



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Nevada State Office
1340 Financial Boulevard
Reno, Nevada 89502-7147
<http://www.blm.gov/nevada>

In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0138 2969 14

DECISION

Sierra Club : Protest of Parcels in the
Christian F. Gerlach : June 30, 2022
P.O. Box 231438 : Competitive Oil and Gas Lease Sale
Las Vegas, NV 89105

Protest Dismissed Parcels Offered For Sale

On May 18, 2022, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from The Sierra Club, et al (SC), which protested all five parcels located in the Battle Mountain District scheduled to be offered at the June 2022 Competitive Oil and Gas Internet Lease Sale (the Sale). The protest package included a three-page letter signed by SC, 889 identical form letters with non-substantive comments, and 3,409 additional form letters with no individual comments.

The form letters attached to SC's protest do not take issue with particular parcels or analysis thereof, and as a result, BLM has not prepared additional protest decisions. For a discussion of GHG emissions and reasonably foreseeable impacts from the sale, see Environmental Assessment (EA) Section 3.2.2 and the Annual GHG report, which was incorporated by reference into BLM's National Environmental Policy Act (NEPA) analysis.

To the extent SC has raised specific arguments in regards to the parcels proposed to be made available for lease, our response is provided below.

The five protested parcels rely on the Battle Mountain District Office's (BMDO) EA, DOI-BLM-NV-B000-2021-0007-Other and Finding of No Significant Impact (FONSI).

BACKGROUND

The BLM posted the Sale Notice on April 18, 2022 offering five parcels for the June 2022 Lease Sale. The five nominated parcels included land in federal mineral estate located in the BLM

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>

Nevada's Battle Mountain District. After the NVSO completed preliminary adjudication² 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 October 30, 2021, the NVSO sent a preliminary parcel list to the BMDO for review. This interdisciplinary parcel review included internal scoping by a team of BLM specialists; review of geographic information system (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 (LUP); and preparation of an EA documenting NEPA compliance.³

The EA tiered to the existing Land Use Plans,⁴ in accordance with the BLM's NEPA Handbook, H-1790-1, and with the Code of Federal Regulations (CFR) at 40 CFR 1502.1-24.

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).⁵ 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 the Federal Land Policy and Management Act (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

² 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.

³ 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.

⁴ The EA is in conformance with the Tonopah RMP, approved in 1997, the associated Record of Decision, and all subsequent applicable amendments.

⁵ See BLM, H-1624-1, *Planning for Fluid Minerals Handbook*, (Feb. 2018)

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 EA considered three (3) alternatives:

- Alternative A- The “Proposed Action” alternative, which included offering all nominated parcels that were sent for review, with stipulations from the existing Resource Management Plans (RMPs).
- Alternative B- Alternative B removes parcels overlapping the Railroad Valley Wildlife Management Area (WMA). Under this alternative, parcels 1499, 1502, 1503, 1512, and 6909 would not be offered. Parcels 1508, 1510, 1513, 6910, and 6912 would be offered, totaling 2,560 acres, with stipulations from the existing RMPs.
- Alternative C- 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, an alternative removing parcels overlapping the Railroad Valley WMA, and the no action alternative. 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 April 18, 2022, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for June 30, 2022*⁶ (Notice), resulting in a total of five parcels offered for lease. This protest challenges the Sale, BMDO EA (DOI-BLM-NV-B000-2021-0007-Other), FONSI, and the five parcels described in the Notice.⁷

ISSUES

The SC protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, and the Endangered Species Act of 1973 (ESA), 16 U.S.C. § 1531 *et seq.* The following addresses SC’s protest related to the Sale.

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

A. Railroad Valley Springfish (*Crenichthys nevadae*)

⁶ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

⁷ The June 2022 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>

BLM Response:

The Railroad Valley Springfish is discussed in EA section 3.2.7.1. Offering parcels for lease does not in itself have potential to affect a species or its habitat. Further NEPA analysis and any needed Section 7 consultations would be conducted if and when a project is proposed on a leased parcel. Any parcels occurring within or near water resources including Railroad Valley Springfish habitat have been given the water resources Controlled Surface Use Stipulation (NV-B-10-B-CSU) to protect water resources. BLM Nevada standard lease notices (NV-B-00-A-LN) are applied to all parcels and notify the prospective lessees that threatened, endangered, or other special status species may now or in the future be found on any parcel. The BLM may recommend modifications to exploration and development proposals to further its conservation and management objective to avoid BLM-approved activity that will contribute to a need to list such a species or their habitat. The BLM may require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species or result in the destruction or adverse modification of a designated or proposed critical habitat. The BLM will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the ESA as amended, 16 U.S.C. §1531 et seq., including completion of any required procedure for conference or consultation. Additionally, parcel NV-2022-02-1503 was not included in the Sale Notice.

For these reasons, the above SC protest is dismissed.

B. Railroad Valley Tui Chub (*Siphaletes bicolor* ssp.)

BLM Response:

The Railroad Valley Tui Chub is discussed in EA section 3.2.7.1. Offering parcels for lease does not in itself have potential to affect a species or its habitat. Further NEPA analysis and any needed Section 7 consultations would be conducted if and when a project is proposed on a leased parcel. Any parcels occurring within or near water resources have been given the water resources Controlled Surface Use Stipulation (NV-B-10-B-CSU) to protect water resources. BLM Nevada standard lease notices (NV-B-00-A-LN) are applied to all parcels and notify the prospective lessees that threatened, endangered, or other special status species may now or in the future be found on any parcel. The BLM may recommend modifications to exploration and development proposals to further its conservation and management objective to avoid BLM-approved activity that will contribute to a need to list such a species or their habitat. The BLM may require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species or result in the destruction or adverse modification of a designated or proposed critical habitat. The BLM will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the ESA as amended, 16 U.S.C. §1531 et seq., including completion of any required procedure for conference or consultation. Additionally, parcels NV-2022-02-1512 and NV-2022-02-6909 were not included in the Sale Notice for this lease sale.

For these reasons, the above SC protest is dismissed.

C. Lockes Pyrg (*Pyrgulopsis lockensis*) & Western Toad (*Anaxyrus boreas*)

BLM Response:

Lockes pyrg and amphibian species, including the Western and Railroad Valley Toads, are discussed in section 3.2.7.1 of the EA. Offering parcels for lease does not in itself have potential to affect a species or its habitat. Further NEPA analysis would be conducted if and when a project is proposed on a leased parcel. Parcels near ground water resources have Controlled Surface Use stipulation (NV-B-10-B-CSU) to protect groundwater resources. BLM Nevada standard lease notices (NV-B-00-A-LN) are applied to all parcels and notify the prospective lessees that threatened, endangered, or other special status species may now or in the future be found on any parcel. The BLM may recommend modifications to exploration and development proposals to further its conservation and management objective to avoid BLM-approved activity that will contribute to a need to list such a species or their habitat. The BLM may require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species or result in the destruction or adverse modification of a designated or proposed critical habitat. The BLM will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the ESA as amended, 16 U.S.C. §1531 et seq., including completion of any required procedure for conference or consultation. Additionally, parcel NV-2022-02-1503 was not included in the Sale Notice for this lease sale.

For these reasons, the above SC protest is dismissed.

D. Ground Water Quality, Quantity, and State Sensitive Wildlife

BLM Response:

Potential impacts to water quality and quantity are addressed in EA section 3.2.4 and the Hydraulic Fracturing Technology Paper (S.I., Section 12). Once specific lease development is proposed, the direct effects of the project will be addressed and additional site-specific analysis will be conducted to address any water resource issues and potential impacts specific to the site not addressed at the leasing stage. BLM does analyze a Reasonably Foreseeable Development (RFD) scenario in the EA, which is based upon recent and historic development within the BMDO and provides the best available estimate of future development and disturbance on the proposed parcels. Any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations regarding water resources including the Clean Water Act, Safe Drinking Water Act, Hazardous Waste regulations, and the State of Nevada Hydraulic Fracturing Rules. In addition to any lease stipulations, the BLM reserves the right to move the site of a proposed project up to 200 meters due to resource concerns, to include water and wildlife resource issues (43 CFR 3101.1-2).

Any proposed hydraulic fracturing (HF) project would be required to comply with the State of Nevada HF regulations, including casing and cementing design, and disclosure of chemicals through FracFocus. In addition, an operator is required to comply with BLM regulations for Onshore Oil and Gas Operations (43 CFR 3160 et. Seq.) and the Onshore Orders, which regulate the drilling and construction of a well, as well as environmental

requirements. Oil reservoirs are substantially deeper than usable water resources in Nevada. Groundwater aquifers are protected through construction requirements, requiring their isolation, and through ongoing testing of the integrity of the well. The first measure of protection against polluting groundwater is the use of adequate, competent well casing and cementing of the casing strings. Water quality is further protected by extending cementing to below the ground water. Well casing integrity testing is performed on oil and gas wells prior to use and during prescriptive maintenance to ensure isolation from groundwater aquifer formations. The Nevada Administrative Code 522.728 further defines duties of the operator for conducting hydraulic fracturing operations.

The BLM would perform additional project and site-specific NEPA review for any proposed exploration or development projects; this analysis would include any proposed consumptive use of water as it relates to the proposed activity. Waters of the State, including groundwater and water rights are managed by the NV Division of Water Resources and the NV State Engineer. Any water required for drilling or completion operations would be acquired by the operator in accordance with State law from an existing permitted appropriation, or from a temporary diversion or water well permit from the NV State Engineer.

Parcels near ground water resources have Controlled Surface Use stipulation (NV-B-10-B-CSU) to protect groundwater resources. BLM Nevada standard lease notices (NV-B-00-A-LN) are applied to all parcels and notify the prospective lessees that threatened, endangered, or other special status species may now or in the future be found on any parcel. Site-specific avoidance, minimization, and/or mitigation measures would be determined at the time of proposed lease development and attached as Conditions of Approval (COAs) to the APD.

For these reasons, the above SC protest is dismissed.

E. Fossil Fuel production on public lands is the source of about a quarter of U.S. greenhouse gas pollution at a time scientists are saying we must move urgently to cut emissions by at least half.

BLM Response:

The BLM will continue to provide a relevant assessment and disclosure of the associated greenhouse gas (GHG) emissions from proposed actions and provide context and analysis of those emissions as they relate to global climate change. Currently, there is not a formal Federal policy establishing a national carbon budget or a final international consensus on which carbon budget the world should use for limiting global warming (1.5C or 2.0C) that the BLM can use to evaluate the significance of a proposed action. However, this may change in the future, such as via Council on Environmental Quality (CEQ) direction on addressing climate change and GHGs in NEPA. The BLM works in concert with other U.S. federal agencies, including the Environmental Protection Agency (EPA) and Department of Energy (DOE), to implement U.S. strategies and meet committed goals, including applicable executive and secretary's orders, to reduce GHG.

For these reasons, the above SC protest is dismissed.

DECISION

To the extent that SC 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, SC's protest of the Sale, Battle Mountain District EA, and FONSI is dismissed, and five parcels were offered for sale on June 30, 2022.

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 Justin Abernathy, Deputy State Director, Division of Energy and Minerals, at (775) 861-6585.

Justin Abernathy
Deputy State Director, Energy and Minerals
Nevada State Office

Enclosure:

1- Form 1842-1

cc (electronic):
WO310

NVB0000

NVB0100

NVB0200

NV0920 (J. Abernathy)

NV0922 (A. Jensen, F. Kaminer, J. Menghini, J. Estrella)

bcc: Kathryn Brinton, Office of the Solicitor, Pacific Southwest Region,
2800 Cottage Way, Room E-1712, Sacramento, California, 95825
Lease Sale Book June 2022
Reading File: NV-922