



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Nevada State Office
1340 Financial Boulevard
Reno, Nevada 89502-7147
<http://www.blm.gov/nv>

JUL 3 1 2018

In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0111 8479 04

DECISION

The Wilderness Society : Protest of Parcels in the
Nada Culver, Director and Senior Counsel : June 12, 2018
1660 Wynkoop Street, #850 : 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 Wilderness Society (TWS) and the Friends of Nevada Wilderness (FNW). TWS and FNW specifically protested 96 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, (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).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 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

TWS/FNW'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 TWS/FNW's protest related to the Sale.

The BLM has reviewed TWS/FNW'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. National Environmental Policy Act (NEPA) Violations

I. BLM has failed to analyze impacts to inventoried lands with wilderness characteristics.

BLM Response:

The BLM did take a hard look at the specific parcels offered for oil and gas leasing, and the reasonably foreseeable impacts to the resources on these parcels, including effects on wilderness resources. BMDO reviewed and performed site-specific analysis on all 166 nominated parcels containing approximately 313,715 acres of public land. After conducting onsite reviews for each parcel by a team of resource specialists, and disclosing to the public any potential impacts to resources from leasing these lands, BMDO was able to recommend the leasing of all of the 166 nominated parcels in the BMDO, in conformance with regulations. BLM makes several references throughout the EA stating that once an APD is submitted, 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. During leasing review, each parcel is reviewed, scrutinized, and evaluated for any potential impacts, and whether the lease of any parcel may directly or indirectly affect resources. If there is scientific evidence that indicates that exploration and development of a particular parcel may have a substantial impact to a resource, and no reasonable mitigation is available, it is not recommended for leasing.

The BMDO considered potential impacts to lands with wilderness characteristics during scoping and preparation of the EA, and in revisions of the draft EA. Based on the BLM's most recent comprehensive wilderness characteristics inventory, 2012-2017 inventory data, 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.

TWS/FNW claims that the BLM has made a decision regarding the Castle Rock 1 and 2 and the Heart Hills units, however the wilderness characteristics inventory is currently ongoing as stated in the EA, and the BLM Wilderness Characteristics Inventory Worksheets for the Castle Rock 1 and 2 and the Heart Hills units (TWS/FNW Protest, Exhibit 1) specifically states:

This form documents information that constitutes an inventory finding on wilderness characteristics. It does not represent a formal land use allocation or a final agency decision subject to administrative remedies under either 43 CFR parts 4 or 1610.5-3.

The BLM permits responsible development of the public lands in accordance with Federal, State, and local laws and regulations. The BLM does not permit any activity that would violate federal laws or regulations or cause unnecessary or undue degradation of public lands. The above TWS/FNW protest has been considered, found to be without merit and is dismissed.

II. BLM has failed to respond to significant new information submitted by the public regarding 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 prevent change of the management or use of public lands. Lands with wilderness characteristics do not have any congressional or other legal requirements for management. The BLM manages lands with wilderness characteristics according to the RMP for the area, which in the BMDO manages all lands not specifically designated for conservation as open to multiple use, any change to this policy would require a land use plan amendment. The BLM Manual 6310 states “The BLM will determine when it is necessary to update its wilderness characteristics inventory.”

As stated in the EA Appendix K, Summary of Comments and Responses:

A wilderness characteristics inventory is in progress. Public input will be considered, including FNW’s citizen inventories, as part of this process. In the interim, lands with wilderness characteristics will be managed for multiple use where not designated otherwise.

Based on the BLM’s most recent comprehensive wilderness characteristics inventory, 2012-2017 inventory data, 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 a significant impact on lands with wilderness characteristics. By law and policy, all public lands are included in existing land use plan decisions which remain in effect until an amendment or revision is complete or approved (43 USC 1711 and 1712). Therefore, the BLM will not routinely defer leasing when waiting for an RMP amendment or revision to be signed.

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

III. BLM has failed to evaluate a reasonable 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. During the EA comment period,

TWS/FNW proposed several alternatives and included these alternative suggestions in their protest. The BLM responded to these alternative suggestions in the EA (Appendix K: Summary of Comments and Responses). Allocation decisions such as closing lands to leasing or designating areas for NSO may only be made through the RMP amendment or revision process.

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

IV. BLM has failed to evaluate direct, indirect and cumulative impacts to greater sage-grouse habitat.

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. The EA for leasing is tiered to the RMPs which incorporate the GRSG Plan Amendment, and addresses direct, indirect, and cumulative effects of leasing, as well as identifying potential future effects of exploration and development. BMDO followed the GRSG Plan Amendment 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 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 Amendment, so the BLM is free to use the most current lek information in applying the stipulations that address proximity to leks.

After review of these issues, the BLM concludes that the proposed action is in conformance with the GRSG Plan Amendment and that there are no significant effects to GRSG habitat such that an EIS is required. Therefore, the above TWS/FNW protest is found to be an opinion, without merit, and is dismissed.

B. Federal Land Policy and Management Act (FLPMA) Violations

I. BLM failed to prioritize leasing outside of greater sage-grouse habitats.

BLM Response:

The BLM NVSO utilized the required prioritization process during the adjudication of the nominated parcels by following a 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.

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

II. The proposed action conflicts with FLPMA's multiple use mandate.

BLM Response:

The BLM is directed by FLPMA to manage the public lands and resources to meet the goals of multiple use and sustained yield. The BLM is also mandated by FLPMA to prevent unnecessary and undue degradation of the public lands and the Department of the Interior's regulations at 43 CFR 3160 defines a wide array of rules which govern the conduct of Onshore Oil and Gas operations. This lease sale and any future oil and gas exploration or development activities which result from it would be carried out in accordance with all applicable federal, state, and local laws including the Mineral Leasing Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Endangered Species Act, Hazardous Waste regulations, and OSHA regulations.

Furthermore, the Purpose and Need for the EA responds to the requirement of the Mineral Leasing Act of 1920, 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 Tonopah and Shoshone Eureka RMPs, as amended. 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. Any future exploration or development activity is required to comply with all applicable Federal, State, and local laws and regulations. Potential resource conflicts are addressed by stipulations and lease notices (Appendix B) and by additional project and site-specific NEPA analysis when a project is proposed.

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

DECISION

To the extent that TWS/FNW 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/FNW'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:

CERTIFIED MAIL 9171 9690 0935 0187 0738 56
Friends of Nevada Wilderness
Kirk Peterson, Inventory Coordinator
PO Box 9754
Reno, NV 89507

cc (electronic):

WO310 (S. Mallory)
NVB0000 (D. Furtado)
NVB0200 (T. Coward)
NVB0100 (J. Sherve)
NV0920 (B. Amme)
NV0922 (K. Anderson, F. Kaminer, J. Menghini, A. Reynolds)

bcc: Erica Niebauer, Office of the Solicitor, Pacific Southwest Region,
2800 Cottage Way, Room E-1712, Sacramento, California, 95825
Lease Sale Book June 2018
Reading File: NV-922