



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>

DEC 20 2019

In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 91 7199 9991 7039 9487 4137

DECISION

Sierra Club
Christian F. Gerlach
3828 Meadows Lane
Las Vegas, NV 89107

: Protest of Parcels in the
: November 12, 2019
: Competitive Oil and Gas Lease Sale

List of Individuals
Attached;

Protest Dismissed Parcels Offered For Sale

On October 7, 2019, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from the Sierra Club, et al (SC), which protested all of the 263 parcels scheduled to be offered at the November 12, 2019 Competitive Oil and Gas Lease Sale (the Sale) as analyzed in the Ely District Office's (EYDO) Environmental Assessment (EA), DOI-BLM-NV-L000-2019-0004-EA and FONSI.² The SC protest package included 83 form letters from individuals, a resolution by the City of Mesquite, a resolution by the Moapa Band of Paiutes, and a comment letter from the National Park Service dated February 14, 2019.

BACKGROUND

The BLM posted the Sale Notice on September 13, 2019 offering 263 parcels for the November 2019 Lease Sale, subsequently reduced to 48 parcels in errata. The 263 nominated parcels included land in Federal mineral estate located in the BLM Nevada's Ely District Office. After the NVSO completed preliminary adjudication³ of the nominated parcels, the NVSO screened

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

³ 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

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 May 3, 2019, the NVSO sent a preliminary parcel list to the EYDO for review. This interdisciplinary parcel review included internal scoping by a team of BLM specialists, review of 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.⁴

The EA tiered to the existing Land Use Plans (LUP),⁵ 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).⁶ 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 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

leasing into a preliminary parcel list to send to the District/Field Office for National Environmental Policy Act (NEPA) analysis and leasing recommendations.

⁴ 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.

⁵ The EA is in conformance with the Ely District Resource Management Plan, approved in August 2008, its associated Record of Decision, and all subsequent applicable amendments.

⁶ See BLM, H-1624-1, *Planning for Fluid Minerals Handbook*, (Feb. 2018)

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.

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 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.

On September 13, 2019, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for November 12, 2019*⁷ (Notice), resulting in a total of 263 parcels offered for lease. This protest challenges the Sale, EYDO EA and FONSI, and all of the 263 parcels described in the Notice.⁸ 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), all 165 parcels in Greater Sage-Grouse habitat scheduled to be offered at the November 12, 2019 sale have been deferred for further analysis. An additional 50 parcels have been deferred from the Sale for other resource concerns. Therefore this Decision addresses the remaining 48 parcels and the Sierra Club’s protest of them.

ISSUES

The SC 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 SC’s protest related to the Sale.

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

⁷ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

⁸ The November 2019 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>

A. SC generally alleges that the November 2019 Competitive Oil and Gas Lease Sale threatens established US Fish and Wildlife Service critical habitat of the threatened desert tortoise, the Moorman White River Springfish, and wildlife migration corridors.

BLM Response:

The BLM did consider all of the threatened and endangered species known to be present on the parcels as well as BLM special status species lists for plants and animals in the EA. Critical habitat only applies to threatened and endangered species listed by USFWS under the Endangered Species Act (ESA), which does not currently apply to the Moorman White River Springfish. The BLM notified the USFWS of the parcels in the proposed lease sale during internal scoping and corresponded with USFWS biologists to address any concerns. The BLM previously consulted with the USFWS regarding listed species in the EYDO, in accordance with the ESA in developing the Land Use Plans, Stipulations, and Lease Notices to be applied to parcels in the district, receiving a Biological Opinion. Additionally, all BLM oil and gas lease sale proposals are reviewed by NDOW to assist BLM in evaluating how development of parcels may affect wildlife species in Nevada and help ensure appropriate wildlife protection lease stipulations are applied to each parcel, including mule deer, bighorn sheep and greater sage-grouse (*see Appendix D*). A timing limit stipulation (#NV-L-06-TL) and lease notice (#NV-L-06P-LN) have also been attached to any parcel overlapping desert tortoise critical habitat.

The BLM reinitiated formal Section 7 consultation in the EYDO in 2017, which resulted in the USFWS issuing a Programmatic Biological Opinion (BO) for additional Threatened and Endangered species not covered in the RMP BO and specifically addressing the impacts on all known threatened and endangered species present in the EYDO from oil and gas leasing, exploration, and development including hydraulic fracturing. The EA, which tiers to the RMP and FEIS, states that the BLM can take actions to protect critical habitat for threatened and endangered species and BLM sensitive species up to but no including the approval of actions if the action will jeopardize the species (jeopardy). A lease notice (#NV-L-00-A-LN) was attached to all parcels to serve the lessee with notice that the lease and any future activities proposed on it are subject to the ESA, and any attendant requirements for additional scrutiny, surveys, and potential mitigation to protect the specie(s) and or the specie's habitat. Stipulations and lease notices, like this one, serve a vital role at the leasing stage by putting the BLM, lessee, and the public on notice that developing this lease may be difficult and may require additional mitigation and conformance, or may result in the denial of development as proposed on the lease.

Additionally, potential impacts to surface and ground water quantity, quality, and the fish and wildlife that rely on those water resources, are addressed in the EA and in the Hydraulic Fracturing Technology Paper to the extent possible at the leasing stage. In response to public comments received, 10 parcels that overlap Huntington Creek were deferred to a future sale to provide sufficient time to perform additional analysis, develop CSU stipulations, and allow for a public 30-day review and comment period on any proposed CSU stipulations for surface and groundwater. Once lease development is proposed, the direct and other effects of the development project will be addressed and site-specific NEPA will be conducted to address any water resource 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. If exploration and development are proposed that may affect Threatened and Endangered Species known to be present on specific parcels, consultation with USFWS will be reinitiated as needed.

Therefore, the above SC protest has been considered, found to be without merit and is dismissed.

B. SC generally alleges that BLM's oil and gas leasing program is not a good return on investment as compared to Nevada's outdoor economy and that the BLM should be working to maintain our natural resources instead.

BLM Response:

The BLM recognizes that economic activity associated with tourism and recreation can be an important contribution to local communities and their economies. The level of inconvenience would depend on the activity affected, traffic patterns within the area, noise levels, the length of time and season in which these activities occurred, and other factors. Multiple use management continues on leased lands. Leasing does not preclude other uses, such as outdoor recreation, wildlife habitat management, renewable energy development, exploration for other minerals, etc. 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.

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 Ely District RMP, as amended. The Purpose and Need is consistent with the BLM's responsibility under the Mineral Leasing Act (MLA), as amended, to promote the development of oil and gas on the public domain by responding to properly submitted Expressions of Interest (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.

Therefore, the above SC protest has been considered, found to be without merit and is dismissed.

C. SC generally states that the BLM should develop Nevada's solar, wind, and geothermal energy resources instead of developing oil and gas resources.

BLM Response:

The BLM appreciates SC's comments and opinion on halting oil and gas resource development and developing Nevada's solar, wind, and geothermal energy resources instead. This request is outside the scope of the proposed action. Therefore, the above SC comment has been considered, found to be without merit and is dismissed.

DECISION

To the extent that SC 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, SC's protest of the Sale, EA, and FONSI is dismissed and 48 parcels were offered for sale on November 12, 2019.

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.



Jon K. Raby
State Director

Enclosure:

1- Form 1842-1

cc: Attached List

cc (electronic):

WO310
NVL0000

NVL0100

NVL0300

NV0920 (B. Amme)

NV0922 (K. Anderson, F. Kaminer, J. Menghini, J. Estrella)

bcc: Erica Niebauer, Office of the Solicitor, Pacific Southwest Region,
2800 Cottage Way, Room E-1712, Sacramento, California, 95825
Lease Sale Book November 2019
Reading File: NV-922

First Name	Last Name	Address	City	State	Zip Code
Jim	Boone	3112 Ivory Coast Dr.	Las Vegas	NV	89117
James	Katzen	3240 Medicine Man Way	Las Vegas	NV	89169
Maurice	Friedman	4008 N. Decatur Blvd.	Las Vegas	NV	89130
Justin	McAfee	2426 Quiet Ode Street	Henderson	NV	89044
Shannon	Salter	1632 E. Saint Louis Ave., #4	Las Vegas	NV	89104
Mary Jane	Contreras	2760 Trickling Brook Ct	Las Vegas	NV	89156
Janalee	Vaseur	7437 Fencerow Street	Las Vegas	NV	89131
Nathan	McDonald	461 Trenier Dr	Henderson	NV	89002
Megan	Pina	7329 Zion Falls Street	Las Vegas	NV	89131
Trisha	Santos	6644 Topley Pike Avenue	Las Vegas	NV	89139
Lynn	Nguyen	4765 Gym Road	Las Vegas	NV	89119
Robert	Rigney	4770 Gym Road	Las Vegas	NV	89119
Daisy	Cortes	3200 Brady Avenue	Las Vegas	NV	89101
Fatima	Ortiz	6746 Ledgewood Drive	Las Vegas	NV	89103
Maritiza	Menjivar	3819 Haddock Avenue	Las Vegas	NV	89115
Milica	Tunguz	6534 Alpine Mist Street	Las Vegas	NV	89148
Aaron	Oliva	7736 Villa Andrade Avenue	Las Vegas	NV	89131
Amya	White-Lambert	8800 Saint Cloud Court	Las Vegas	NV	89143
Sophie	Foster	7412 Shallow Glen Court	Las Vegas	NV	89129
Toni	Pinto	4770 Gym Road	Las Vegas	NV	89119
Elliasa	Puno	4765 Gym Drive	Las Vegas	NV	89119
Alexander	Konrad	1780 Baja Lane	Henderson	NV	89012
Stephanie	Uribe	3417 West Delhi Avenue	North Las Vegas	NV	89031
Tamra	King	4381 Lone Ranch Avenue	Las Vegas	NV	89131
Jaron	Vanderlaan	3510 East Oreana Avenue	Las Vegas	NV	89120
Hunter	Bulla	8348 Celina Hills Street	Las Vegas	NV	89131
Donte	MacPherson	7457 Lassen Peak Circle	Las Vegas	NV	89149
Beatriz	Avila-Marquez	6683 Apollos Gate Court	Las Vegas	NV	89142
Carmen	Avila-Marquez	6683 Apollos Gate Court	Las Vegas	NV	89142
Clarissa	O'Neil	10323 Copalito Drive	Las Vegas	NV	89178
Jasmine	Donnett	875 South Silverado Ranch Blvd, #2179	Las Vegas	NV	89183
Prosper	Nasuwa	5353 West Desert Inn Road, #1128	Las Vegas	NV	89146
Sean	Wiggins	505 Sunrise Villa Drive	Las Vegas	NV	89110
Jorge	Aceves	4995 Midnight Oil Drive	Las Vegas	NV	89112
Alexis	Charbonneau	1050 Whitney Ranch Drive	Henderson	NV	89014
Ana	Ortega	6941 Manistee Court	Las Vegas	NV	89108
Keyana	Wilfred	50576 CR #15	Spring Creek	NE	69357
Brandon	Rosales	1165 Maple Pines Avenue	North Las Vegas	NV	89081
Savannah	Huff	11B Putnam Court	South Las Vegas	NV	89115
Karyme	Pulido	6505 Ruby Red Circle	Las Vegas	NV	89108
Natalie	Guillen	3100 Kaibab Avenue	Las Vegas	NV	89101

Jeomar	Tapiceria	4700 Kay Place	Las Vegas	NV	89107
Daniel	Saravia	4850 Fairfax Avenue	Las Vegas	NV	89120
Catrina	Spadino	566 Smithridge Park	Reno	NV	89511
Salwan	Yousif	6939 Yellow Cosmos Avenue	Las Vegas	NV	89130
Cameron-Philip	Moresca	7770 Gym Road	Las Vegas	NV	89119
Alexander	Acosta	101 Morrestown Avenue	Las Vegas	NV	89149
Calista	Fondoulis	4765 Gym Road	Las Vegas	NV	89119
Jamiyah	Hughes	8103 Bluff View Lane	Corona	CA	92880
Tylo	Reyes	230 Valerian Street	Henderson	NV	89015
Nina	Marrufo	1917 Empoli Court	Las Vegas	NV	89134
Daniela	Ferrer	6997 Pleasant View Avenue	Las Vegas	NV	89147
Sho	Hampton	271 East Gowan Road	North Las Vegas	NV	89030
Michael	Corsi	9109 Starling Wing Place	Las Vegas	NV	89143
Daniela	Jimenez	5003 Celebrity Circle	Las Vegas	NV	89119
Dylan	Jenkins	2447 Antler Point Drive	Henderson	NV	89074
Daniel	Vallejo	3809 Sage River Street	Las Vegas	NV	89129
Katelyn	Ragg	10168 Millers Chase Road	Las Vegas	NV	89183
Selena	Caballero	3446 Elegant Rose Street	Las Vegas	NV	89117
Carina	Guerrero	885 Navajo Lane	Las Vegas	NV	89110
Colleen	Narayan	6650 East Ressel Road	Las Vegas	NV	89019
Jacques	Martinez	633 Del Giorno Street	Las Vegas	NV	89138
Mariah	Hilton	4765 Gym Road	Las Vegas	NV	89119
Lori	Handelman	5419 West Tropicana Avenue	Las Vegas	NV	89103
Josephine	Canfield	8765 Glennaire Way	Las Vegas	NV	89123
Anastasia	Hunsberry	8367 Drop Camp Street	Las Vegas	NV	89123
Steven	Salem	9679 Swaying Elms Court	Las Vegas	NV	89147
Melannie	Martinez	3032 Arrowhead Street	North Las Vegas	NV	89030
Nuhamen	Tefera	6839 Scarlet Flax Street	Las Vegas	NV	89148
Brenda	Contreras	2585 Coral Sky Court	Las Vegas	NV	89142
Jessica	Kurihara	1826 Dawn Ridge Avenue	Henderson	NV	89074
Melissa	Giovanni	3943 Zodiacal Light Street	Las Vegas	NV	89129
Felipe	Gonzalez	P.O. Box 19085	Las Vegas	NV	89132
Yazmyn	Pelaez	990 Painted Pony Drive	Henderson	NV	89014
Nichole	Benigas	2108 Club Meadows Drive	Henderson	NV	89074
Alicia	Lopez	2067 Capistrano Avenue	Las Vegas	NV	89169
Shayne	Dawma	6215 Sun Seed Court	North Las Vegas	NV	89081
Vickie	Simmons	Box 340	Moapa	NV	89025
Lori	Kay	Box 340	Moapa	NV	89025