

United States Bureau of Land Management
Nevada State Office
1340 Financial Boulevard
Reno Nevada 89502-7147

Re: Protest of June 2020 Oil and Gas Lease Sale DOI-BLM-NV-B000-2020-0007-EA

Submitted via email: blm_nv_eoi_nominations@blm.gov

To whom it may concern:

Please accept this protest of the above oil and natural gas lease sale that is filed by the National Wildlife Federation (NWF) and the Nevada Wildlife Federation (NvWF). This protest is filed pursuant to the provisions at 43 C.F.R. § 3129.1-3. In this lease sale, the Bureau of Land Management is proposing to sell 7 parcels containing 10,699.891 acres in the State of Nevada. See Lease Sale Notice at 1. NWF and NvWF Federation commented on the draft Environmental Assessment.

Interest of the protesting parties

The National Wildlife Federation, one of America's largest conservation organizations, has worked across the country to unite Americans from all walks of life in giving wildlife a voice for over eighty years. NWF has 51 state and territorial affiliates and more than 6 million members and supporters, including hunters, anglers, gardeners, birders, hikers, campers, paddlers, and other outdoor enthusiasts. NWF programs work to protect the 600 million acres of public lands owned by all Americans and has a longstanding interest in ensuring these lands are managed properly for fish, wildlife, and communities.

The Nevada Wildlife Federation is the oldest statewide conservation organization dedicated to sustaining Nevada's wildlife through conservation and education. Since 1951, the Nevada Wildlife Federation has fought to defend American public lands and the sagebrush steppe eco-system, ensure responsible management of Nevada's water, and advocated for habitat restoration and collaboratively-developed conservation policy solutions.

Authorization to file protest

Mary Greene, Public Lands Attorney, National Wildlife Federation, is authorized to file this protest on behalf of all the protesting parties

Lease parcels protest

NWF and NvWF protest all parcels in the June 2020 sale

NVN 099640 NV-2020-06-1294
NVN 099641 NV-2020-06-0013
NVN 099642 NV-2020-06-1273
NVN 099643 NV-2020-06-1280

NVN 099644 NV-2020-06-1291
NVN 099645 NV-2020-06-0019
NVN 099646 NV-2020-06-0020

Statement of interest

I. BLM should not conduct oil and gas lease sales during a national emergency

The United States is currently experiencing an unprecedented state of emergency that has upended lives across the country and helped to drive the collapse of oil and gas prices. The COVID-19 pandemic will only continue intensify disruptions to daily lives and continue to significantly impact the markets. The public cannot be expected to meaningfully engage in any sort of public process when households across the State are grappling with this pandemic: home-schooling children, facing unemployment, and fighting illness. We strongly urge BLM to suspend lease sales, and to remain flexible as this scenario continues to play out.

a. BLM will not be able to ensure meaningful public participation in oil and gas lease sales

Attempts to move forward with oil and gas lease sales at a time when the country is grappling with COVID-19 disregards the public participation mandate of the Federal Lands Policy Management Act (FLPMA) and the National Environmental Policy Act (NEPA).¹ Given that BLM public rooms are closed, the public will have to view proposed leases on-line. However, many Nevadans do not have access to reliable internet. Nevada ranks 35th for broadband access,² with rural areas being most affected by lack of access. Yet it is these rural areas that stand to be most impacted by the proposed lease sales. Moreover, the Mineral Leasing Act (MLA) requires BLM to give notice of proposed leasing and that “[s]uch notice shall be posted in the appropriate local office of the leasing and land management agencies.”³ Clearly, BLM cannot currently comply with this requirement and will be in violation of the Act if it moves forward with lease sales. Even if internet or posting notices were not at issue, the public cannot be expected to meaningfully engage in any sort of public process when households across the State are dealing with this pandemic.

b. Nevada’s March 2020 lease sale makes clear that leasing at this time is not financially responsible

Nevada’s March 2020 lease sale highlights the impact this pandemic has had on the oil and gas market: 2% of the acreage offered in the lease sale sold. It is unlikely that oil and gas prices will re-bounce by the June sale meaning that BLM can expect a similar, if not worse outcome. Given the outcome of the March sale, it is incredible that BLM is forging ahead with this sale when there is clearly no appetite or need. Doing so only ensures that most if not all of the leases will be available non-competitively and available far below market rate. At a time when oil and gas companies across the country are seeking both royalty relief and lease suspensions due to the significant downturn of oil and gas prices and a

¹ FLPMA requires that BLM give “the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.” 43 U.S.C. § 1739(e). NEPA requires that “environmental information is available to public officials and citizens before decisions are made and before actions are taken” and reiterates that “public scrutiny is essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). Further, NEPA obligates the BLM to “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 40 C.F.R. § 1506.6(a).

² <https://broadbandnow.com/Nevada>.

³ 30 U.S.C. § 226(f)

decrease in demand leading to a glut in the market, it is unclear why BLM insists on moving forward with these sales.

II. BLM should not lease on low potential lands

The fact that all seven leases proposed for this lease sale are on low potential lands compounds the likelihood that there will be almost no bids. In continuing with this lease sale, BLM is encouraging below-market speculative leasing at a time when demand for oil and gas is at a record low. This type of leasing deprives the taxpayers and the State of Nevada of bonus bids, royalties (as most of these leases will not be developed) and market-rate rental fees. In response to our comments related to leasing on low potential lands, BLM stated “[t]he Purpose and Need for this EA responds to the requirement 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).” See summary of comment responses in supplemental information (SI). However, the MLA does not *obligate* BLM to offer nominated parcels for sale. BLM has the discretion to either lease or not lease these parcels. To suggest that the MLA requires BLM to lease all nominated parcels that comply with the land use plan ignores fundamental tenants not only of the MLA, but also of the Federal Law Policy Management Act, and the National Environmental Policy Act.

III. BLM should defer leases in big game habitat and migration corridors until it conducts a sufficient environmental analysis

In our comments we explained why BLM must analyze the reasonably foreseeable impacts of oil and gas leasing at this stage in order to meet its obligation to take a “hard look” at all proposed actions. See NWF NvWF comments on EA at 2. In response to this comment BLM simply stated “Impacts to big game are analyzed in Section 3.2.8 and 4.2.6.” See SI. These sections do not actually provide any sort of analysis. Section 3.2.8 simply notes the type of habitat that is within parcels offered for the lease sale, and section 4.2.6. broadly states that oil and gas leasing would add to the impacts past and present actions. See EA at 3.2.8 and 4.2.6. As the Ninth Circuit Court of Appeals has held “[a]n agency cannot satisfy this [hard look] requirement under NEPA with ‘[g]eneral statements about ‘possible effects’ and ‘some risk’” unless the agency provides “a justification regarding why more definitive information could not be provided.”⁴ While the agency need not conduct a parcel-by-parcel review of the impacts, it can consider “hypothetical situations that represented the spectrum of foreseeable results.”⁵ Here BLM, has not provided a satisfactory justification as to why it cannot analyze a spectrum of foreseeable results. For example, BLM could look at the impacts of low, medium, and high development in big-game habitat and migration corridors.

a. Lease Notices and timing limitation stipulations do not sufficiently protect mule deer migratory corridors

As we noted in our comments, BLM states that mule deer and pronghorn habitat and migration corridors are protected by timing limitation (TL) stipulations or lease notices. Neither are sufficiently protective. See comments at 3. In response to our comments BLM stated “[s]tipulations (see DOI-BLM-NV-B000- 2020-0007-Stipulations) developed in cooperation with NDOW to protect wildlife, including

⁴ *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 868 (9th Cir. 2005) (quoting *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379-80 (9th Cir. 1998)).

⁵ *Alaska Env’tl. Ctr. v. Kempthorne*, 457 F.3d 969, 976 (9th Cir. 2006)

big game, from disturbance in crucial seasonal habitats. Additionally, any future proposed exploration or development would be evaluated in a separate project and site-specific NEPA analysis.” See SI. However, these apply only to “crucial seasonal habitat” not to migration corridors or fawning areas. Stipulations that protect other wildlife, while important do not address the needs of big-game. Despite commenting several times about the inadequacy of lease notices, BLM continues to ignore this comment. A lease notice does not carry the legal weight of a lease stipulation, nor does it alter the terms or conditions of the BLM's standard oil and gas lease. BLM regulations are clear on this point: An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.⁶ We continue to urge BLM to apply density and surface use stipulations (along with TL stipulations) in important habitat, including migration corridors. If the current Land Management Plan does not allow for sufficient stipulations to protect big game, NWF urges BLM to defer leases within habitat and migration corridors until it can amend the RMP.

IV. Conclusion

The National Wildlife Federation and the Nevada Wildlife Federation appreciate the opportunity to protest the June 2020 lease sale for Nevada. Thank you for your time and consideration.

Sincerely,

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⁶ See 43 C.F.R. § 3101.1-3

