those resources, and appropriate mitigation measures to prevent potential impacts met the standards to be relied upon as a basis for the proposed decision. The BLM Eastern States Notice of Competitive Oil and Gas Internet-Based Lease Sale, December 13, 2016 was posted on October 14, 2016.

## **DISCUSSION**

The Protester makes 3 primary arguments as to why the Lease Sale Parcels should not be offered at the December Lease Sale. The following is a discussion of the specifics as to the protester's arguments, as well as BLM Eastern States' responses. The following answers address the protester arguments pertaining to the actual NEPA documents that served as guidance in the decision to offer the Ohio Lease Sale Parcels.

### **PART ONE**

## **1. Horizontal Oil and Gas Wells Using Extremely High Pressure, Industrial – Grade Fracking**

### **A. The FONSI is based on a 2006 FS ROD, which did not address modern, highly industrial horizontal drilling and hydraulic fracturing methods**

The BLM adequately uses the 2006 FS ROD because, even though it did not initially incorporate industrial horizontal drilling and hydraulic fracturing methods, a 2012 Supplemental Information Report (SIR) was conducted in order to determine if the new method represented a significant change from the vertical method explored previously. The 2012 report, which was incorporated to the Marietta EA, concluded that no further analysis was necessary and this is clearly stated in the Final Marietta EA:

“The 2012 SIR was completed to determine if the 2006 Forest Plan/EIS needed to be updated in light of new information regarding hydraulic fracturing. The Forest Service determined that the potential effects associated with hydraulic fracturing and horizontal drilling were not significantly different from those of vertical drilling and that the mitigation measures in place for vertical drilling would suffice for horizontal drilling/hydraulic fracturing” (Appendix A [Page 170])

### **B. Every one of the 33 parcels will have a major and significant impact on the environment. All or most of the parcels are on or near streams.**

The Marietta EA adequately analyzes the current state, and potential impacts, on water resources related to the proposed action. The Final Marietta EA states (Page 104):

While the act of leasing federal minerals would produce no impacts to surface water quality, subsequent exploration and development of the lease parcels have the potential to produce impacts. The potential effects to surface water from reasonably foreseeable mineral development include sediment loading of stream channels due to the erosion associated with site development or operational transport and introduction of pollutants, toxic chemicals, sediment or debris, via spills and releases to surface water from oil/produced water treatment, storage tanks, handling and sanitary facilities or oil/produced water transportation mediums (trucks or pipelines).

Specifically, the Marietta EA addresses concerns regarding withdrawals of water for oil and gas operations (Page 105):

The BLM and Forest Service would not approve water withdrawals that would draw down a surface waterbody to the extent that aquatic life would be measurably adversely impacted, for example, by dewatering a stream enough to entrap fish or expose mussels to dry conditions in a stream that would normally have perennial flow.

Regarding local aquifers and groundwater, the Marietta EA states (Page 105):

Local aquifers (within the Marietta Unit) do not yield sufficient water to support industrial activities within the Marietta Unit. Therefore, the likelihood that the proposed leasing action and potential future mineral development would affect groundwater quantity is negligible.

The Marietta EA does acknowledge potential environmental concerns to water resources, as well as mitigating measures (Page 105):

Future mineral development activities would pose some risk of accidental spills of drilling fluids, produced water, and other chemicals (see also Section 4.7, Wastes, Hazardous or Solid). This risk would be minimized by the requirement, described in the 2012 SIR, for operators to use tanks, instead of open pits, to hold all fluids other than fresh water... The only areas where a spill would pose an unacceptable risk to groundwater quality are designated wellhead protection areas or certain locations within the Ohio River and Little Muskingum River floodplains (Thompson, 2012). Other locations throughout the Marietta Unit tend to have low groundwater pollution potential due to low hydraulic conductivity and depths of groundwater (around 200 feet or less from the surface). Drilling to a production zone that is below a potable water-bearing formation poses the risk of allowing brine and other chemicals to migrate up into a potable water zone. This risk is mitigated in federal wells by casing and cementing requirements in Onshore Oil and Gas Order Number 2.

**C. The EA goes on to say NOTHING about studying the extreme health effects attendant to fracking (relating to the removal of the Bamburger and Oswald study from the Final EA)**

The Marietta EA adequately addresses human health and safety in relation to fracking in in Sections 3.8 & 4.8. Eastern States recognizes the public's concern regarding health issues related to possible future hydraulic fracturing, and therefore decided to compile a new section addressing this topic. The Final Marietta EA states (Pages 108-109):

There would be no direct impacts to public health and safety from leasing, since leasing is an administrative action...BLM acknowledges that if the leasing area was to be developed in the future, environmental hazards of...oil and gas may produce some effects to public health or safety if not properly managed...communities or workforce residing or working near the potential development sites may be at higher risk for accidental spills, fugitive emissions or releases of gas from a future well bore. The level of effect would depend on the product released or spilled, level of activity, density of development, technological and safety controls/regulations in place, and the receptors' susceptibility to risk.

.... As of 2014, most studies addressing the public health implications of oil and gas development have been either predictive and/or descriptive hypothesis generating. The few analytic studies are preliminary and do not provide enough evidence to conclusively determine if oil and gas operations directly result in health effects in nearby populations. Existing studies have provided evidence that hazards are inherently present in and around oil and gas operations and populations can be exposed to these hazards if safety measures

are not implemented. People living near oil and gas operations have reported that oil and gas operations affect their health and quality of life, particularly through traffic accidents, air and water pollution, and social disruption expressed as psychosocial stress (University of Colorado at Boulder, 2015). Some short term health effects reported by people living near oil and gas operations include irritation of the eyes, nose, throat, lungs or skin, or other symptoms like headache, dizziness or nausea and vomiting. Some also report sleep disturbance or anxiety associated with noise or light effects from mineral development activities. There is very little information about long term health effects in people living near oil and gas operations.

.... Numerous scientific studies have linked air pollution to a variety of health problems including: (1) respiratory and cardiovascular disease, (2) decreased lung function, (3) increased frequency and severity of respiratory symptoms such as difficulty breathing and coughing, (4) increased susceptibility to respiratory infections, (5) effects on the nervous system, including the brain, such as IQ loss and impacts on learning, memory, and behavior, (6) cancer, and (7) premature death. Sensitive individuals or those at high risk appear to be at even greater risk for air pollution-related health effects, for example, those with pre-existing heart and lung diseases (e.g., heart failure/ischemic heart disease, asthma, emphysema, and chronic bronchitis), diabetics, older adults, and children. Future mineral development operations within the Marietta Unit that would violate a state and/or federal air quality standard would not be approved.

**D. BLM and FS have a choice: withdraw (written in the letter as without) all parcels permanently or perform an EIS prior to proceeding further.**

As discussed below, Eastern States satisfied the National Environmental Policy Act (NEPA) requirements analyzing potential reasonably foreseeable future impacts of oil and gas operations necessary prior to offering the Ohio Parcels. Under NEPA an EA may be relied upon without any further environmental analysis when the EA's analysis show that no significant impacts to environmental resources would occur. A finding of no significant impact does not require that no impacts are identified, rather, no impact may result from adequate regulations and mitigation measures that negate any potential significant impact. The Marietta EA contains adequate mitigating measures to any potential impacts. Therefore BLM can determine based on the analysis included throughout the EA that significant environmental impact would not occur. No surface disturbing activity would be authorized under leasing. Additional NEPA would be required before any potential future drilling may be proposed.

**2. Violation if the Endangered Species Act: The Northern Long Eared Bat (Threatened)**

**A. In section 3.3.8.1.2. of the EA, Long Eared Bat, the BLM misstates and ignores the purpose of the USFWS final 4(d) rule, which was issued earlier this year.**

For the Northern Long Eared Bat the Marietta EA uses the 4(d) rule of the USFWS which states that in areas of the bat's range that may be affected by white-nose syndrome, incidental take caused by some tree removal and tree-clearing activities, does not need to be prohibited to

conserve the northern long-eared bat when conservation measures that protect the bat's most vulnerable life stages are taken (Page 48):

The Forest Service activities fall under the 4(d) rule that exempts incidental take of northern long-eared bat, provided those activities adhere to certain, basic conservation measures to protect hibernacula and roost trees.

In addition, the Marietta EA adequately uses the 4(d) rule since it clearly states (Page 48):

The stipulations that pertain to oil and gas leasing on the Wayne National Forest are more restrictive than the requirements provided in the Fish and Wildlife Service's 4(d) rule for northern long-eared bat, and any incidental take of northern long-eared bat would comply with the exemption provided by the 2016 4(d) rule. The 4(d) rule exempts take from tree-removal activities that take place more than one-quarter mile from a known hibernaculum, and it exempts tree removal outside of the pup season (June 1 - July 31). There are no known bat hibernacula on the Marietta Unit."

The BLM therefore acknowledges that possible tree removal may result in impacts to individual northern long-eared bats but relies on its own stipulations and the ones already established for the Indiana bat, since they share a similar habitat: "This risk is minimized by the application of lease stipulations designed to protect Indiana bat" (Page 100).

**B. Most amazingly, the EA totally avoids these restrictions and relies instead on an inapplicable BO, WNS (amazingly), and the lack of a designated critical habitat to shield the BLM and the FS from the requirements of the ESA.**

The Marietta EA adequately addresses Section 7 of the ESA (Pages 19-20):

The Forest Service completed a Biological Evaluation (BE) and the USFWS issued its Biological Opinion (BO) on November 22, 2005. The BO established a tiered approach to the Section 7 consultation. The programmatic (Tier I) BO (November 22, 2005) covers all the activities described in the 2006 Forest Plan/EIS at a programmatic, non-site-specific level. Because the BLM was a cooperating agency in the 2006 Forest Plan and EIS, the consultation conducted with respect to the 2006 Forest Plan and EIS applies to the Proposed Action analyzed in this EA... As part of the 2012 SIR, the Forest Service reviewed new information related to hydraulic fracturing and whether there could be additional effects to threatened and endangered species that had not been previously analyzed in the 2006 Plan/ EIS. The Forest Service and the USFWS concluded that no further analysis or consultation was needed and that the consultation conducted under the 2006 Plan/EIS was still valid. As the BLM analyzes individual projects pursuant to the Forest Plan, the BLM is responsible for reinitiating consultation and providing the USFWS with additional information; this process is called Tier II consultation.

...Since the BLM was a cooperating agency it can adopt the consultations included within the Plan as their 2012 revision done for their 2012 SIR.



...the BLM would submit a Tier II Biological Assessment to the USFWS when it receives an APD, if it determines that potential effects to critical habitat, fish or wildlife could occur.

### **3. Environmental Justice**

#### **A. BLM did not reach out to local communities, which are very rural.**

Per CEQ regulations, scoping is required for the preparation of Environmental Impact Statements, and optional for Environmental Assessments. The meetings held in November 2015 were designed to allow informal information exchange between BLM, the FS, and the public. The agencies documented the feedback and noted the public issues of interest in the Marietta EA (Section 1.7.4, Page 21). These meetings were described in the Marietta EA (Pages 20-21):

The BLM conducted external scoping for the Proposed Action through a series of public meetings, requesting public comments, and through close coordination and data sharing with the Forest Service. Public notices appeared in local newspapers including the Marietta Times, Athens Messenger, and the Ironton Tribune for two consecutive weeks starting on November 1, 2015. The BLM also issued a press release to various news outlets on November 2, 2015, notifying the public of dates, times, and locations of the public meetings. Public meetings were held on November 17, 2015 in Marietta, November 18, 2015 in Athens, and November 19, 2015 in Ironton. The primary purpose for those public meetings was to provide information and gather public input regarding issues that the BLM should consider in this EA. At each meeting, the BLM and the Forest Service provided information regarding proposed oil and gas leasing activities throughout the WNF; displayed maps showing locations of requested leases and DOI-BLM-Eastern States-0030-2016-0002-EA, 21 posters detailing the administrative processes associated with EOIs, leasing, and the NEPA; and answered inquiries regarding the project.

A primary purpose of NEPA is to inform the public about the environmental implications of Federal agency actions before they are made. Therefore, it is BLM policy to offer a 30-day public comment period on Draft EAs for fluid mineral leasing actions. The public has additional opportunities to be involved in the process when the Marietta EA and Sales Notice is posted for the 30-day protest period. As stated above, Eastern States followed these guidelines for the Marietta EA and December 2016 Lease Sale.

Furthermore, Eastern States complied with applicable CEQ regulations (40 CFR 1503.4), which recognizes several options for responding to substantive comments, including: modifying one or more of the alternatives as requested, developing and evaluating suggested alternatives, supplementing, improving, or modifying the analysis, making factual corrections, explaining why the comments do not warrant further agency response, citing cases, authorities, or reasons to support the BLM's position.

In addition, the CEQ recommends that responses to substantive comments should normally result in changes in the text of the NEPA document, rather than as lengthy replies to individual comments in a separate section (see Question 29a, CEQ, Forty Most Asked Questions

Concerning CEQ's NEPA Regulations, March 23, 1981). Therefore, a short response to each substantive comment and a citation to the section or page where the change was made was the method was utilized for the Marietta EA. Similar comments were summarized and responded to as a whole and if the comment did not entail any change to the Marietta EA it was also disclosed within the response matrix developed. This response matrix was attached as Appendix A (Page 158) to the Marietta EA.

**B. Based on a review of socioeconomic data for the five counties within and directly adjacent to the WNF, the potential for low-income environmental populations does exist.**

The Marietta EA adequately addresses environmental justice since it acknowledges the existence of a low-income environmental population (Page 80):

Based on a review of socioeconomic data for the five counties within and directly adjacent to the WNF, the potential for low-income environmental justice populations residing near the Marietta Unit does exist. Median household incomes for the five counties is lower than the state and national average and the overall poverty level is slightly higher (see Table 3.19). Compared to state and national averages, however, the percent of minorities is much lower.

As to the impacts on environmental justice of oil and gas development, the Marietta EA states (Pages 118-119):

Although there is potential for future mineral development within the Marietta Unit to affect low income populations in the area, the level of affect is not expected to be disproportionate and high as defined by CEQ criteria. Therefore, the proposed action would not be expected to result in environmental justice concerns. Should future development be proposed and specific oil and gas development plans be identified, the BLM would conduct additional site-specific analysis to further assess potential environmental justice issues associated with oil and gas development in the Marietta Unit.

The Marietta EA also includes potential mitigating measures to impacts on environmental justice (Page 118):

For leases in which the surface is privately owned and the mineral estate is federally owned, surface owner agreements, standard lease stipulations, and BMPs would potentially address many of the concerns of private surface owners.

**C. Although minority populations in the Marietta do not meet the criteria of "significant" because the percentage of minorities purportedly is not high enough, there is a Native American Tribal population in this area. It is the Tutelo Nahysson Tribal Nation.**

The National Historic Preservation Act of 1966 (NHPA) is the basis for tribal consultation in the Section 106 review process. The requirements to consult with Indian tribes in the Section 106 review process are derived from the specific language of Section 101(d)(6)(B) of NHPA. They are also based on the unique legal relationship between *federally* recognized Indian tribes and the federal government embodied in the U.S. Constitution, treaties, court decisions, federal statutes, and executive orders.

A distinction exists between Indian tribes who are *federally recognized* and those who are not. Federal recognition signifies that the U.S. government acknowledges the political sovereignty and Indian identity of a tribe and from that recognition flows the obligation to conduct dealings with that tribe's leadership on a "government-to-government" basis. When federally recognized tribes speak of "government-to-government" consultation, they are often referring to consultation between a designated tribal representative and a designated representative of the federal government. Federally recognized tribes were sent a letter to asking for their input and concerns about the proposed leasing within the WNF.

The Tutelo Nahyssan Native American Tribe is not recognized as a federally listed tribe. While the BLM would not address the Tribe in the same way as a federally recognized Native American Tribe as required per Section 106 of the NHPA, the BLM would address any substantive comments offered by the Tribe during the public comment and protest period as required by NEPA.

## **DECISION**

After a careful review, it has been determined that all of the protested Lease Sale Parcels described in the December Sale Notice may be offered at the December Lease Sale. The protests to all Lease Sale Parcels are denied for the reasons described above. As stated above, 16 Ohio Parcels included in the December Sale Notice will not be offered at the December Sale, but for reasons other than this protest.

You may appeal this decision to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the attached Form 1842-1 (Attachment 2). If you file an appeal, your notice of appeal must be filed in the BLM Eastern States Office, 20 M Street SE, Suite 950 Washington, D.C. 20003, within 30 days from receipt of this decision. You have the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21) (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.

Standard 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.

Please contact Justin Katusak at (202) 912-7727 with any further questions or concerns.



Karen E. Mouritsen  
State Director