



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
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DECISION

Basin and Range Watch : Protest of Parcels in the
Kevin Emmerich, Director : June 12, 2018
P.O. Box 70 : Competitive Oil and Gas Lease Sale
Beatty, Nevada 89003 :

Protest Dismissed Parcels Offered For Sale

On May 6, 2018, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from Basin and Range Watch (BRW). BRW specifically protested 25 of the 166 parcels scheduled to be offered at the June 12, 2018 Competitive Oil and Gas Lease Sale (the Sale) and the Battle Mountain District Office's (BMDO) Oil and Gas Lease Sale Environmental Assessment (EA), DOI-BLM-NV-B020-2018-0017-EA.²

BACKGROUND

The BLM received 166 nominated parcels for the Sale through September 15, 2017. The 166 nominated parcels included land in Federal mineral estate located in the BLM Nevada's Battle Mountain District Office (BMDO). After the NVSO completed preliminary adjudication³ 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.

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

On November 1, 2017, the NVSO sent a preliminary parcel list to the BMDO for review. This review included interdisciplinary team review by BLM specialists, field visits to nominated parcels (where appropriate), review of conformance with the Land Use Plans, and preparation of an EA documenting National Environmental Policy Act (NEPA) compliance.⁴ The preliminary parcel list was also posted in the NVSO Public Room on November 1, 2017 for public review. This public scoping period allowed the public an opportunity to provide comments before the BLM developed the EA. Scoping comments were then analyzed and incorporated into the EA. During preparation of the preliminary EA, BMDO notified the public of the proposed action by posting the project on eplanning⁵ and publishing a press release announcing a public comment period (January 16, 2018 through February 15, 2018). Once the comment period ended, the BMDO reviewed all comments (including the scoping comments) and summarized them into a single document.

The EA tiered to the existing Land Use Plans (LUP)⁶, in accordance 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 (analyzed in a Resource Management Plan), nor a specific implementation action (e.g., a permit to drill, analyzed in a site specific NEPA document).⁷ The federal action is to conduct an oil and gas lease sale and is supported by its own NEPA document. BLM described its purpose and need for the action in the EA as follows:

1.2 Purpose and Need for Action, and Decision to be Made

Oil and gas leasing is necessary to provide oil and gas companies with new areas to explore and potentially develop, and is recognized as an acceptable use of the public lands under FLPMA. Leasing is authorized under the Mineral Leasing Act of 1920, as amended and modified by subsequent legislation, and regulations found at 43 CFR part 3100. 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. Offering parcels for competitive lease sale provides for orderly development of fluid mineral resources under BLM's jurisdiction in a manner consistent with multiple use management and consideration for the natural and

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 Eplanning is the BLM national register for LUP and National Environmental Policy Act NEPA documents. The register allows you to review and comment online on BLM NEPA and planning projects.

⁶ The EA is in conformance with the Tonopah RMP (Tonopah Field Office), approved 1997, the Shoshone Eureka RMP (Mt. Lewis Field Office), approved in 1986, the Sage-Grouse RMPA, approved 2015, their associated Records of Decision, and all subsequent applicable amendments.

⁷ See BLM, H-1624-1, *Planning for Fluid Minerals Handbook*, (Feb. 2018)

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.

This action is being initiated to facilitate Battle Mountain District's implementation of the requirements in Executive Order (EO) 13212 (2001) and the National Energy Policy Act (2005). The BLM is required by law to consider leasing of nominated areas if leasing is in conformance with the applicable BLM land use plan. The District must provide a recommendation to the Nevada BLM State Director who will decide which parcels will be included in the upcoming June 2018 Competitive Oil and Gas Lease Sale, and which stipulations will be applied, based on the analysis in this EA.

The BMDO EA analyzed two (2) alternatives:

- The “Proposed Action” alternative, which included offering all 166 nominated parcels that were sent to the BMDO for review, with stipulations from the existing RMPs.
- The “No Action” alternative, which considered rejecting all parcels nominated for the lease sale in June 2018. This alternative is included as a baseline for assessing and comparing potential impacts.

Additional alternatives were proposed in public comments, however they were not carried forward for further analysis as they would not have resulted in substantial additional protection, as the proposed action with stipulations and best management practices was found to provide adequate resource protection through the EA analysis. The 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, Appendix K: Summary of Comments and Responses.

On April 27, 2018, the NVSO published a *Notice of Competitive Oil and Gas Lease Sale for June 12, 2018*⁸ (Notice), resulting in a total of 166 parcels offered for lease. This protest challenges the EA and 25 of the 166 parcels described in the Notice.⁹

ISSUES

BRW's 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 BRW's protest related to the Sale.

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

⁸ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

⁹ The June 2018 Competitive Oil and Gas Lease Sale Protest and Decision are posted on the BLM website, located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

I. The BLM failed to emphasize strong conservation measures in the Purpose and Need Statement.

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. 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. Leasing and any future exploration and development activities will comply with these laws including, as applicable, EO 11988, EO 11990, NDOW MOU, MBTA, BGEPA, WFRH&B Act, NPHA, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Endangered Species Act, Hazardous Waste regulations, and OSHA regulations.

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

II. The BLM failed to provide a full range of alternatives.

BLM Response:

In the BLM NEPA Handbook H-1790-1, 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 BLM is required by law under the Mineral Leasing Act of 1920, as amended, and under the regulations at 43 CFR 3100 to consider leasing areas that have been nominated for lease, if leasing is in conformance with the applicable land use plan(s). The proposed action with stipulations meets the Purpose and Need for the federal action and is in conformance with the existing Tonopah and Shoshone Eureka RMPs, as amended. Additionally, to reduce potential impacts to resources from oil and gas leasing, the BMDO evaluated parcels containing sensitive habitat and resources and applied additional stipulations and mitigation measures to the parcels to govern future development activities.

BRW recommends an alternative to avoid leasing in all sage grouse habitat, Monitor Valley, and within ¼ mile of all water sources, however, allocation decisions such as closing lands to leasing or designating areas for NSO may only be made through the RMP amendment process. Additional alternatives were proposed in public comments, however they were not carried forward for further analysis as they would not have resulted in substantial additional protection as the EA analysis of the proposed action with stipulations and best management practices was found to provide adequate resource protection, with regards to reasonably foreseeable exploration and development.

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

III. The BLM failed to provide enough protection and avoidance measures to protect springs and groundwater resources.

BLM Response:

The BLM took a “hard look” at the environmental consequences of leasing in the BMDO, including the potential impacts from exploration and development, in Chapter 3 of the EA, Affected Environment and Environmental Consequences. This section addresses the elements that must be reviewed in all environmental analyses, as well as other resources deemed appropriate for evaluation. All resources present on parcels that could be affected by leasing were analyzed for potential direct and indirect impacts from lease exploration and development.

The EA addressed potential impacts to water resources in Sections 3.2.4 and 4.2.4. The EA analysis determined that there were no significant impacts to water resources (including springs and groundwater basins) from the selected alternative such that an EIS was required. However, there could be indirect impacts to water resources from oil and gas development on these leases. To reduce potential impacts to water resources from oil and gas leasing, the BMDO evaluated parcels containing water resources and applied additional stipulations and mitigation measures to the lease to govern future development activities. Once lease development is proposed, additional 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 (leasing and lease development) would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs).

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

IV. The BLM provided inadequate measures to protect wildlife resources including Greater Sage Grouse.

BLM Response:

The EA addressed potential impacts to wildlife in sections 3.2.8 and 4.2.6. The EA analysis determined that there were no significant impacts (direct or indirect) to wildlife from the selected alternative such that an EIS was required. However, there could be direct or indirect impacts to wildlife from oil and gas exploration and development on these leases. To reduce potential impacts to wildlife habitat and populations from oil and gas leasing and development, the BMDO evaluated parcels located within high-value habitat and applied additional stipulations and mitigation measures to the lease to govern future development activities. Once lease development is proposed, additional site-specific NEPA will be conducted to address wildlife issues and potential impacts specific to the site not addressed at the leasing stage. Furthermore, any lease exploration or development would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs).

The BLM NVSO utilized the required prioritization process during the adjudication of the nominated parcels. The BLM conducted a thorough analysis of potential direct, indirect, and cumulative impacts to greater sage-grouse habitat from oil and gas leasing, exploration and development in the September 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment (GRSG Plan Amendment) that amended the BMDO's two RMPs. This amendment defines mitigation and implementation strategies necessary to protect the bird's habitat. BMDO followed these instructions through the leasing process, by attaching stipulations (Appendix B) to all proposed parcels in PHMA, GHMA and near leks as specified in the GRSG Plan Amendment and by leasing outside of habitat first before considering leasing within habitat. After review of these issues the BLM concludes that the proposed action is in conformance with the GRSG Plan Amendment.

Therefore, the above BRW protest is found to be an opinion, without merit, and is dismissed.

V. The BLM failed to provide enough measures to address the impacts to visual resources.

BLM Response:

The BLM did consider impacts to visual resources in sections 3.2.14 of the EA to the extent possible at the leasing stage. Potential impacts to visual resources that may result through development of an issued lease include, but are not limited to impacts to night skies, artificial night lighting, visual impact of facilities, drill sites, drill pads, tanks, and roadway construction. Mitigation that may be applied at the exploration and development stage to reduce potential impacts includes, but are not limited to (EA page 40):

- *designing lighting to reduce the impacts to night skies*
- *screening any stationary lights and light plants*
- *directing lighting onto the pertinent site only and away from adjacent areas not in use, with safety and proper lighting of the active work areas being the primary goal*
- *hooding and shielding lighting fixtures as appropriate*
- *using topographic features to visually screen facilities*
- *locating drill sites where they will be least conspicuous (BLM has the discretion to move proposed drill site locations up to 200 meters within the lease boundary)*
- *reducing the size or changing the configuration of drill pads*
- *using low profile tanks*
- *matching colors (approved by BLM VRM specialist) of facilities and equipment to blend in with the surroundings*
- *planning road alignment to minimize visual contrast*
- *required reclamation, which may include re-contouring drill pads; reclaiming roads; reseeding drill sites and roads; and removing equipment and facilities*

These methods, along with any others identified via NEPA analysis at the APD stage, generally have the potential to minimize impacts to visual resources on public lands to the greatest extent practicable.

The above mitigation measures, along with any other identified measures at the APD stage, are intended to minimize impacts to visual resources on public lands. Photo simulations, KOPs, and

specific measures to minimize visual impacts are not possible at the lease sale stage, when it is unknown what kind of projects would be proposed or in which specific locations. These analyses would be conducted as needed when or if a project is proposed on a leased parcel. When a development project is proposed, effects to visual resources, and measures to minimize them, are considered as part of the additional project and site-specific environmental analysis. Effects are assessed in terms of how conspicuous they would be from key observation points, such as roads or scenic overlooks. The BLM assigns VRM classes to public lands through the land use planning process, with management direction for each class. Attempts are made to mitigate visual contrasts from surface-disturbing activities regardless of the VRM class. VRM classes are based in part on a Visual Resources Inventory (VRI) which rates existing scenic values and cannot be changed without an RMP amendment. Approval by the Field Manager is required on a case-by-case basis to determine whether the structure(s) meet the acceptable VRM class standards and, if not, whether they add acceptable visual variety to the landscape. If leased parcels are developed in the future, development would be subject to site-specific visual resource mitigation measures, Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs), which would be developed through additional project and site-specific NEPA analysis.

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

VI. The BLM failed to address impacts to Cultural Landscapes in the cultural resources review

BLM Response:

There have been no traditional cultural properties or cultural landscapes identified in the project area. The proposed action and alternatives were subject to tribal consultations and are compatible with the approved Resource Management Plan and federal laws relating to protection of cultural resources. Consultation with local Tribes is always ongoing. To date, the local Tribes have raised no concerns with this lease sale. Additional cultural surveys, tribal consultation, and project and site-specific NEPA would be conducted at the exploration and development stages, when a project proposal has been submitted.

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

DECISION

To the extent that BRW 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 all of the above reasons, BRW's protest of the lease sale and the EA is dismissed and 166 parcels were offered for sale on June 12, 2018.

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.


Michael C. Courtney
Acting State Director

Enclosure:

1- Form 1842-1

cc (electronic):

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NVB0000 (D. Furtado)
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bcc: Erica Niebauer, Office of the Solicitor, Pacific Southwest Region,
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Lease Sale Book June 2018
Reading File: NV-922