



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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OCT 31 2018

In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0187 0739 62

DECISION

The Wilderness Society : Protest of Parcels in the
Nada Culver, Director and Senior Counsel : September 11, 2018
1660 Wynkoop Street, #850 : Competitive Oil and Gas Lease Sale
Denver, CO 80202

Protest Dismissed Parcels Offered For Sale

On August 6, 2018, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from The Wilderness Society (TWS). TWS protested all of the 144 parcels scheduled to be offered at the September 11, 2018 Competitive Oil and Gas Lease Sale (the Sale). TWS also protested BLM's reliance on the following EAs:

- a) Elko District Office: DOI-BLM-NV-E000-2018-0007-DNA, which refers to
 - (1) March 2018 Oil and Gas Lease Sale (supported by DOI-BLM-NV-E000-2017-0017-EA), and
 - (2) March 2017 Oil and Gas Lease Sale (supported by DOI-BLM-NV-E000-2016-0004-EA), and

- b) Ely District Office: DOI-BLM-NV-L000-2018-0001-DNA and FONSI, which refer to
 - (1) December 2017 Oil and Gas Lease Sale (supported by DOI-BLM-NV-L030-2017-0021-EA), and
 - (2) December 2014 Oil and Gas Lease Sale (supported by DOI-BLM-NV-L000-2014-0002-EA), and
 - (3) December 2013 Oil and Gas Lease Sale (supported by DOI-BLM-NV-L000-2013-0004-EA).

The Elko District Office EAs may be collectively referred to herein as the Elko EAs; the Ely District Office EAs may be referred to as the Ely EAs. When referring collectively to the Elko

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>

District Office EAs and the Ely District Office EAs, they are referred to as the “Referenced EAs” for ease in reading.²

BACKGROUND

The BLM received 144 nominated parcels for the September 2018 Lease Sale. The 144 nominated parcels³ included land in Federal mineral estate located in the BLM Nevada’s Elko District Office (EDO) and Ely District Office (EYDO). After the NVSO completed preliminary adjudication⁴ 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 February 20, 2018, the NVSO sent a preliminary parcel list to the EDO and EYDO for review. This interdisciplinary parcel review included internal scoping by a team of BLM specialists, review of GIS data, satellite imagery and other previously collected wildlife, habitat and other resource data, field visits to nominated parcels (where appropriate), review for conformance with the Land Use Plans, and review of the existing Referenced EAs’ documents for National Environmental Policy Act (NEPA) compliance.⁵

The DNAs relied on the Referenced EAs and the existing Land Use Plans (LUP),⁶ in accordance with the BLM’s NEPA Handbook, H-1790-1, and in keeping with the spirit of tiering in 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.

² The DNAs and FONSI are posted to the BLM’s ePlanning website with links to the documents located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

³For the September 2018 lease sale, one parcel was offered within the Elko District Office boundary, and 143 parcels were offered within the Ely District Office boundary. All parcels relied on NEPA analysis that BLM determined was adequate to support the proposed action. TWS protests the proposed action in its entirety; BLM therefore refers to all of the NEPA analysis above in support of the proposed action.

⁴ 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.

⁵ 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.

⁶ The DNAs are in conformance with the Elko District Resource Management Plan, approved in March 1987, the Elko and Wells RMPs Fire Management Amendment, approved in September 2004, the Ely District Resource Management Plan, approved in August 2008, the Nevada and Northeastern California Greater Sage-Grouse ARMPA, approved in September 2015, their associated Records of Decision, and all subsequent applicable amendments.

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 existing NEPA documents.

The purpose for the federal action is to provide opportunities for private individuals or oil and gas companies with new areas to explore and potentially develop. Leasing is authorized under the Mineral Leasing Act of 1920 (MLA), as amended and modified by subsequent legislation, and regulations found at 43 CFR part 3100. Oil and gas leasing is recognized as an acceptable use of public lands under FLPMA. BLM authority for leasing public mineral estate for the development of energy resources, including oil and gas, is described in 43 CFR 3160.0-3.

The need for the proposed action is to respond to the nomination of parcels by Expressions of Interest (EOIs) for leasing, consistent with the BLM's responsibility under the Mineral Leasing Act, as amended, to promote the development of oil and gas on the public domain. The public, BLM, or other agencies may nominate parcels for leasing. The BLM is required by law to consider leasing of areas that have been nominated for lease if leasing is in conformance with the applicable BLM land use plan, FLPMA, and other applicable laws, regulations, and policies. Offering parcels for competitive oil and gas leasing provides for the orderly development of fluid mineral resources under BLM's jurisdiction in a manner consistent with multiple use management and consideration of the natural and cultural resources that may be present. This requires that adequate provisions are included with the leases to protect public health and safety and assure full compliance with the spirit and objectives of NEPA and other federal environmental laws and regulations.

The Referenced EAs considered at least two (2) alternatives:

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

The Referenced EAs analyzed a range of alternatives including no action, the proposed action, and for the 2013 & 2014 Ely EAs and 2016 Elko EAs, deferral/withdrawal of certain parcels. These alternatives provided a spectrum of effects for analysis and comparison, ranging from no parcels offered to offering all nominated parcels. Additional alternatives were proposed in internal scoping and public comments, however they were not all carried forward for further analysis as they would not provide a basis for evaluation of effects not encompassed by the analyzed range of alternatives. The additional proposed alternatives did not meet the Purpose and Need for the federal action and were not in compliance with BLM policy regarding the Land Use Planning process and the Oil and Gas leasing process. These alternatives were discussed in the Referenced EAs in Public Involvement, Public Comments and Responses, and/or Alternatives sections.

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

On July 27, 2018, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for September 11, 2018*⁸ (Notice), resulting in a total of 144 parcels offered for lease. This protest challenges the EDO and EYDO DNAs and all of the 144 parcels described in the Notice.⁹

ISSUES

TWS protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.* The following addresses TWS protest related to the Sale.

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

I. BLM failed to take the “hard look” required by NEPA.

BLM Response:

TWS generally alleges that the DNAs for the September 2018 Oil and Gas Lease Sale are in violation of NEPA because the proposed action is not adequately covered in existing NEPA documents. As TWS has stated, the use of DNAs is governed by Department Manuals, the BLM NEPA Handbook, and BLM IMs. The key requirement for use of a DNA is that the proposed action is covered by adequate existing NEPA, because a DNA “does not itself provide NEPA analysis.” If, through the lease parcel Interdisciplinary Parcel Review Team review process, the authorizing official confirms that the proposed leasing action is adequately analyzed in an existing NEPA document, and is in conformance with the approved RMP, a DNA may be used to document NEPA compliance for the leasing decision. Washington Office Informational Memorandum 2018-034, issued January 31, 2018, directs that if the authorized officer confirms that the proposed leasing action has been adequately analyzed in existing NEPA documents, and is in conformance with the approved RMPs, a DNA will be used to document NEPA compliance for the leasing decision. *See also* NEPA Handbook H-1790-1 section 5.1.

At the lease sale stage, the BLM does not yet know 1) if a lease parcel proposed for an oil and gas lease sale will be purchased and result in the issuance of an oil and gas lease; 2) assuming a lease is issued for the proposed lease parcel, whether an Application for Permit to Drill (APD) will be submitted for that lease, and 3) what specific location and operating procedures for oil and gas development might be proposed for the lease parcel in the future. To provide a more site-specific and detailed analysis of the impacts from lease development activities would require the BLM to speculate on the density of drilling locations, the number, characteristics, and specifications of related production equipment, and the rate at which the lease would be developed, among other things. The BLM cannot speculate in this manner; to do so would likely either under-estimate impacts or over-estimate impacts. BLM's NEPA Handbook H-1790-1 section 6.8.3.4 states: “...you are not required to speculate about future actions.”

Where the context and intensity of the environmental impacts remain unidentifiable until exploration and development activities are proposed, the APD is the first useful point at which a

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

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

site-specific environmental appraisal can be undertaken (*Park County Resource Council, Inc. v. U.S. Department of Agriculture*, 817 F.2d 609 (10th Cir. 1987)). However, when site-specific impacts are reasonably foreseeable at the leasing stage, NEPA requires the analysis and disclosure of such reasonably foreseeable site-specific impacts (N.M. ex rel. *Richardson v. BLM*, 565 F.3d. 683, 719-19 (10th Cir. 2009)). Although certain site-specific impacts remain unforeseeable at this time, the analysis in the Ely and Elko RMPs and FEISs provides disclosure and analysis of the reasonably foreseeable environmental impacts associated with offering and issuing leases for these parcels.

In preparation of the DNAs for the September 2018 Lease Sale, the BLM reviewed the existing Ely RMP and FEIS, the Elko RMP and FEIS, and the Referenced EAs. The Ely and Elko RMPs and FEISs analyzed the potential impacts of oil and gas leasing, exploration, and development in the Ely and Elko Resource Areas. The 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment (GRSG Plan Amendment) amended the Ely and Elko RMPs to address Greater Sage-Grouse. Under the GRSG Plan Amendment, mapped habitat for Greater Sage-Grouse (GRSG) is designated as Priority Habitat Management Area (PHMA), General Habitat Management Area (GHMA), or Other Habitat Management Area (OHMA). The proposed action conforms to applicable sections of the GRSG Plan Amendment. The Referenced EAs contained analysis of the proposed parcels for their respective lease sales, including analysis of resources and potential impacts in the areas of the nominated parcels.

The Ely and Elko RMPs and FEISs proposed and analyzed a Reasonably Foreseeable Development scenario (RFD) for Oil and Gas exploration and development. The RFD was based on known and potential oil and gas resources, and historic development in Nevada. The RFD was used to analyze potential and reasonably foreseeable direct, indirect, and cumulative impacts to other resources in the Resource Management Plans, and to make land use planning allocations and develop stipulations to prevent or reduce resource conflicts. Lengthy public comment periods were provided during the preparation of each of the two RMPs. Since neither the level of development in the RFDs or the impacts analyzed in the two FEISs have been exceeded, the RFD remains a valid analysis tool for ongoing oil and gas exploration and development. The area encompassing the 144 nominated parcels was analyzed in the FEISs and was allocated as open to oil and gas leasing in the RMPs with stipulations, thus the proposed action is in conformance with the RMPs. The BLM has no new data or information about changed circumstances that would require it to analyze the potential impacts of leasing in greater detail than that provided in the Referenced EAs, FEISs, and the analyses in the existing FEISs/RMPs for the Ely and Elko District Offices are comprehensive and sufficient. While the Protestant claims that BLM defers environmental analysis to the APD stage, and relies on environmental analysis from the RMP stage, Protestant ignores the environmental review that BLM relies on for the leasing stage of the oil and gas development process that is found in the Referenced EAs.

The DNAs rely on environmental review adequate for this stage of the oil and gas development process. The above TWS protest point has been considered, found to be without merit and is dismissed.

II. BLM failed to consider a 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 Referenced EAs analyzed a range of alternatives including no action, the proposed action, and for the 2013 & 2014 EAs deferral/withdrawal of certain parcels. These alternatives provided a spectrum of effects for analysis and comparison, from not offering any parcels to offering all parcels nominated.

The BLM is required by law under the Mineral Leasing Act of 1920, as amended, the Energy Policy Act of 2005, and under regulations at 43 CFR 3100 to consider leasing available lands for oil and gas development, if leasing is in conformance with the applicable land use plan(s). The Applicable Land Use Plans and FEISs analyzed potential impacts of leasing and development and made allocation decisions closing certain lands and making others available with stipulations. The proposed action with stipulations meets the purpose and need for the federal action and is in conformance with the existing EDO and EYDO RMPs, as amended. The Referenced EAs analyzed the areas nominated for lease and reviewed the direct, indirect, and cumulative impacts of leasing and potential future development. Protestant recommends alternatives that defer most or all parcels that include priority and general sage-grouse habitat as well as parcels in areas of inventoried lands with wilderness characteristics, yet allocation decisions such as closing lands to leasing or designating areas for NSO may only be made through the RMP amendment or revision process.

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

III. BLM has failed to consider the cumulative impacts of leasing.

BLM Response:

The direct, indirect, and cumulative impacts of each proposed action (lease sale and reasonably foreseeable future development) are analyzed in the respective Referenced EAs. The Referenced EAs tier to the applicable land use plan and FEIS which analyzed mineral development impacts when making fluid mineral allocation decisions. The Greater Sage Grouse RMP amendments and the FEIS analyzed the impacts of leasing and mineral development within sage grouse habitat and created lease stipulations for sage grouse habitat including Timing Limitations (TL), Controlled Surface Use (CSU), which are design and noise requirements, and designating large areas of priority habitat (PHMA) as No Surface Occupancy (NSO) which precludes any surface disturbing activity.

The BLM appreciates TWS’s comments and opinion on halting oil and gas leasing until a programmatic review is conducted, but FLPMA requires BLM to revise land use plans “when appropriate” in BLM’s judgment (43 U.S.C. 1712(a)). 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. This request is outside the scope of the proposed action. Therefore, the above TWS comment has been considered, found to be unreasonable and without merit, and is dismissed.

IV. BLM's FONSI for the Ely District is arbitrary and capricious.

BLM Response:

TWS generally alleges that since BLM has not prepared an EA that the agency has no way to know what site-specific concerns or new information exist for the lease sale parcels. The Finding of No Significant Impact (FONSI) for the Ely District is based upon the analysis in the Referenced EAs as reviewed in the September Lease Sale DNAs which did not find any significant impact from the proposed action (lease sale) and reasonably foreseeable future development. The direct, indirect, and cumulative impacts of each proposed action (lease sale and reasonably foreseeable future development) are analyzed in the respective Referenced EAs. The Referenced EAs tier to the applicable land use plan and FEIS which analyzed mineral development impacts, when making fluid mineral allocation decisions. Protestant alleges that the BLM "does not appear to have added any stipulations to address site-specific conditions", yet lease notices and site-specific stipulations are included in both the Ely DNA (Attachment B; pages 23-69) and the Elko DNA (pages 11-14).

The Ely and Elko RMPs and FEISs proposed and analyzed a Reasonably Foreseeable Development scenario (RFD) for Oil and Gas exploration and development. The RFD was based on known and potential oil and gas resources, and historic development in Nevada. Neither of these factors have changed. The RFD was used to analyze potential and reasonably foreseeable direct, indirect, and cumulative impacts to other resources in the Resource Management Plans, including sage-grouse, groundwater, and other resources, and to make land use planning allocations and develop stipulations to prevent or reduce resource conflicts. Lengthy public comment periods were provided during the preparation of each of the two RMPs. Since neither the level of development in the RFDs or the impacts analyzed in the two FEISs have been exceeded, the RFD remains a valid analysis tool for ongoing oil and gas exploration and development. The area of the 144 nominated parcels was analyzed in the FEISs and was allocated as open to oil and gas leasing in the RMPs with stipulations, thus the proposed action is in conformance with the RMPs. The BLM has no new data or information about changed circumstances that would require it to analyze the potential impacts of leasing in greater detail than that provided in the FEISs, and the analyses in the existing FEISs/RMPs for the Ely and Elko District Offices are comprehensive and sufficient.

Therefore, the Ely DNA does have adequate underlying NEPA that supports a FONSI, and the above TWS protest point has been considered, found to be without merit and is dismissed.

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

BLM Response:

TWS generally alleges that the impact of oil and gas leasing on inventoried LWC was not analyzed in the Ely RMP, and a DNA cannot be utilized to issue leases in those areas. 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. The EDO and EYDO reviewed and performed site-specific analysis on all 144 nominated parcels containing 295,174.30 acres of public land. After conducting site-specific reviews for each parcel by a team of resource specialists, and disclosing to the public any potential impacts to resources from leasing these lands, the EDO and EYDO were able to recommend the leasing of all the 144 nominated parcels in the EDO and EYDO, in conformance with regulations. BLM makes several references throughout the Referenced EAs 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.

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. The BLM Manual 6310 states “The BLM will determine when it is necessary to update its wilderness characteristics inventory.”

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

As stated in Chapter 3.3.13, Table 3.10, BLM Ely District undertook its most recent comprehensive wilderness characteristics inventory as part of the process of updating the RMP. BLM used the FNW inventory to focus on areas identified, while conducting the agency's own inventory as required. BLM determined that while 15 units suggested by FNW did overlap wilderness characteristics, eight of the inventory units were found to possess wilderness characteristics on their own merits. The other seven units inherited the outstanding opportunities of adjacent wilderness areas.

The EDO and EYDO considered potential impacts to lands with wilderness characteristics during scoping and preparation of the Referenced EAs. The two DNAs are used to confirm that the proposed leasing action is adequately analyzed in the existing NEPA documents and is in conformance with the approved RMP. Based on the BLM's most recent comprehensive wilderness characteristics inventory, the BLM has determined that the proposed action and alternatives would not have a significant impact on lands with wilderness characteristics.

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

VI. The proposed lease sale violates FLPMA because it is inconsistent with the governing RMPs.

BLM Response:

The proposed lease sale was reviewed for conformance with the applicable land use plans as required by FLPMA, NEPA, Department regulations, and the Determination of NEPA adequacy worksheet part B (Land Use Plan Conformance). Leasing of lands within the EDO and EYDO for the production of energy resources is managed in accordance with direction provided in the EDO and EYDO RMPs. Since their approval, the RMPs have been periodically evaluated and amended as necessary to address current policies and emerging issues. Parcels nominated for leasing are screened to identify areas open to leasing and applicable lease stipulations.

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 direct, indirect, and cumulative impacts to the greater sage-grouse from oil and gas exploration and development in the September 2015 Nevada and Northeastern California Greater Sage-Grouse ARMPA (GRSG Plan Amendment) that amended the EDO and EYDO RMPs. This amendment set forth maps of habitat types and made allocation decisions for leasable minerals including stipulations, mitigation, and implementation strategies necessary to protect the bird's habitat. The BLM NVSO, EDO, and EYDO followed these instructions through the leasing process, by analyzing the parcels and determining habitat types present and attaching the prescribed stipulations to all proposed parcels in PHMA, GHMA and near leks as set forth in Appendix G of the Sage-Grouse ARMPA to leases in sage grouse 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).

In conclusion, the proposed action is in conformance with the EDO and EYDO RMPs, the GRSG Plan Amendment, and with current policy, as stated above. Therefore, the above TWS protest point is found to be an opinion, without merit, and is dismissed.

VII. Consultation with the Fish & Wildlife Service is required.

BLM Response:

The BLM did consider all of the threatened and endangered species known to be present on the parcels as well as BLM special status species lists for plants and animals. The BLM did notify the USFWS of the parcels in the proposed lease sale during the internal scoping and corresponded with USFWS biologists to address any concerns. The BLM complied with Section 7 of the Endangered Species Act by engaging the USFWS in formal consultation and receiving a Biological Opinion (BO) as part of the EDO and EYDO RMPs and FEISs.

The BLM also reinitiated formal Section 7 consultation in the EYDO in 2017, which resulted in the USFWS issuing a Programmatic Biological Opinion for additional threatened and endangered species not covered in the RMP BO and specifically addressing the impacts on all known threatened and endangered species present in the EYDO from oil and gas leasing, exploration, and development including hydraulic fracturing. The Referenced EAs, which tier to the RMPs and FEISs, state that the BLM can take actions to protect critical habitat for threatened and endangered species and BLM sensitive species up to and including not approving actions as submitted, if the action is determined to be detrimental to the continuance of populations (jeopardy). A lease notice was attached to all 144 parcels to serve the lessee with notice that the lease and any future activities proposed on it are subject to the Endangered Species Act, and any attendant requirements for additional scrutiny, surveys, and potential mitigation to protect the specie(s) and or the specie's habitat. Stipulations and lease notices, like this one, serve a vital role at the leasing stage by putting the BLM, lessee, and the public on notice that developing this lease may be difficult and may require additional mitigation and conformance, or may result in the denial of development as proposed on the lease.

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. If exploration and development are proposed that may affect Threatened and Endangered Species known to be present on specific parcels, consultation with the USFWS will be reinitiated as needed. Furthermore, these activities would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs).

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

VIII. IM 2018-034 is invalid.

BLM Response:

The review of the nominated parcels for this lease sale under guidance in IM 2018-034 was consistent with existing federal laws including the Mineral Leasing Act, NEPA, FLPMA, and the oil and gas regulations at 43 CFR 3100. The BLM Interdisciplinary Parcel Review Teams reviewed the parcels and existing data (GIS, satellite imagery, files, and past EAs) for information on resources, and conducted field visits when necessary to verify or acquire additional data. The parcels and numbers of acres (fewer acres were offered in the Elko District,¹⁰ and fewer acres were offered in the Ely District¹¹ in the September 2018 lease sale than were analyzed in the Referenced EAs) were different from those addressed in the Referenced EAs only in site-specific location--the general location (the same valley), geography, and public land resource conditions were not different. In addition, the Proposed Action here, as well as in the Referenced EAs was the same: BLM offered for sale similarly situated parcels for oil and gas leases. The Referenced EAs' lease sales included a range of alternatives by which to

¹⁰ See the Elko District Office DNA (DOI-BLM-NV-E000-2018-0007-DNA), which refers to March 2018 Oil and Gas Lease Sale (supported by DOI-BLM-NV-E000-2017-0017-EA, and the March 2017 Oil and Gas Lease Sale (supported by DOI-BLM-NV-E000-2016-0004-EA).

¹¹ See the Ely District Office: DOI-BLM-NV-L000-2018-0001-DNA and FONSI, which refer to the December 2017 Oil and Gas Lease Sale (supported by DOI-BLM-NV-L030-2017-0021-EA), and the December 2014 Oil and Gas Lease Sale (supported by DOI-BLM-NV-L000-2014-0002-EA), and the December 2013 Oil and Gas Lease Sale (supported by DOI-BLM-NV-L000-2013-0004-EA).

analyze potential impact. The September 2018 lease sale considered the analysis in those EAs and ultimately relied on that analysis to support the sale at issue here. Protestant took advantage of the public comment periods offered for those sales and submitted comments for the March 2017, December 2017, March 2018, and other Referenced EAs. In addition, Protestant has filed protests to previous sales for which the Referenced EAs were prepared, as well as the September sale to which we respond here. The Referenced EAs were evaluated in compliance with NEPA and BLM Handbook 1790-01 for adequacy of environmental analysis and documented in the Determination of NEPA Adequacy worksheets.

The validity of BLM IM 2018-034 is beyond the scope of the proposed action, and the protest of the proposed action. The above TWS protest point has been considered, found to be without merit and is dismissed.

DECISION

To the extent that TWS has raised any allegations not specifically discussed herein, they have been considered in the context of the above response and are found to be without merit. For this reason, and for those previously discussed, TWS's protest of the Sale and the DNAs is dismissed and 144 parcels were offered for sale on September 11, 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 Kemba K. Anderson, Acting Deputy State Director, Minerals Division, at (775) 861-6566.



Brian C. Amme
Acting State Director

Enclosure:

1- Form 1842-1

cc (electronic):

WO310 (S. Mallory)
NVE0000 (J. Silvey)
NVE0200 (M. Peterson)
NVE0300 (M. Jackson)
NVL0000 (P. McFadden)
NVL0100 (M. Seal)
NVL0300 (C. Carlton)

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
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