United States Department of the Interior

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In Reply Refer To:
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DECISION

The Wilderness Society
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: Protest of Parcels in the
: December 17, 2019
: Competitive Oil and Gas Lease Sale

Protest Dismissed
Parcels Offered For Sale

On December 2, 2019, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest[1] from The Wilderness Society, et al (TWS), which specifically protested 247 of the parcels scheduled to be offered in the Ely District at the December 17, 2019 Competitive Oil and Gas Internet Lease Sale (the Sale), which relies on the Ely District Office's (EYDO) Environmental Assessment, DOI-BLM-NV-L000-2019-0005-EA, and FONSI.

BACKGROUND

The BLM posted the Sale Notice on November 1, 2019 offering 272 parcels for the December 2019 Lease Sale, subsequently reduced to 156 in errata. The 272 nominated parcels included land in Federal mineral estate located in the BLM Nevada's Ely and Battle Mountain Districts. After the NVSO completed preliminary adjudication[2] 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 June 14, 2019, the NVSO sent a preliminary parcel list to the EYDO and BMDO 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

[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.

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 EAs 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 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.

The EAs considered two (2) alternatives:

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[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 EAs are in conformance with the Ely District RMP, approved in 2008, 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 "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 EAs 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 EAs in Public Involvement, Public Comments and Responses, and Alternatives sections.

On November 1, 2019, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for December 17, 2019*[6] (Notice), resulting in a total of 272 parcels offered for lease. This protest challenges the Sale, EYDO EA, and FONSI, and 247 of the 272 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), all 26 parcels in Greater Sage-Grouse habitat scheduled to be offered at the December 17, 2019 sale have been deferred for further analysis. Additionally, 34 parcels have been removed from the sale due to an existing energy corridor, and 56 parcels have been deferred for further review. Therefore this Decision addresses the remaining parcels in Ely District and TWS's protest of them.

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 Ely 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 December 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

prevent change of the management or use of public lands. The BLM Manual 6310 states "The BLM will determine when it is necessary to update its wilderness characteristics inventory."

As stated in the December 2019 EA (DOI-BLM-NV-L000-2019-0005-EA):

> *In 2011, the Ely District Office began updating the lands with wilderness characteristics (LWC) inventory on a project-by-project basis until there is a land use plan revision. The project area has received an inventory update... There has not been a land use plan amendment to determine if or how these LWC units would be managed to protect the wilderness characteristics.*

Based on the BLM's most recent comprehensive wilderness characteristics inventory, 2011-2019 inventory data, the allocation and management decisions in the existing RMPs, 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 beyond those considered in the RMPs. 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 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 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.

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

B. The proposed lease sale violates FLPMA because it is inconsistent with the governing RMP regarding the management of Sage-Grouse habitat.

BLM Response:

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 parcels in GHMA and PHMA lands scheduled to be offered at the December 17, 2019 sale have been removed for further analysis.

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

C. The proposed lease sale violates FLPMA because if fails to prevent unnecessary or undue degradation of the PHMA and GHMA lands being offered for lease.

BLM Response:

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 parcels in GHMA and PHMA lands scheduled to be offered at the December 17, 2019 sale have been removed for further analysis.

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

D. 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 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.

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, and 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.

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

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

E. BLM must ensure that lease parcels in the Ely District are not in areas closed to leasing or in Areas of Critical Environmental Concern.

BLM Response:

In conformance with the Ely District RMP, a No Surface Occupancy (NSO) stipulation (NV-L-06-O-NSO) has been applied to any parcels overlaying an Area of Critical Environmental Concern (ACEC). Additionally, on December 2, 2019 the BLM NVSO issued an errata to the November 1, 2019 Notice of Competitive Oil and Gas Internet Lease Sale that removed 34 parcels from the Sale due to an existing energy corridor that is closed to leasing.

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

F. BLM violated NEPA by failing to analyze and disclose to the public greenhouse gas emissions and climate impacts of its leasing decisions.

BLM Response:

The EA addressed the potential impacts and environmental consequences to greenhouse gas emission (GHG) and climate change to the extent possible at this stage in sections 3.3.1 and 4.3.1. Much of the information in section 3.3.1 is incorporated by reference from the December 2017 Competitive Oil and Gas Lease Environmental Assessment, Section 3.3.1 Air Quality and Climate Change, pages 25 through 31 (BLM, 2017). This included emissions from well drilling activities and an estimate of potential oil production and downstream CO_2 generated based on the Reasonably Foreseeable Development scenario. Additional analysis on the effects of hydraulic fracturing on Air Quality and Human Health and Safety is provided in the Hydraulic Fracturing Technology Paper. Any subsequent oil and gas development activities would be further analyzed at the APD permitting stage when additional project specific information is available and would be subject to all applicable Federal, State, and local laws and regulations including the Clean Air Act, Hazardous Waste regulations, and OSHA regulations.

As stated in the referenced December 2017 EA (DOI-BLM-NV-L030-2017-0021-EA):

> *The RFD scenario developed for this lease EA is a maximum of 100 wells drilled within the parcels in the Ely District. The number of wells that could be drilled in any given area is unknown but potential emissions would be multiplied appropriately. For example, using the information from Erbes (2013), the drilling of 100 wells would produce between 65,100 tons and 315,600 tons of greenhouse gas emissions in terms of short tons of CO2 equivalent (CO2e), using a Global Warming Potential (GWP) of 1 for CO2, 21 for CH4, and 310 for N2O,(Erbes, 2013).*

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. 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.

Therefore, the above TWS protest has been considered, found to be without merit, and 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, Ely District EA, and FONSI is dismissed and 156 parcels were offered for sale on December 17, 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.

Brian C. Amme
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Nevada State Office

Enclosure:
1- Form 1842-1

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Lease Sale Book December 2019
Reading File: NV-922