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April 26, 2017

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WildEarth Guardians
2590 Walnut Street
Denver, Colorado 80205

DECISION

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**SEPTEMBER 1, 2016 OIL & GAS LEASE SALE PROTEST OF 36 PARCELS
PROTEST DENIED**

ALL PROTESTED PARCELS WILL BE ISSUED

On May 20, 2016, the Bureau of Land Management (BLM), New Mexico State Office (NMSO) received a letter from WildEarth Guardians (WEG) protesting the offering of all 36 oil and gas lease sale parcels as described in the Notice of Competitive Lease Sale (Sale Notice) for the September 1, 2016, previously July 20, 2016, Competitive Oil and Gas Lease Sale.

The 36 parcels protested are located in Eddy and Lea Counties of southeast New Mexico. The parcels are unleased Federal mineral estate administered by the BLM Carlsbad Field Office (CFO) with the surface estate administered by either the BLM, New Mexico State Land Office, or private ownership. Altogether, the protested parcels aggregate approximately 13,876.08 acres.

BACKGROUND

These parcels were nominated by interested parties in accordance with 43 CFR § 3120.3. After preliminary adjudication of the nominated parcels by the NMSO, the parcels were reviewed by the CFO, including an interdisciplinary review, field visits to nominated parcels, review of conformity with the land use decisions for the planning area, and preparation of an Environmental Assessment (EA), documenting National Environmental Policy Act (NEPA) compliance. The NMSO also reviewed each of the parcels, and confirmed land use plan conformance with national and state BLM policies.

The preliminary parcel list was posted for a two-week public scoping period starting on December 14, 2015. The WEG did not provide any comments during this period. Prior to posting the Sale Notice for the parcels to be offered at the competitive sale, the BLM prepared an EA, in which the BLM tiered the analysis to the 1988 Carlsbad Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS), the 1997 Carlsbad RMP Amendment (RMPA) and FEIS for Oil and Gas Resources, and the 1997 Roswell Resource Area RMP and FEIS. The Special Status Species RMPA Record of Decision, signed in 2008, amends these plans in portions of Chaves, Eddy, Lea and Roosevelt Counties, New Mexico, with reference to Planning Areas as described in that document. The purpose of the leasing EA is to analyze specific parcels to determine what reasonably foreseeable impacts may occur from leasing. The EA augments the decisions made in the RMP with current on-the-ground information.

The 30-day public comment period of the EA and unsigned Finding of No Significant Impact (FONSI) commenced on February 8, 2016. The WEG did provide comments to the BLM during this period. On April 20, 2016, the 30-day protest period commenced. A total of two protests were received, one from the WEG and another from the Center for Biological Diversity. Each Protest will be responded to separately. The WEG requested for the 36 parcels be removed from the sale.

On April 20, 2016, the BLM posted the July 2016 Sale Notice for public review. The Sale Notice described the manner in which a member of the public could protest inclusion of lands in the planned sale (at pages vi-viii), including these requirements:

- A protest must state the interest of the protesting party in the matter.
- If the party signing the protest is doing so on behalf of an association, partnership or corporation, the signing party must reveal the relationship between them. For example, unless an environmental group authorizes an individual member of its group to act for it, the individual cannot make a protest in the group's name.

In the WEG protest letter (pages 2 and 3), they provided a summary of their organizations' general objectives. The protest letter was signed by one individual affiliated with the WEG (at page 13), and provided the name, address, and contact information for the WEG, explaining (at page 2):

WildEarth Guardians is a nonprofit environmental advocacy organization dedicated to protecting the wildlife, wild places, wild rivers, and health of the American West.

The BLM's regulations addressing protests of competitive oil and gas lease sales (at 43 CFR § 3120.1-3) do not describe any limitations as to who may protest inclusion of lands in a Sale Notice. The issue of standing for purposes of appealing a BLM decision to dismiss and deny lease sale protests was addressed by the Interior Board of Land Appeals (IBLA). In *Biodiversity Conservation Alliance et al.* (183 IBLA 97, decided January 8, 2013), the IBLA evaluated the

standing of the appellants to challenge the BLM's decisions to dismiss and deny protests related to certain oil and gas lease sale parcels, and determined (183 IBLA 97, 108):

... since the BLM decision at issue involves the leasing of several parcels of land for oil and gas purposes, each of the appellants must show an adverse effect as a result of the leasing of each parcel to which it objects, in order to be recognized as having standing to appeal the decision to lease that parcel.

In the WEG protest of the 36 parcels from the July 2016 Lease Sale, the party has provided to the BLM "colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, sufficient to establish a causal relationship between the approved action and the injury alleged" (183 IBLA 97, 107). The closest the WEG comes to establishing allegations of an adverse effect are within the description of the WEG's interests (WEG Protest on page 2), which states:

On behalf of our members, Guardians has an interest in ensuring the BLM fully protects public lands and resources as it conveys the right for the oil and gas industry to develop publicly owned minerals.

However, it is not clear whether this statement establishes the WEG as a party to the case and as having a legally cognizable interest that would be adversely affected by the BLM's decision to issue any of the protested leases.

In addition, it is not clear that a legally cognizable interest can be demonstrated by the WEG for those parcels located in the Carlsbad Field Office where the surface estate is privately owned, but overlying Federal minerals, whereas any public entry without the consent of the surface owner would constitute a trespass. Of the 36 offered parcels, 18 parcels are located entirely on privately owned surface estate (-002, -005, -013, and -022 thru -036), and three parcels are a combination of public and private surface estate (-015, -017, and -018).

Nonetheless, given the BLM's directions to the public in the Sale Notice regarding submittal of protests, and the lack of specific agency guidance for adjudicating when an individual or group may have standing to protest lease parcels, the BLM has decided to answer the specific arguments made by the WEG. However, the BLM does so with the reservation that the protestors may not have standing to bring an appeal to the IBLA of our protest decision.

On June 27, 2016, the Sale Notice was amended due to a location change and date for the July 20, 2016, Competitive Oil and Gas Lease Sale. In order to provide the public with a 45-day notice of the lease sale changes, the sale was postponed to September 1, 2016. At the sale, all of the protest parcels were bid on successfully, and the necessary monies were subsequently received by the BLM. Given the pending protest, the BLM has not issued the leases.

ISSUES

The BLM has reviewed the protestors' arguments in their entirety; the protestors' arguments are numbered and in bold, with BLM responses following.

1. The BLM failed to fully analyze and assess the direct, indirect, and cumulative impacts of greenhouse gas emissions that would result from issuing the proposed lease parcels.

BLM Response:

NEPA requires the BLM to analyze the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions of any agency or individual. The leasing EA analyzed the direct, indirect, and cumulative impacts of leasing the parcels in accordance with NEPA's requirements, 40 CFR § 1508.7. The WEG argue that the total estimated emissions of 18,795 metric tons annually from 401 wells were incorrect (page 4) because the BLM relied upon "erroneous emissions inventory information." The BLM disagrees with the WEG and finds that its methodology for estimating greenhouse gas emissions (GHG) is correct.

The BLM disclosed GHG emissions based on full development of the leases. The BLM's method used to analyze GHG emissions in the EA initially utilized GHG emissions inventory data found in the 2014 EPA GHG Inventory. Data from the current 2016 EPA GHG Inventory was then used to update the EA. Specifically, Tables 6 and 7 of the EA were updated with the new data and an arithmetic error was corrected in Table 5, and corresponding text was changed in the EA to reflect these changes. The EA now shows an estimate of 124 metric tons of CO₂e per well per year of GHG emissions. In the event of full development, as defined in the EA at 401 wells, the total GHG emissions would be 49,907 metric tons of CO₂e per year. The updated EA includes the BLM's method used to calculate the number of wells, as well as a discussion of the Reasonable Foreseeable Development for the Pecos District.

The EA analyzes and assesses the direct, indirect, and cumulative impacts of GHG emissions that would result from issuing the proposed leases. The lack of scientific tools designed to predict a single proposed action's impact on climate change at a regional or local scale limits the ability to assess its effect on global climate change.

In the Environmental Consequences section 4.3.2 of the EA, it states that "[T]he total emissions from Federal leases in the Permian in 2014 were 1,548,611 metric tons CO₂e. For the proposed action, the maximum number of wells that could be drilled on the 36 parcels would be 401. In the event that full development occurs and all wells were individually drilled, the maximum emissions resulting from the proposed action would be 49,907 metric tons of CO₂e per year (or 0.0007 percent of total annual metric tons of CO₂e) for the proposed action. On a per well basis, this amounts to 124 metric tons of CO₂e emissions per year."

It is difficult to discern with certainty what end uses for the fuels extracted from a particular leasehold might be reasonably foreseeable. There is also uncertainty with regard to the actual

development that may occur as an indirect result of the proposed action. The BLM does not exercise control over the specific end use of the oil and gas produced from any individual Federal lease. The BLM has no authority to direct or regulate the end use of produced oil and/or gas.

Even though the proposed action of leasing would not contribute to cumulative effects on air resources, future foreseeable development could contribute to cumulative GHG emissions. Language regarding the general cumulative impacts of GHG emissions was added to the Environmental Consequences section in the EA. Uncertainties regarding the numbers of wells and other factors result in a moderate to high degree of uncertainty and speculation with regard to GHG estimates at the leasing stage. At the APD stage, more site-specific information on oil and gas activities resulting in GHG effects would be described in detail. Also at the APD stage, the BLM would review and evaluate operations, require mitigation measures, and encourage operators to participate in the voluntary STAR program.

Having set forth the anticipated incremental impacts anticipated by full development of the leases, the EA appropriately disclosed the direct, indirect, and cumulative impacts that the proposed action would have on GHGs, as well as, its acknowledgement to the uncertainty of the emission quantity of GHGs. WEG's statement of reasons have been found to be without merit, and is therefore denied.

2. The BLM failed to analyze the costs of reasonable foreseeable carbon emissions using well-accepted, valid, credible, GAO-endorsed, interagency methods for assessing carbon costs that are supported by the White House.

BLM Response:

The WEG argues that the BLM did not comply with NEPA because the agency did not determine the potential costs to society from the potential GHGs emitted from lease operations, particularly utilizing the Social Cost of Carbon (SCC) protocol.

Consistent with *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013), the BLM has used estimated GHG emissions associated with the proposed action as a reasonable proxy for the effects of climate change in this analysis. The estimated level of GHG emissions can serve as a reasonable proxy for assessing potential climate change impacts, and provide decision makers and the public with useful information for a reasoned choice among alternatives. The BLM has placed said emissions in the context of relevant state emissions. This approach is also consistent with past BLM quantifications considering the incremental impacts of similar BLM leasing actions, as in *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013); *WildEarth Guardians v. BLM*, Civ. Case No. 1:11-cv-1481 (RJL) (D.D.C. Mar. 21, 2014).

The BLM finds that including monetary estimates of the SCC in its NEPA analysis for this proposed action would not be useful to its analysis. Determining the SCC is influenced by many factors, subject to great uncertainty. Estimating SCC is challenging because it is intended to model effects at a global scale on the welfare of future generations caused by additional carbon

emissions occurring in the present. A Federal Interagency Working Group (IWG) on the SCC convened by the Office of Management and Budget, developed estimates of the SCC, which reflect the monetary cost incurred by the emission of one additional metric ton of carbon dioxide. However, the BLM found that including complex monetary estimates of the SCC does not inform its decision making process.

Given the global nature of climate change, estimating SCC of an individual decision requires assessing the impact of the project on the global market for the commodity in question. While we are able to estimate the GHG emissions associated with typical development, we have not estimated the net effect of this action on global GHG emissions or climate change. Depending on the global demand for oil and gas, the net effect of any development associated with this project may be partially offset by changes in production in other locations. Accounting for this potential substitution affect is not addressed by the IWG protocol. As set forth in *EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016), there is a lack of consensus on the appropriate discount rate leading to significant variation in output. SCC does not measure the actual incremental impacts of a project on the environment. And there are no established criteria identifying the monetized values that are to be considered significant for NEPA purposes.

Further, the NEPA analysis for this proposed action does not include monetary estimates of any benefits or costs. The quantitative economic analysis is primarily a regional economic impact analysis, which is used to estimate impacts on economic activity, expressed as projected changes in employment, personal income, or economic output. These indicators are not benefits or costs, as defined in a benefit cost analysis. Without any other monetized benefits or costs reported, monetized estimates of the SCC would be presented in isolation, without any context for evaluating their significance. This limits their usefulness to the decision maker. Therefore, the WEG's arguments regarding SCC calculations have been found to be without merit and are therefore denied.

DECISION

After a careful review, it has been determined that the protests to the 36 parcels in this sale will be denied for the reasons described above. All of the protested parcels described in the September 1, 2016 (previously July 20, 2016) Sale Notice will be offered for sale. As mentioned above, the sale date was amended due to the postponement of the sale due for a change in location.

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 (Enclosure 1). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from is in error.

If you wish to file a Petition for a Stay of this Decision, pursuant to 43 CFR Part 4, the Petition 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 the 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.

/s/Amy Lueders

Amy Lueders
State Director

1 Enclosure
1 - Form 1842-1

cc: w/o enclosures
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