



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
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DECISION

Center for Biological Diversity : Protest of Parcels in the
Michael Saul, Senior Attorney : June 12, 2018
1536 Wynkoop Street, Suite 421 : Competitive Oil and Gas Lease Sale
Denver, CO 80202 :

Protest Dismissed Parcels Offered For Sale

On May 7, 2018, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from the Center for Biological Diversity, et al (CBD). CBD protested all 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.

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

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.

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 (which are analyzed in a Resource Management Plan NEPA document), nor a specific implementation action (e.g., a permit to drill, which is 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 cultural resources that may be present. This requires that adequate provisions are

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)

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 considered 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 all of the 166 parcels described in the Notice.⁹

ISSUES

CBD'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 CBD's protest related to the Sale.

The BLM has reviewed CBD'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>

A. BLM's EA Violates the National Environmental Policy Act ("NEPA") By Failing to Take a "Hard Look" at Foreseeable Impacts of the Proposed Action

1. BLM Unlawfully Deferred Site-Specific Analysis

BLM Response:

BMDO did review and perform site-specific analysis on 166 nominated parcels containing approximately 313,715 acres of public land, and this analysis is presented in the EA in Chapters 3 & 4. Additional supporting data on resources is contained in the appendices, including a reasonably foreseeable development scenario in Appendix G, and Hydraulic Fracturing discussion in Appendix E. The BLM does make several references throughout the EA stating that once an APD or other exploration or development proposal is submitted, that additional project and site-specific NEPA analysis would be performed in addition to the leasing EA. This should not be misconstrued that the leasing EA is not site-specific. Each parcel is reviewed for extant resources, and evaluated for potential direct, indirect, and cumulative impacts to those resources. If this analysis indicates that exploration and development of a particular parcel may have a substantial impact to a resource, and no reasonable mitigation is available then it is not recommended for leasing. In the case of this lease sale, the BLM resource specialists found through their analysis in the EA and based on reasonably foreseeable developments that no proposed lease parcel was subject to substantial impact, with applied stipulations and mitigation, and as such, each parcel was offered for lease. Protestants continue to conflate the requirement for environmental analysis at each stage of the oil and gas process by claiming BLM defers to or relies on environmental review at various other stages and by ignoring the appropriate level of environmental review BLM conducted at this stage of the oil and gas process.

In conclusion, the BLM did conduct site-specific analyses, as stated above. Therefore, the above CBD's protest has been considered, found to be without merit and is dismissed.

2. The EA Does Not Support a Finding of No Significant Impact

BLM Response:

CBD alleges that the EA does not support a reasonable finding that the environmental effects of its major action are insignificant. As such, CBD argues that the EA does not support a FONSI.

In accordance with the NEPA handbook, "Proposed actions are analyzed in an EA if the actions are not categorically excluded, not covered in an existing environmental document, and not normally subject to an EIS." An EA is used to determine if the action would have significant effects; if so, the BLM would need to prepare an EIS. An EA may demonstrate that a proposed action would have effects that are significant but could be reduced or avoided through mitigation. *Id.* None of the issues or potential indirect impacts discussed in the EA meets the "context" and "intensity" considerations for significance *as defined in the CEQ regulations at 40 CFR 1508.27.*

The EA does not support the claim that there would be significant impacts from leasing or development, thus automatically requiring an EIS. Based on the geographic location and resources, currently available lease stipulations and lease notices were applied to provide mitigation requirements to minimize potential impacts from leasing (EA at Appendix B). Once

lease development is proposed, additional site-specific NEPA will be conducted to address any new resource issues and potential impacts specific to the project or site not addressed at the leasing stage.

In conclusion, the EA does not support the claims that there would be significant impacts, and an EIS is not required. A FONSI has been prepared and signed, therefore the above allegations have been considered and found to be without merit and are dismissed.

3. BLM Must Prepare an Environmental Impact Statement (“EIS”)

BLM Response:

CBD alleges that impacts from the proposed action are significant because the effects of leasing and hydraulic fracturing on the human environment will be highly controversial, the effects from the lease sale present highly uncertain or unknown risks, poses threats to public health and safety, and will adversely affect species and habitat. As such, CBD argues that an EIS is required.

In accordance with the NEPA handbook, “Proposed actions are analyzed in an EA if the actions are not categorically excluded, not covered in an existing environmental document, and not normally subject to an EIS.” An EA is used to determine if the action would have significant effects; if so, the BLM would need to prepare an EIS. An EA may demonstrate that a proposed action would have effects that are significant but could be reduced or avoided through mitigation. *Id.* None of the issues or potential indirect impacts discussed in the EA meets the “context” and “intensity” considerations for significance *as defined in the CEQ regulations at 40 CFR 1508.27.*

The EA does not support the claim that there would be significant impacts from leasing or development, thus automatically requiring an EIS. Based on the geographic location and resources, currently available lease stipulations and lease notices were applied to provide mitigation requirements to minimize potential impacts from leasing (EA at Appendix B). Once lease development is proposed, additional site-specific NEPA will be conducted to address any new resource issues and potential impacts specific to the proposed exploration or development project that were not and could not be addressed at the leasing stage, because they are not yet proposed, and as yet are uncertain in scope, location, size, or any other specificity. Protestants are reminded that the oil and gas process is a “step-down” process, and each step in the process is replete with its own environmental analysis appropriate to that particular step. Protestants would have BLM analyze effects of the RMP, or an APD, at the middle leasing stage. The project under consideration drives the analysis.

The BLM does not consider the proposed action to be highly controversial, as courts have consistently specified that disagreement must be with respect to the character of the effects on the quality of the human environment in order to be considered to be “controversial” within the meaning of NEPA, rather than a mere matter of the unpopularity of a proposal. See *Como-Falcon Coalition, Inc. v. U.S. Dept. of Labor*, 609 F.2d 342 (8th Cir. 1978), cert. denied, 446 U.S. 936 (“Mere opposition to federal project does not make project controversial so as to require environmental impact statement.”) There is not a substantial dispute within federal agencies, the State of Nevada government agencies, or the scientific community as to the effects of oil and gas leasing and development in Nevada specifically.

In conclusion, an EIS is not required under NEPA and the above allegations have been considered, found to be without merit, and are dismissed.

4. BLM Unlawfully Relied on Outdated RMPs

BLM Response:

BLM direction (IM 2018-034, Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews) states, “Through effective monitoring and periodic RMP evaluations, state and field offices will examine resource management decisions to determine whether the RMPs adequately protect important resource values in light of changing circumstances, updated policies, and new information (H-1601-1, sections V.A and B). The results of such reviews and evaluations may require a state/field office to update resource information through land use plan maintenance, amendment, or revision. It is BLM policy that existing land use plan decisions remain in effect until an amendment or revision is [completed and] approved. Therefore, the BLM will not routinely defer leasing when waiting for an RMP amendment or revision to be signed. Rather, when making leasing decisions, the BLM will exercise its discretion consistent with existing RMPs and the State Director should consult with the Washington Office (WO) before deciding to defer leasing of any parcels. When necessary, state/field offices will maintain or amend RMPs to accommodate changes in lease stipulations in accordance with guidance found in H-1610-1, Land Use Planning, sections VI.H and VII.B.”

The protestant would have BLM defer oil and gas lease sales pending RMP revision or amendment contrary to BLM’s understanding of law, regulation and policy. BLM will continue to apply its land use plan and issue implementation decisions pursuant thereto. Failure to do so, as advanced by protestant, could result in a state of continued suspension in implementation of the land use plan, and could require revisions whenever a protest is received, which is contrary to the clear language of the statute.

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

5. BLM Failed to Consider the Environmental Impacts from Unconventional Drilling Techniques, such as Hydraulic Fracturing

BLM Response:

The consequences of leasing in the BMDO, including the potential impacts of hydraulic fracturing, is addressed in Chapters 3 & 4 of the EA, and in the Hydraulic Fracturing Whitepaper, Appendix E. Protestants comments on hydraulic fracturing were addressed to the extent possible at this stage in the EA Appendix K, Summary of Comments and Responses. All resources present were analyzed for potential direct, indirect, and cumulative impacts from leasing, exploration, development, and production, including the potential effects of hydraulic fracturing on Air Quality, Water Quality and Quantity, and Human Health and Safety. 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, Hazardous Waste regulations, OSHA regulations, and Nevada Hydraulic Fracturing regulations (which are some of the most stringent in the nation).

Protestants would have BLM amend the RMP before leasing, and analyze and issue all possible APDs before leasing so as to completely analyze the potential effects of those two very different stages of the oil and gas process. However, BLM analyzed the effects of the possible use of hydraulic fracturing in a manner appropriate to the lease stage with reference to future applications for permits to drill on an issued lease and based on the current RMPs. FLPMA provides BLM the authority to determine when and how to amend or revise an RMP and issue an implementing decision. Protestants seek to require BLM to address these steps in the oil and gas process before it engages in leasing but their position is not supported by FLPMA.

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

6. BLM does not Consider Potential Impacts to Water Resources in the Proposed Sale Area

BLM Response:

The EA addressed potential impacts to water resources in Sections 3.2.4 and 4.2.4. The analysis determined that there were no significant impacts to water resources from the selected alternative. However, there could be indirect impacts to water resources from oil and gas development on these leases. To reduce potential conflicts with water resources from oil and gas leasing, the BMDO evaluated parcels located within high-value habitat for significant water resources and proposed to apply additional stipulations and mitigation measures to future development activities. Once lease development is proposed, additional project 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 (COAs).

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

a. BLM did not adequately survey and analyze water features occurring on and around the lease parcels

BLM Response:

The “hard look” at the environmental consequences of leasing in the BMDO, including the potential impacts from exploration and development, are discussed in Chapter 3 of the EA, Affected Environment and Environmental Consequences. The chapter addresses the elements that must be reviewed in all environmental analyses, as well as other resources deemed appropriate for evaluation. All resources that may be present or affected by leasing were analyzed for potential indirect impacts from leasing 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 from the selected alternative. However, there could be indirect impacts to water resources from oil and gas development on these leases. To reduce potential conflicts with water resources from oil and gas

leasing, the BMDO evaluated parcels located within high-value habitat for significant water resources and proposed to apply additional stipulations and mitigation measures to 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 would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs). Protestants ignore the analysis BLM provided to address the direct and indirect effects of leasing, choosing instead to take issue with a stage of the oil and gas process that is not under consideration for approval in this action.

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

b. The EA does not analyze impacts to water quantity

BLM Response:

Potential impacts to water quality and quantity from Hydraulic Fracturing are addressed in the EA and in the Hydraulic Fracturing White Paper (Appendix E). Once lease development is proposed, additional project 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. BLM does analyze a Reasonably Foreseeable Development scenario in the EA, which is based upon recent and historic development within the District and provides the best available estimate of future development and disturbance on the proposed lease parcels. Additionally, any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Water Act, Safe Drinking Water Act, Hazardous Waste regulations, OSHA regulations, and the State of Nevada Hydraulic Fracturing Rules.

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

c. The EA does not adequately analyze impacts to wildlife that depend on water features

BLM Response:

The EA addressed potential impacts to wildlife, including wildlife dependent on water features in Sections 3.2.8 and 4.2.6. The EA analysis determined that there were no significant impacts to wildlife, including all of the species mentioned in this specific CBD protest point, from the selected alternative. However, there could be indirect impacts to wildlife from oil and gas development on these leases. To reduce potential conflicts with wildlife habitat and populations from oil and gas leasing, the BMDO evaluated parcels located within high-value habitat and proposed to apply additional stipulations and mitigation measures to future development activities. Once lease development is proposed, additional project and site-specific NEPA will be conducted to address wildlife 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 (COAs).

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

d. The Water Resources Stipulation (#NV-B-10-B-CSU) provides inadequate protection to critical water resources and the wildlife which depend on them.

BLM Response:

The June EA addressed potential impacts to water resources, and the wildlife dependent on water features in Sections 3.2.4, 3.2.8, 4.2.4, and 4.2.6. The analysis in the EA determined that there were no significant impacts to critical water resources or wildlife from the selected alternative. However, there could be indirect impacts to water resources and wildlife from oil and gas development on these leases. To reduce potential conflicts with water resources and dependent wildlife habitat and populations from oil and gas leasing, the BMDO evaluated parcels containing water resources, or located within high-value habitat and applied additional stipulations including for areas with water resources – requiring additional engineering reviews, and mitigation measures to future development activities.

The water resources stipulation was applied to all parcels intersecting perennial streams as identified in our database. Additionally, any proposed hydraulic fracturing project would be required to comply with the State of Nevada HF regulations, including casing and cementing design, and disclosure of chemicals through FracFocus. Oil reservoirs are substantially deeper than water resources in Nevada. Groundwater aquifers are protected through construction requirements, requiring their isolation, and through ongoing testing of the integrity of the well. The first measure of protection against polluting groundwater is through use of adequate, competent well casing. The second line of defense is through cementing of the various well casings used. Water quality is further protected by extending cementing to below the ground water elevation. Well casing integrity testing is performed on oil and gas wells prior to use and during prescriptive maintenance to ensure isolation from groundwater aquifer formations. The Nevada Administrative Code 522.728 further defines duties of the operator for conducting hydraulic fracturing operations. Furthermore, these activities would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs).

In the BLM's analysis, the combination of existing federal and state laws including the Clean Water Act, the Safe Drinking Water Act, and the Endangered Species Act, as well as existing BMPs and the requirement of additional engineering reviews in sensitive areas will prevent any significant impacts from Reasonably Foreseeable Development. Once specific lease development is proposed, additional project and site-specific NEPA will be conducted to address critical water and wildlife issues and potential impacts specific to the site not addressed at the leasing stage.

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

7. BLM Had Failed to Analyze Impacts to Paleontological Resources

BLM Response:

The EA addressed potential impacts to paleontological resources in Sections 3.2.3 and 4.2.3. The analysis in the EA determined that there was low to moderate potential for vertebrate or significant invertebrate, trace, or plant fossils in the rock units within the nominated parcels, and that the standard stipulations and requirements for oil and gas development with the addition of a Lease Notice for Low to Moderate Potential for fossils, including the requirement to immediately stop work and report any discovery to the BLM Authorized Officer and the requirements of the Paleontological Resources Preservation Act, no significant impacts to Paleontological Resources could be expected from the selected alternative. The Lease Notice informs the lessees of their parcels' fossil potential, requirements to inform the BLM of fossil discoveries, and requirements for surveys, avoidance and/or data recovery prior to their disturbance. BLM Instruction Memorandum (IM) No. 2009-011 provides guidelines for assessing potential impacts to paleontological resources in order to determine mitigation steps for federal actions on public lands under FLPMA (Public Law [PL] 94–579, codified at 43 U.S.C. 1701–1782 and 18 U.S.C. 641) and NEPA. Furthermore, these activities would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs).

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

8. The EA and FONSI's Reliance on the MBTA Stipulation Fails to Take a Hard Look at Harm to Migratory Bird Species

BLM Response:

The EA addressed potential impacts to wildlife, including migratory birds in Sections 3.2.8 and 4.2.6. The EA analysis determined that there were no significant impacts to wildlife from the selected alternative. However, there could be indirect impacts to wildlife from oil and gas development on these leases. To reduce potential conflicts with wildlife habitat and populations from oil and gas leasing, the BMDO evaluated parcels located within high-value habitat and proposed to apply additional stipulations and mitigation measures to future development activities. The Migratory Birds lease notice is included in Appendix B at this stage to notify lessees that all potential future operations are required to comply with the provisions of the Migratory Bird Treaty Act by implementing measures to prevent take of migratory birds. Once lease development is proposed, additional project and site-specific NEPA will be conducted to address wildlife 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 (COAs).

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

9. BLM Fails to Analyze the Impacts of Lighting on Bats and Other Wildlife

BLM Response:

The impacts of artificial lighting on bats and other wildlife were analyzed to the extent possible at this stage in section 3.2.8 of the EA. Once lease development is proposed, additional project and site-specific NEPA will be conducted to address wildlife issues and potential impacts specific to the site, including artificial lighting, not addressed at the leasing stage. Guidelines for

lighting intensity, orientation, etc. would be recommended at the time of any project proposal to avoid, minimize, and mitigate such impacts. Furthermore, any proposed activities would be subject to Best Management Practices (BMPs), all applicable state and federal regulations, Occupational Safety and Health Administration (OSHA) requirements, and Conditions of Approval (COAs).

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

10. The EA Fails to Take a Hard Look at Foreseeable Significant Impacts to Mule Deer, Pronghorn, and Desert Bighorn Sheep Habitat and Populations

BLM Response:

The BLM considers long term impacts to all wildlife species, including Mule Deer, Pronghorn Antelope, and Desert Bighorn Sheep, from oil and gas exploration and development. 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 to wildlife from the selected alternative. However, there could be indirect impacts to wildlife from oil and gas development on these leases. To reduce potential conflicts with wildlife habitat and populations from oil and gas leasing, the BMDO evaluated parcels located within high-value habitat and proposed to apply additional stipulations and mitigation measures to future development activities. Timing limit stipulations (Appendix B) protect pronghorn, mule deer and bighorn sheep from disturbance in crucial seasonal habitats identified by NDOW and during seasons identified by NDOW for each of these species. Several parcels do provide crucial seasonal habitat for multiple species, in which case all relevant stipulations are applied; the stipulated seasons of concern do not combine to cover the entire year on any parcel. BLM coordinates closely with NDOW to meet the goal of sustainability for the species and to identify areas of sensitivity for the species. If such areas are identified, the BLM, in consultation with NDOW, would propose specific mitigation to ensure the habitat would be protected.

The small acreage of surface disturbance anticipated under the RFD scenario is not expected to contribute substantially to habitat loss or fragmentation for big game. Stipulations (Appendix B) developed in cooperation with NDOW protect wildlife from disturbance in crucial seasonal habitats.

Once lease development is proposed, additional project and site-specific NEPA will be conducted to address wildlife 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 (COAs).

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

B. BLM Failed to Consider Impacts to Endangered and Threatened Species and to Insure that Its Action Will Not Jeopardize Their Continued Existence

BLM Response:

The BLM did consider in the EA all of the Threatened and Endangered Species known to be present in the area of the proposed parcels, as well as BLM special status species lists for plants and animals. The BLM has previously consulted with the U.S. Fish and Wildlife Service regarding listed species in the District, in accordance with the Endangered Species Act (ESA) in developing the Land Use Plans, Stipulations, and Lease Notices to be applied to parcels in the district, receiving a Biological Opinion. The EA states that the BLM would initiate further ESA Section 7 consultation with the U.S. Fish and Wildlife Service when an exploration or development plan is submitted that may affect a listed species or habitat.

The BLM can take actions to protect listed species and their critical habitat, by requiring modification (design features or additional mitigation measures such as timing) or relocation of proposed projects. The BLM can disapprove proposed projects, if the actions are determined to have effects that are detrimental to the continuance of the species or populations (Jeopardy) and no reasonable mitigation measures can prevent those effects. The EA states that a Lease Notice was attached to all 166 parcels to serve the lessee with notice that the lease is subject to additional scrutiny, surveys, and potential mitigation to protect Threatened and Endangered species and or the species' habitat from impacts caused by oil and gas exploration and development. 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 design features and mitigation for conformance with the ESA.

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

C. BLM's Treatment of Impacts to Greater Sage-Grouse Violates FLPMA and NEPA

BLM Response:

The BLM conducted a thorough analysis on potential direct, indirect, and cumulative impacts to greater sage-grouse habitat from oil and gas 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 leasing outside of habitat first before considering leasing within habitat.

The BLM concludes that the proposed action is in conformance with the GRSG Plan Amendment. Therefore, the above CBD protest is found to be an opinion, without merit, and is dismissed.

1. BLM Must Defer Parcels NV-18-6-007, -008, -009, -012, and -017 to Address NDOW and USFWS Concerns

BLM Response:

The BLM NVSO utilized the required prioritization process during the adjudication of the nominated parcels by following specifically outlined guidance on prioritization implementation listed in the WO IM 2018-026, and adjudicating and parceling nominations outside of sage-grouse habitat first before considering leasing within habitat. The BLM conducted a thorough analysis on potential impacts to the greater sage-grouse from oil and gas exploration and development in the September 2015 Sage-Grouse RMPA that amended the BMDO's two RMPs. This amendment set forth maps of habitat types and made allocation decisions for leasable minerals including stipulations and mitigation and implementation strategies necessary to protect the bird's habitat. The BLM NVSO and BMDO followed these instructions through the leasing process, by analyzing the parcels in the EA and determining habitat types present and attaching the prescribed stipulations as set forth in Appendix G of the Sage-Grouse ARMPA to leases in sage grouse habitat.

The BLM reviewed all parcels including NV-18-6-007, -008, -009, -012, and -017 to ensure that all allowable GRSG stipulations are applied. BLM is currently constrained by the terms of the 2015 GRSG Plan Amendment to apply habitat mapping and stipulations as identified in 2015. Application of stipulations beyond those provided in the 2015 GRSG Amendment would require a LUP amendment. However, lek locations are not mapped in the GRSG Plan Amendment, so BLM is free to use the most current lek information in applying the stipulations that address proximity to leks. Additionally, deferring parcels NV-18-6-007, -008, -009, -012, and -017 would go against the stated purpose of WO IM 2018-026, which is: "to ensure consistency, certainty, and clarity when implementing an objective in the [GRSG Plan Amendments] to prioritize oil and gas leasing outside of GRSG habitat, while continuing to move forward expeditiously with oil and gas leasing and development, yet providing protections for GRSG and GRSG habitat management areas."

In conclusion, the proposed action and alternatives are in conformance with the 2015 Sage-Grouse RMPA, as stated above. Therefore, the above CBD protest is found to be an opinion, without merit, and is dismissed.

2. BLM's Final Environmental Assessment Does Not Adequately Disclose or Analyze Impacts to 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 to wildlife from the selected alternative. However, there could be indirect impacts to wildlife from oil and gas development on these leases. To reduce potential conflicts with wildlife habitat and populations from oil and gas leasing, the BMDO evaluated parcels located within high-value habitat and proposed to apply additional stipulations and mitigation measures to 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,

these activities 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 on potential direct, indirect, and cumulative impacts to greater sage-grouse habitat from oil and gas 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 leasing outside of habitat first before considering leasing within habitat. The stipulations have been applied to each part of a parcel with GRSG habitat, down to the 40-acre quarter-quarter of a section, using the highest applicable level of protection (e.g. if a quarter-quarter section includes PHMA and GHMA, stipulations for PHMA are applied).

The BLM is currently constrained by the terms of the 2015 GRSG Plan Amendment to apply habitat mapping and stipulations as identified in 2015. Application of stipulations beyond those provided in the 2015 GRSG Amendment would require a LUP amendment. However, lek locations are not mapped in the GRSG Plan Amendment, so BLM is free to use the most current lek information in applying the stipulations that address proximity to leks. Additionally, BLM IM 2018-026 states its purpose as: "to ensure consistency, certainty, and clarity when implementing an objective in the [GRSG Plan Amendments] to prioritize oil and gas leasing outside of GRSG habitat, while continuing to move forward expeditiously with oil and gas leasing and development, yet providing protections for GRSG and GRSG habitat management areas."

It is reasonable and sufficient for the BLM to state that the proposed action is in conformance with the GRSG Plan Amendment. The above CBD protest has been considered, found to be without merit, and is dismissed.

3. The Proposed Lease Sale Does not Comply with the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment (Sage-Grouse ARMPA)

BLM Response:

The BLM conducted a thorough analysis on potential direct, indirect, and cumulative impacts to greater sage-grouse habitat from oil and gas 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 leasing outside of habitat first before considering leasing within habitat. The stipulations have been applied to each part of a parcel with GRSG habitat, down to the 40-acre quarter-quarter of a section, using the highest applicable level of protection (e.g. if a quarter-quarter section includes PHMA and GHMA, stipulations for PHMA are applied).

The BLM is currently constrained by the terms of the 2015 GRSG Plan Amendment to apply habitat mapping and stipulations as identified in 2015. Application of stipulations beyond those provided in the 2015 GRSG Amendment would require a LUP amendment. However, lek locations are not mapped in the GRSG Plan Amendment, so BLM is free to use the most current lek information in applying the stipulations that address proximity to leks. Additionally, BLM IM 2018-026 states its purpose as: “to ensure consistency, certainty, and clarity when implementing an objective in the [GRSG Plan Amendments] to prioritize oil and gas leasing outside of GRSG habitat, while continuing to move forward expeditiously with oil and gas leasing and development, yet providing protections for GRSG and GRSG habitat management areas.”

It is reasonable and sufficient for the BLM to state that the proposed action is in conformance with the GRSG Plan Amendment. The above CBD protest has been considered, found to be without merit, and is dismissed.

D. [C] BLM’s Proposed Decision and FONSI Are Arbitrary and Capricious Because they Bear No Reasonable Relationship to a Legitimate Purpose or Need

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. 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.

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

E. [D] BLM Has Failed to Consider Climate Impacts or Analyze Reasonable Alternatives to Mitigate Those Impacts

BLM Response:

The BLM addressed the potential impacts and environmental consequences to air quality, climate change, and greenhouse gasses (GHG) in the EA in sections 3.2.1 and 4.2.1. This analysis included the potential indirect and cumulative impacts from future exploration and development including impacts from vehicle and equipment exhaust, increased particulate matter and dust from earthmoving activities, and potential fugitive gas and emissions from fossil fuel extraction, production, and combustion. 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 affects from GHG, and additional mitigation derived from project analysis may be required. Additional analysis on the effects of hydraulic fracturing on Air Quality and Human Health and Safety is provided in the Hydraulic Fracturing White Paper. 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, Hazardous Waste regulations, and OSHA regulations.

The EA considered both the proposed action as modified by attached stipulations and mitigation measures, as well as a no leasing alternative to serve as both a baseline for analysis and an alternative, which could be selected by the BLM if the analysis of the proposed action resulted in unacceptable environmental impacts. A nationwide programmatic review of all oil and gas or fossil fuel leasing actions is beyond the scope of this project.

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

ISSUES OUTSIDE SCOPE OF ACTION

The points raised by CBD below have not been addressed in detail as they are outside the scope of the action under consideration, the June 12, 2018 Competitive Oil & Gas Lease Sale, as they demand changes to Federal laws and policies nationwide.

1. The Cumulative Effects of Federal Fossil Fuel Leasing and Production Contributes Significantly to Adverse Impacts of Climate Change

BLM Response:

The BLM appreciates CBD's comments and opinion on banning leasing and fracking until a programmatic review is conducted. This request is outside the scope of the proposed action. Therefore, the above CBD comment has been considered, found to be unreasonable and without merit, and is dismissed.

2. BLM Failed to Consider a Ban on new Oil and Gas Leasing and Fracking in a Programmatic Review and Halt All New Leasing and Fracking in the Meantime

BLM Response:

The BLM appreciates CBD's comments and opinion on banning oil and gas leasing and hydraulic fracturing until a programmatic review is conducted. This request is outside the scope of the proposed action. Therefore, the above CBD comment has been considered, found to be unreasonable and without merit, and is dismissed.

DECISION

To the extent that CBD 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, CBD's protest of the 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.

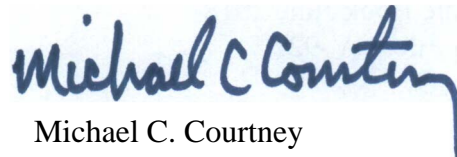
If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition 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:

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Lease Sale Book June 2018
Reading File: NV-922