



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0187 0739 00

DECISION

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

Protest Dismissed Parcels Offered For Sale

On November 5, 2018, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from The Wilderness Society (TWS). TWS protested 14 of the 17 parcels scheduled to be offered at the December 11, 2018 Competitive Oil and Gas Lease Sale (the Sale) as analyzed in the Ely District Office's (EYDO) Environmental Assessment (EA), DOI-BLM-NV-L000-2018-0002-EA and FONSI.²

BACKGROUND

The BLM received 17 nominated parcels for the December 2018 Lease Sale. The 17 nominated parcels³ included land in Federal mineral estate located in the BLM Nevada's Ely and Winnemucca District Offices (WDO). 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.

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 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>

³ For the December 2018 lease sale, 14 parcels were offered within the Ely District Office boundary, and 3 parcels were offered within the Winnemucca District Office boundary. All parcels relied on NEPA analysis that BLM determined was adequate to support the proposed action. TWS specifically protests the 14 parcels located in the Ely District; BLM therefore refers to the EYDO EA and FONSI 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.

On July 13, 2018, the NVSO sent a preliminary parcel list to the WDO 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 EA documents for NEPA compliance.⁵

The EA tiered to the existing Land Use Plans (LUP),⁶ in accordance with the BLM's NEPA Handbook, H-1790-1, and with the Code of Federal Regulations (CFR) at 40 CFR 1502.20:

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review . . . the subsequent . . . environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.

The federal action, an oil and gas lease sale, is not a planning level action making resource allocation decisions (which are analyzed in a Resource Management Plan NEPA document), nor a specific implementation action (e.g., a permit to drill, analyzed in a site specific NEPA document).⁷ The federal action is to conduct an oil and gas lease sale and is supported by its own or existing NEPA documents.

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

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

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 EA is in conformance with 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.

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

and assure full compliance with the spirit and objectives of NEPA and other federal environmental laws and regulations.

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

On October 26, 2018, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for December 11, 2018*⁸ (Notice), resulting in a total of 17 parcels offered for lease. This protest challenges the Sale, EYDO EA and FONSI, and 14 of the 17 parcels described in the Notice.⁹

ISSUES

The TWS protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.*, and the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. § 181 *et seq.* The following addresses TWS’ protest related to the Sale.

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

A. 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, APA, and the oil and gas regulations at 43 CFR 3100. Protestant claims that by offering a shortened 15-day comment period and 10-day protest period on the EA, that the agency has significantly

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

⁹ The December 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>

constrained their ability to participate in this lease sale, yet the BLM did provide 30 days for public comment and the 10-day protest period was consistent with guidance in IM 2018-034. Notification of the reopened comment period was posted on BLM's ePlanning website.

As stated in Chapter 1.5 of the December 2018 EA (DOI-BLM-NV-L000-2018-0002-EA):

The BLM received approximately 5 external comments from individuals and government agencies on the Proposed Action during the initial 15-day comment period that ran from August 17- September 4, 2018. The comment period was reopened for an additional 15 day comment period from September 25-October 9, 2018. Approximately 1 external comment was received during this time.

Additionally, the Preliminary Injunction issued by the District Court in Western Watersheds Project v. Zinke, No. 1:18-cv-00187-REB (D. Idaho Sept 21, 2018) applies only to parcels in designated Sage Grouse Habitat; "The preliminary injunction does not apply to BLM oil and gas lease procedures on federal lands that are not within federally-recognized boundaries encompassing greater sage-grouse habitat management areas." As acknowledged by TWS in their protest, the BLM has postponed all parcels in recognized sage-grouse habitat in order to comply with the preliminary injunction.

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.

B. BLM has 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 EA analyzed the no action alternative and the proposed action. 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 EYDO RMP, as amended. The EA 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 until production in Nevada is on par with other western states 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.

Additionally, 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, lease notices, and by additional project and site-specific NEPA analysis when a project is proposed.

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

C. BLM must defer leasing in lands with wilderness characteristics until management decisions are made for those areas.

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

As stated in the December 2018 EA (DOI-BLM-NV-L000-2018-0002-EA):

In 2011, the Ely District Office BLM began updating the lands with wilderness characteristics (LWC) inventory on a project-by-project basis until there is a land use plan revision. There has not been a land use plan amendment to determine if or how these LWC units would be preserved to protect the wilderness characteristics. Until this occurs the EYDO is managing LWC under Manual 6320-Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process (Public). This manual contains the BLM's policy and guidance for considering lands with wilderness characteristics in the BLM land use planning process under FLPMA and other applicable law and supersedes all previous guidance on this topic.

Based on the BLM's most recent comprehensive wilderness characteristics inventory, 2011-2017 inventory data, the allocation and management decisions in the existing RMPs, and the analysis in the EA with respect to the Reasonably Foreseeable Development scenario, the BLM has determined that the proposed action and alternatives would not have significant impacts on lands with wilderness characteristics beyond those considered in the RMPs. Protestant recommends alternatives that defer most or all parcels in areas of inventoried lands with wilderness characteristics, yet allocation decisions such as closing lands to leasing or designating areas for NSO may only be made through the RMP amendment or revision process. BLM will continue to apply its land use plan and issue implementation decisions pursuant thereto. Requiring revisions to the land use plan whenever a protest is received could result in a state of continued suspension in implementation of the land use plan, which is contrary to the clear language of the statute.

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

D. Leasing lands with low potential for development is inconsistent with FLPMA and the MLA.

BLM Response:

The BLM's Purpose and Need as stated in section 1.2 of the EA is derived from the requirements of the Mineral Leasing Act of 1920 (MLA, 30 U.S.C. 181 et seq.), as amended, that the BLM consider leasing of nominated areas if in conformance with the applicable land use plan. The proposed lease sale is in conformance with the Ely District RMP, as amended. The Purpose and Need is consistent with the BLM's responsibility under the Mineral Leasing Act (MLA), as amended, to promote the development of oil and gas on the public domain by responding to properly submitted Expressions of Interest (EOIs). Parcels may be nominated by the public, the BLM, or other agencies. The MLA establishes that deposits of oil and gas owned by the United States are subject to disposition in the form and manner provided by the MLA under the rules and regulations prescribed by the Secretary of the Interior, where consistent with land use planning, FLPMA and other applicable laws, regulations, and policies.

Multiple use management continues on leased lands. Leasing does not preclude other uses, such as renewable energy, exploration for other minerals, wildlife habitat management, etc. Additionally, any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Endangered Species Act, Hazardous Waste regulations, and OSHA regulations. Potential resource conflicts are addressed by stipulations and lease notices and by additional project and site-specific NEPA analysis when a project is proposed

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

E. The legal rationale for the Preliminary Injunction issued by the U.S. District Court for the District of Idaho regarding IM 2018-034 also applies to lands outside the planning area for the greater sage-grouse plan amendment.

BLM Response:

The Preliminary Injunction issued by the District Court in *Western Watersheds Project v. Zinke*, No. 1:18-cv-00187-REB (D. Idaho Sept 21, 2018) applies only to parcels in designated Sage Grouse Habitat; "The preliminary injunction does not apply to BLM oil and gas lease procedures on federal lands that are not within federally-recognized boundaries encompassing greater sage-grouse habitat management areas." As acknowledged by TWS in their protest, the BLM has postponed all parcels in recognized sage-grouse habitat in order to comply with the preliminary injunction.

Therefore 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' protest of the Sale, EA, and FONSI is dismissed and 17 parcels were offered for sale on December 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 (J. Sellar-Baker)
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
Lease Sale Book March 2018
Reading File: NV-922