



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

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Western Environmental Law Center  
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### **DECISION PROTESTS DENIED OCTOBER 22, 2014, OIL & GAS LEASE SALE**

On August 14, 2014, the Bureau of Land Management (BLM), New Mexico State Office (NMSO) timely received a letter from Western Environmental Law Center (WELC) and nine additional environmental-advocacy groups (WELC et al.)<sup>1</sup> protesting the offering of 13 parcels (NM-201410-001, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014, and -015) as described in the Notice of Competitive Lease Sale (Sale Notice) for the October 22, 2014 Competitive Oil and Gas Lease Sale.

The 13 parcels protested are located in Rio Arriba and Sandoval Counties, New Mexico within the Santa Fe National Forest (SFNF). The parcels are unleased Federal mineral estate administered by the BLM Farmington Field Office (FFO) with the surface estate administered by the United States Forest Service (USFS). The BLM issues and administers oil and gas leases on USFS lands only if the USFS does not object to leasing of specific lands. Altogether, the protested parcels aggregate approximately 20,146.67 acres.

### **BACKGROUND**

These parcels were nominated by interested parties in accordance with 43 CFR § 3120.3. After adjudication of the nominated parcels by the NMSO, the parcels were reviewed by the USFS to ensure leasing of the parcels would be in conformance with the applicable SFNF Plan decisions.

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<sup>1</sup> WELC submitted a single protest on behalf of WELC, Amigos Bravos, Chaco Alliance, Diné Citizens Against Ruining Our Environment, Earthworks, Natural Resources Defense Council, Rio Arriba Concerned Citizens, San Juan Citizens Alliance, Sierra Club Environmental Law Program, and WildEarth Guardians. For the purposes of this protest, the BLM will address the protestors, collectively, as WELC et al.

The USFS did not object to leasing of these parcels and required the inclusion of appropriate stipulations (30 U.S.C. § 226(h)).

The role of the BLM in issuing oil and gas leases for lands managed by the USFS was changed by the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA), which amended 30 U.S.C. §226. As a result of FOOGLRA, when USFS-administered lands are being considered for oil and gas leasing, the BLM must not issue any lease over the objection of the USFS, and the USFS can require the inclusion of appropriate stipulations (30 U.S.C. § 226(h)). The USFS must verify the lands have been adequately analyzed in a forest plan level leasing analysis, that leasing decisions are based on the analysis, and that there is no new significant information or circumstances requiring further environmental analysis. Leasing analysis must comply with National Environmental Policy Act (NEPA) and its implementing regulations at 40 § CFR 1500-1508 in considering the effect of leasing on the human environment, including reasonably foreseeable future development. If the USFS does not object to leasing, then the BLM retains separate, independent authority to decide whether to include USFS-administered lands in a lease sale and to impose additional stipulations, as described at 43 CFR § 3107-2.

The parcels were also reviewed by the FFO including interdisciplinary review, field visits to nominated parcels (where appropriate), review of conformity with the land use decisions for the planning area and preparation of an Environmental Assessment (EA) documenting NEPA compliance. The NMSO also reviewed each of the parcels, and confirmed plan conformance and conformance with national and state BLM policies.

The preliminary parcel list was posted for a two-week public scoping period on March 10, 2014. Prior to posting of the Sale Notice advertising the parcels to be offered at the competitive sale, the BLM prepared an EA in which the BLM tiered the analysis to the SFNF Oil and Gas Leasing and Roads Management Environmental Impact Statement (EIS) and Record of Decision (ROD) issued in 2008 and Supplemental EIS issued in 2012. The purpose of the lease sale EA is to analyze specific parcels to determine what reasonably foreseeable impacts may occur from leasing. The EA augments the decisions made in the EISs with current on-the-ground information. The 30-day comment period of the EA and unsigned Finding of No Significant Impact (FONSI) commenced on May 1, 2014. WELC et al. did provide comments to the BLM during this period. The 30-day protest period commenced on July 16, 2014. A total of 116 protests were received. WELC et al. requested the 13 parcels be removed from the sale.

On October 22, 2014, the BLM conducted a competitive oil and gas lease sale during which all of the protest parcels were successfully bid upon, and the necessary monies were subsequently received by the BLM. Given the pending protest, the BLM has not issued the leases.

## **ISSUES**

The remainder of our responses will address the protestors' arguments related to the 13 parcels. The BLM has reviewed the protestors' arguments in their entirety; the protestors' substantive arguments are numbered and summarized in bold, with BLM responses following.

**1. The BLM Cannot Lease the Subject Parcels while the Mancos Shale/Gallup Formation RMPA and EIS Remains Uncompleted.**

BLM Response:

WELC et al. alleges that because the BLM has deferred 22 non USFS parcels from the October 2014 lease sale, it would be unlawful for the BLM to move forward with leasing the 13 USFS parcels while the Farmington Mancos Gallup Resource Management Plan Amendment (RMPA) and EIS is underway.

Because these parcels are within the administrative boundary and jurisdiction of the USFS, the 2003 FFO RMP and any ongoing RMP revisions or amendments are not applicable. In accordance with the BLM-USFS Memorandum of Understanding (MOU) dated March 14, 2006 (BLM MOU WO300-2006-07), the issuance of leases located on USFS-administered surface estates will conform to the applicable Forest Plan.

The USFS SFNF completed the 2008 and 2012 EISs for Oil and Gas Leasing and has not identified the need to amend or supplement the EISs or their Forest Plan to address unforeseen activities. As such, the USFS has determined they have valid EISs and Forest Plan that supports leasing of the parcels proposed for lease.

If these parcels were not on USFS-administered surface estates and were within the scope of the 2003 FFO RMP decision space, the ongoing amendment process of the FFO RMP is not a reason to defer the offering of leases for lands that are open to leasing under the existing RMP. The BLM may offer parcels for lease and issue new leases when a RMP is being amended, if the leasing decision conforms to the existing RMP and is supported by the underlying EIS. See Powder River Basin Resource Council, 180 IBLA 1, 17 (2010); Montana Trout Unlimited, 178 IBLA 159, 171 (2009); and Sierra Club Legal Defense Fund, Inc., 124 IBLA 130, 140 (1992). The Interior Board of Land Appeals (IBLA) has also specifically held that the BLM is not required to suspend oil and gas leasing pending the RMP update process (see Wyoming Outdoor Council, 156 IBLA 377, 384 (2002)).

The parcels are outside of the scope of the decision area for the BLM RMPA. The BLM appropriately relied upon the USFS's analysis of the lease parcels and their lack of objection of offering parcels. Therefore, the statement of reason has been considered, found to be without merit and is denied.

**2. The BLM is Required to Prepare an EIS and Failed to Provide a Convincing Statement of Reasons Why the Lease Sale will Impact the Environment No More than Insignificantly. BLM impermissibly relies on mitigation measures to avoid a finding of significance.**

BLM Response:

The BLM has combined several of WELC et al.'s other statements of reason into this one category as they all have a relevant response. The additional statements of reasons are as follows:

- The BLM failed to take a “hard look” by predetermining its NEPA analysis. BLM not only violates NEPA but FLPMA by creating the presumption in favor of oil and gas leasing and development.
- The BLM failed to take a “hard look” at the direct, indirect, and cumulative impacts of oil and gas leasing and development.
- Because an irretrievable commitment of resources will occur at the lease sale stage, BLM must consider impacts prior to the sale. Site-specific analysis is needed. The BLM failed to take a “hard look” at hydraulic fracturing.
- **The BLM failed to take a “hard look” at impacts to human health, human communities, cultural values, and environmental justice.**

Section 102(2)(C) of NEPA requires consideration of the potential environmental impacts of a proposed action in an EIS if that action is a “major Federal action[s] significantly affecting the quality of the human environment” (42 U.S.C. § 4332(2)(C)). The BLM must consider all relevant matters of environmental concern, take a “hard look” at potential environmental impacts, and make a convincing case that no significant impact will result that has not already been addressed in an EIS or that any such impact will be reduced to insignificance by adoption of appropriate mitigation measures (see Wyoming Outdoor Council, 173 IBLA 226, 235 (2007)).

The level of environmental analysis conducted for the October 2014 Lease Sale is consistent with the purpose and need for the action. The BLM identified, disclosed, and analyzed in the EA potential impacts that could arise from offering the parcels, including the impacts of hydraulic fracturing in the Environmental Impact sections related to Air Resources, Water Resources, Wildlife and Environmental Justice. The EA made available for the protest period acknowledges that oil and gas exploration, drilling, hydraulic fracturing or production may result in increased traffic, air pollution, and noise (pp. 51, 53-57, 60, 62 and 64-67). The EA also describes potential positive impacts associated with oil and gas operations, including increased employment, population, and revenues.

The October 2014 Lease Sale EA tiers to the USFS SFNF 2008 and 2012 EISs where appropriate, and includes additional information as necessary. “Tiering” and “incorporation by reference” are two concepts, which are provided in the Council of Environmental Quality (CEQ) regulations implementing NEPA and which are designed to reduce redundant paperwork and analysis in the NEPA process (see 40 CFR §1502.20 and §1502.2). Through the use of tiering or incorporation by reference, federal agencies need not repeat analysis and content that is already contained in another NEPA document previously prepared by that agency or another in order to comply with NEPA.

The October 2014 Lease Sale EA and USFS SFNF 2008 and 2012 EISs, concluded that the sale of parcels and issuance of oil and gas leases is strictly an administrative action that does not authorize ground-disturbing activities. While BLM acknowledges that leasing carries a right-to-use leased land subject to BLM controls, direct impacts from the act of leasing are not a foregone conclusion. Nonetheless, there are indirect effects, arguably caused by the act of leasing. Indirect effects are caused by the action, are later in time, but are still reasonably foreseeable, and may occur at some point after implantation of the proposed action (see 40 CFR § 1508.8(b)). The effects analysis in the section titled Environmental Impacts of the October 2014 Lease Sale EA addresses indirect effects that could result from leasing these lands for oil and gas development and production. The EA addresses typical oil and gas exploration and development activities, including the potential future use of a particular type of well stimulation (hydraulic fracturing), which are generally anticipated as a result of lease issuance. Although the USFS SFNF 2008 and 2012 EISs do not provide site-specific information about oil and gas development activities, the EISs provide substantial information on potential surface disturbing impacts, as well as cumulative impacts related to the human and natural environment. The October 2014 Lease Sale EA and USFS SFNF 2008 and 2012 EISs identified several stipulations that the USFS and BLM would attach to the leases which are designed to protect cultural and visual resources, wildlife habitat, surface integrity, riparian areas and wetlands, and recreation areas. Lease stipulations attached to the parcels immediately mitigate some negatives impacts from future development.

Ground disturbing activities cannot occur until a lessee applies for and receives approval for drilling on the lease. For this reason, without a discrete development proposal, the use of hydraulic fracturing in the oil and gas exploration and development process cannot be determined at the lease stage. When a well is proposed for development, it must undergo a project-specific NEPA analysis when an Application for Permit to Drill (APD) is received. The site-specific analysis addresses the location, intensity, and timing of development, ensures that lease stipulations are applied and the project is in full compliance with Federal, State, Local, and Tribal laws, rules, regulations, and policy. When the proposed development is anticipated to or has the potential to have impacts on a resource(s), the analysis would identify Best Management Practices (BMP) and attach additional restrictions and mitigations, known as Conditions of Approval (COA) that would minimize or eliminate the impacts. If adverse impacts are unavoidable, the project may not be approved or additional environmental analysis will be performed to disclose the effects.

Visual quality was not addressed in the October 2014 Lease Sale EA made available for the protest period; however, the USFS SFNF 2008 EIS addresses impacts from oil and gas leasing on visual resources (pp. 184-194). Five parcels have Controlled Surface Use Stipulation for Retention Visual Quality Objective (High Scenic Integrity Objective) (CSU3B) attached, which informs the lessee that surface disturbance activities must be located and designed to be consistent with the visual quality objective of “retention” (or the scenic integrity of “high”) or to reclaim disturbed areas to meet visual quality objectives within one to three years from project startup. Lessees can achieve this requirement by following industry’s BMPs for minimizing impacts to visual quality, along with implementing visual quality guidelines in the Forest Plan

Forest Service Scenery Management System Handbook (Agriculture Handbook 701). If development is proposed, the USFS would site the access road and well pad in such a way that minimizes the visibility of the surface disturbance from roads, trails, and towns. As well, COAs could be attached depending on the need to reduce the visual impacts. Potential COAs include but are not limited to low profile tanks, and painting the tanks a color that blends with the surrounding environment. Proper implementation of mitigation measures, BMPs, and COAs can greatly reduce visibility of the development, especially from further distances. These measures would prevent degradation of scenic beauty. Scenic beauty could be an added value to property in the surrounding areas and is valued by recreationist visiting the area.

Based on the lease stipulations accompanying the parcels and the requirement for additional site-specific analysis and mitigation, the impacts of future development would not rise to the level of significance and a FONSI is warranted. As well, no new evidence was presented that was not already considered in the October 2014 Lease Sale EA or the USFS SFNF 2008 and 2012 EISs or that is not already regulated by Federal or State laws, rules, regulations, or policy. In conclusion, the BLM adequately addressed potential impacts to the human environment and the environmental consequences of how development may affect human health and safety, as well as the socioeconomics of development. Therefore, the statement of reasons have been considered, found to be without merit and are denied.

### **3. The BLM failed to take a “hard look” at impacts to air quality and climate change.**

#### BLM Response:

The BLM analyzed air resources including air quality and climate in the October 2014 Lease Sale EA starting on page 21 of the EA made available for the protest period. In the analysis, the BLM provided a brief description of when air quality could be impacted, an estimate of the expected greenhouse gas (GHG) emissions, and the large context of GHG emissions and climate change. The analysis incorporates by reference the Air Resources Technical Report for Oil and Gas Development<sup>2</sup> (Technical Report). The purpose of the Technical Report is to summarize the technical information on air quality and climate change and to collect and present the data and information needed for air quality and climate change analysis pertaining to oil and gas development.

The October 2014 Lease Sale EA estimated the total GHG emissions anticipated if all 25 nominated parcels considered under the Proposed Action - Alternative B were leased at 11,611 metric tons CO<sub>2</sub>e annually; however, the decision was to lease only 13 of the 25 parcels. Using the reasonable foreseeable development scenario in Table 19 of the October 2014 Lease Sale EA made available for the protest period, it can be determined that if full lease development occurred on the 13 parcels a total of 67 vertical wells would be drilled resulting in 6,592.8 metric tons

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<sup>2</sup> US Department of Interior. BLM. 2014. Air Resources Technical Report for Oil and Gas Development. New Mexico State Office. [http://www.blm.gov/nm/st/en/prog/more/air\\_resources/air\\_resources\\_technical.html](http://www.blm.gov/nm/st/en/prog/more/air_resources/air_resources_technical.html).

CO<sub>2</sub>e annually. The amounts to 0.0001% of the total GHG emissions from all sources in the United States and 0.15% of the total emissions from oil and gas field production in New Mexico. Cumulatively the level of emissions anticipated is insignificant.

Flaring occurs when natural gas that is produced at oil and gas wells cannot be captured or vented safely and efficiently. Natural gas is a valuable resource and most producers would rather capture natural gas than flare it. At the time of a lease sale, it is not possible to predict whether a well developed on the lease will flare or not. Compared to the air quality issues associated with venting of natural gas directly to the atmosphere, flaring is a preferred method of releasing natural gas that cannot be captured because it minimizes the emissions of methane, a potent GHG, and volatile organic compound, which may be hazardous to human health and also contribute to the formation of ozone. The BLM encourages industry to incorporate and implement BMPs, which are designed to reduce impacts to air quality by reducing emissions. Typical measures include: adherence to BLM's Notice to Lessees (NTL) 4A, Royalty or Compensation for Oil and Gas Loss, concerning the venting and flaring of gas on Federal leases for natural gas emissions that cannot be economically recovered and flaring hydrocarbon gases at high temperatures in order to reduce emissions of incomplete combustion. As well, the BLM encourages operators to adopt proven, cost-effective technologies and practices that improve operation efficiency and reduce emissions (i.e. Environmental Protection Agency's (EPA) Natural Gas Star Program).

In October 2012, EPA promulgated air quality regulations for completion of hydraulically fractured gas wells. These rules require air pollution mitigation measures that reduce the emissions of volatile organic compounds during gas well completions. Mitigation includes a process known as "Green Completion" in which natural gas brought up during flowback must be recaptured and reroute into the gathering line thus reducing the emissions of Volatile Organic Compounds (VOCs). WELC et al. also allege the BLM must consider the social cost of carbon (SCC). As for addressing potential costs to society from GHG emissions, the CEQ's 2014 Draft Guidance explains (p. 16):

*Monetizing costs and benefits is appropriate in some, but not all, cases...*

Highlighting the transformative nature of climate change impacts assessments, such as SCC estimates, the CEQ's 2014 Draft Guidance instructs agencies (p. 16 footnote omitted):

*When using the Federal social cost of carbon, the agency should disclose the fact that these estimates vary over time, as associated with different discount rates and risks, and are intended to be updated as scientific and economic understanding improves.*

The BLM Washington Office's (WO) April 3, 2015 e-mail (issued after the Lease Sale was held) notes that:

*In response to public comments, some BLM field offices have included estimates of the SCC in project-level NEPA documents. We are working on additional guidance for the field. Until*

*such guidance is provided, if BLM managers believe that public interest or other factors make it appropriate to include the SCC, please contact the BLM WO for technical assistance before issuing any NEPA documents.*

As these statements demonstrate, there remain uncertainties involved with estimating SCC for GHG emissions. While we agree that some level of uncertainty is unavoidable in assessing impacts from complex environmental systems, in this case that uncertainty is compounded by basing any potential SCC estimates on speculative GHG emissions. *Cf.*, *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 2014 U.S. Dist. LEXIS 170072 (D. Or. Dec. 9, 2014) (holding that an SCC analysis is not required to comply with NEPA where there is no clear way to quantify costs and benefits). The BLM also has acknowledged that climate science does not allow a precise connection between project-specific GHG emissions and specific environmental effects of climate change. This approach is consistent with that upheld when considering NEPA challenges to Federal coal leasing decisions (*WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 n.5 (D.C. Cir. 2013); *WildEarth Guardians v. BLM*, 8 F. Supp. 3d 17; 34 (D.D.C 2014)).

No new evidence was presented that was not already considered in the October 2014 Lease Sale EA or the Technical Report or that is not already regulated by Federal or State laws, rules, regulations, or policy. In conclusion, the BLM adequately addressed potential impacts to air quality and climate and the environmental consequences of how development may affect air resources. Therefore, the statement of reason has been considered and found to be without merit and is denied.

**4. The BLM failed to take a “hard look” at impacts to water resources, particularly water quality and quantity, from oil and gas leasing and development, including the use of hydraulic fracturing.**

BLM Response:

The FFO addressed potential impacts to water resources in the section titled Environmental Impacts, Water Resources which begins on page 37 of the October 2014 Lease Sale EA made available for the protest period. The EA analysis determined that there were no impacts to water resources from leasing the parcels; however, there could be indirect impacts to water resources from reasonably foreseeable oil and gas development on the leases, including groundwater contamination from inadequate casing and cementing of the wellbore; surface water contamination from accidental spills or releases of drilling fluids, hydraulic fracturing fluids, produced water, or chemicals used during development and production of a well; and groundwater depletion. The EA also concluded that “Adherence to APD COAs and other design measures would minimize potential effects to groundwater quality.”



## *Quality*

As stated in the October 2014 Lease Sale EA, “there are no verified instances of hydraulic fracturing adversely affecting groundwater in the San Juan Basin.” This can, in part, be attributed to the fact that “the producing zone targeted by both action alternatives is well below any underground sources of drinking water.” The EA states that the typical depth of groundwater in the San Juan Basin is 500 feet or less, and that any future hydraulic fracturing is expected to occur deeper than 5,700 feet as measured from the surface. The USFS SFNF 2008 EIS states the water depths in domestic wells are shallow ranging from six feet deep in the Arroyo Chijuilla watershed to 304 feet in the Rio Gallina watershed. Based on the distance between the groundwater and the targeted formations, no adverse impacts to groundwater are expected to occur.

The potential for drilling or hydraulic fracturing fluids or produced water to contaminate groundwater is significantly reduced if wells are properly cased and cemented. The BLM has adopted stringent requirements for casing and cementing of well bores (see Onshore Oil and Gas Order No. 2, Drilling Operations on Federal and Indian Oil and Gas Leases). As part of a complete APD package the operator must submit a drilling plan which includes the proposed casing and cementing program. The BLM thoroughly reviews these plans for every APD submitted to ensure that usable groundwater is isolated and that all BLM and state requirements for casing and cementing have been met or exceeded. While a well is being drilled, the BLM inspectors are onsite when the surface casing is installed and cemented to confirm that the operator is following the approved casing and cementing plan. The BLM inspectors verify cement integrity by witnessing casing pressure tests. These measures are intended to ensure that hydrocarbon-bearing strata at great depths remain isolated from surface waters and freshwater-bearing strata at shallow depths. New downhole tools are being used to detect the presence and quality of cement resulting in more precise results. If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing must be re-cemented, repaired, or an additional casing string run and the casing tested again. All results are recorded in the driller’s log.

Because there are a number of chemicals that are used, stored, and/or produced on each well site, there is a potential for spills and leaks (which are described as ‘undesirable events’) to occur. The BLM has established regulations that require -- to the extent possible -- prevention of spills and leaks, reporting (via NTL 3A, Reporting of Undesirable Events), and emergency response. The first mitigation measure is at the APD phase in which the BLM works with the operator to site the well pad, tank battery, and access road as far as possible from the water source and the use of a close-loop drilling system if practicable. In addition, COAs are attached to APDs (e.g. impermeable liners for pits, secondary containment structures around all storage facilities including tank batteries, complying with the EPA Spill Prevention, Control and Countermeasure regulations (40 CFR § 112)), and BMPs, such as storing chemicals off the ground to prevent contact with the soil and standing water, to reduce the likelihood of these undesirable events occurring, and to mitigate damage from a spill or leak through remediation and reclamation.

Each field office maintains records of spills and leaks that occur within their jurisdiction. In addition, the New Mexico Oil Conservation District (NMOCD) requires that all spills regardless of landowner be reported to the State of New Mexico. The BLM did identify the potential for these events to occur in the impact assessment section of FFO RMP, and analyzed the potential consequences of spills and leaks, as a means of evaluating the effectiveness of mitigating measures. However, because these are rare and unforeseeable events, it would be inappropriate to quantitatively estimate the volumes of oil or brine leaks and spills, and their environmental consequences.

The BLM is responsible for inspection and enforcement of wells and facilities that have a Federal lease nexus and to conduct regular regulatory inspections, such as but not limited to, drilling, production, environmental compliance, production audits and abandonment inspections. If at any time during the life of the well, a well site is causing or has the potential to cause environmental damage such as surface contamination, the BLM has the authority to issue Written Orders of the Authorized Officer, Incidents of Non-compliance, citations, fines, and, in specific circumstances, cessation of operations when incidents of non-compliance occur.

### *Quantity*

Water quantity is briefly addressed in the October 2014 Lease Sale EA made available for the protest period stating “Because large volumes of water are needed for hydraulic fracturing, the use of groundwater for this purpose might contribute to the drawdown of groundwater aquifer levels.” (pp. 61). The amount of water used during well development is highly dependent on a number of factors including but not limited to: vertical or horizontal well, length of well bore, closed-loop or reserve pit drilling system, type of mud, type of stimulation used (e.g. hydraulic fracturing or acidizing), formation being fractured, and use of recycled water or inert gases. Therefore, the amount of water that could actually be used is too speculative to reasonably quantify at the leasing stage. When an APD is received a quantitative analysis can be completed. Once a well is drilled, operators are required to report the volumes of water and gases used in completion of the well to the BLM and are available for review at NMOCD’s website: [ocdimage.emnrd.state.nm.us](http://ocdimage.emnrd.state.nm.us).

In response to the high demand for and the lack of availability of water in the San Juan Basin, operators have successfully developed fracturing techniques that use considerably less water by substituting inert gases such as nitrogen and carbon dioxide as the carrier of the fluid for the frack. These can replace up to 95 percent of the water used for the frack fluids. The BLM encourages operators to utilize this new technology to lessen the impact of oil and gas development on water availability in the area.

The New Mexico Constitution establishes that all the water in the State belongs to the public and, to the extent that it is unappropriated, it is available for appropriation. The Office of the State Engineer is responsible for permitting all surface and groundwater withdrawals apart from water rights acquired before 1907 and small scale stock watering. An application for a new appropriation or a change in an existing water right is reviewed for the existence of

unappropriated waters, if the application will impair existing water rights, whether granting the application would be contrary to the conservation of water within the state, and if the application will be detrimental to the public welfare. Because of these statutes and process, the BLM does not generally have control of permitted water wells, their intended uses, or to regulate if they are exceeding their permitted allocation. The BLM requires full compliance with applicable state regulations.

No new evidence was presented that was not already considered in the October 2014 Lease Sale EA or that is regulated by Federal or State laws, rules, regulations, or policy. In conclusion, the BLM adequately addressed potential impacts to water resources from oil and gas development, including hydraulic fracturing, and the environmental consequences of how development may affect water quality and quantity. Therefore, the statement of reason has been considered, found to be without merit and is denied.

#### **5. The BLM failed to sufficiently analyze all reasonable alternatives.**

##### BLM Response:

The BLM considered a range of alternatives in the October 2014 Lease Sale EA made available for the protest period (pp. 6-21) to address the purpose and need identified in the EA. The purpose is to consider opportunities for private individuals or companies to explore for and develop oil and gas resources on public lands through a competitive leasing process, and the need is established by BLM's responsibility under the Mineral Leasing Act, as amended, to promote the exploration and development of oil and gas on the public domain. The alternatives considered included a No Action Alternative, a Proposed Action, and a Preferred Alternative.

The No Action Alternative (Alternative A) would exclude offering any parcels for sale. Surface management would remain the same and on-going oil and gas development would continue on surrounding, federal, private and state leases. The Proposed Action Alternative (Alternative B) would offer for sale 25 lease parcels with stipulations, and the Preferred Alternative (Alternative C) would offer for sale 13 lease parcels with stipulations. Stipulations identified for both alternatives are consistent with the respective 2003 FFO RMP and 2008 and 2012 USFS EIS decisions. In addition, ten proposed leases were considered for lease, but eliminated from detailed analysis because they were not in conformance with the current land use plans or more time was needed for evaluation. The alternatives analyzed in the October 2014 Lease Sale EA varied from excluding parcels for sale to offering 25 parcels for sale, and as such represents a reasonable range of alternatives that are responsive to the purpose and need for the proposed action.

The October 2014 Lease Sale EA appropriately identified mitigation for the leasing analysis, and both Alternative B and C allow for implementation-level adaptability through the use of standard operating procedures, BMPs, and required COAs. In addition, lease stipulations or other management practices may need to be modified, if needed, to continue meeting overall RMP management objectives. These types of changes may require an RMP amendment (BLM

Instruction Memorandum, IM 2010-117, Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews).

The October 2014 Lease Sale EA appropriately tiers from the 2003 FFO RMP and the 2008 and 2012 USFS EISs, whereby a reasonable range of alternatives, at the landscape scale, identify overall management goals and objectives for resources and resource uses. These plans also identify specific allocations of resource uses and assess the impacts of those allocation and management actions to the environment, and disclose that analysis in the respective planning documents. Each plan considered varying degrees of intensity of potential development: a range of acres open (available) and closed (not available) for oil and gas leasing and development. The range of alternatives also considered varying levels of major and/or moderate constraints for oil and gas development. These alternatives and assessment of impacts were previously analyzed and disclosed in the respective plans from which the October 2014 Lease Sale EA tiers from. The EA is in conformance with these plans and based on the assessment of impacts from the proposed and preferred alternatives, still meet the defined management goals and objectives of specific resources that were considered.

In conclusion, the October 2014 Lease Sale EA includes brief discussions of the need for the proposal, reasonable alternatives as required by sec 102(2)(E) of NEPA and include the environmental impacts of the proposed action and alternatives. Therefore, the statement of reason has been considered and found to be without merit and is dismissed.

#### **6. The BLM failed to consult and analyze impacts to special status wildlife.**

##### BLM Response:

The BLM has combined several of WELC et al.'s other statements of reason into this one category as they all have a relevant response. The statements of reasons are as follows:

- The BLM failed to update the 2002 Biological Assessment and failed to consult for biological impacts in the EA.
- The BLM failed to take a hard look at impacts to the Golden Eagle, and failed to coordinate pursuant to the Bald and Golden Eagle Protection Act or seek authorization pursuant to the Migratory Bird Treaty Act.

The BLM found that the proposed action would be in compliance with the 2002 Biological Assessment for the 2003 RMP (Cons. #2-22-01-I-389). During the USFS SFNF 2008 EIS, it was determined that there would be no adverse effect for the proposed actions and, therefore, consultation with the U.S. Fish and Wildlife Service was not required. After an appeal of the 2008 EIS by the Wild Earth Guardians, the USFS SFNF stated in their 2012 supplemental EIS that because the amendment is programmatic and does not authorize any land-disturbing activities, the biological assessment for this project determined that there will be no effects to listed or proposed threatened or endangered species as a result of implementation of Alternative 2. Additional analysis in this supplement confirms that the selected alternative is consistent with

the “Regionwide Programmatic Land and Resource Management Plan Biological Opinion” issued by the U.S. Fish and Wildlife Service on June 10, 2005; and that no re-initiation of consultation is needed on the Forest Plan as a result of this amendment.”

Based on a field inspection and data reviews completed for the October 2014 Lease Sale EA, it was determined there are no known threatened or endangered species within the area of analysis. Additional consultation with the USFWS under the Endangered Species Act may be required for any new ground disturbing activity, and an effects determination will occur when a site-specific project is proposed. In addition, the BLM did not identify the presence of Bald or Golden Eagles. Both species were considered in the October 2014 Lease Sale EA and the 2008 USFS EIS. The 2008 USFS EIS noted that the bald eagle occurs only occasionally, primarily due to the absence of desirable waterways. The USFS also identified that no known bald eagle nests or habitat exist in the study area and current use in the area is limited to occasional transients and incidental winter roosting. The October 2014 Lease Sale EA mentioned that the proposed action does not contain suitable habitat for nesting and foraging opportunities are possible. Golden eagles were analyzed in the 2008 USFS EIS as “birds of prey”. The October 2014 Lease Sale EA mentioned that the proposed action contains suitable foraging habitat for the Golden eagle, but nesting habitat is marginal. Since the lease parcels may include foraging habitat for both species, site-specific analysis will be conducted on any new ground disturbing activity to eliminate or minimize impacts to these species. Site-specific mitigation will be addressed at that time. Therefore, the statement of reasons have been considered, found to be without merit and are denied.

#### **7. BLM must prevent unnecessary and undue degradation.**

##### BLM Response:

WELC’s contention that BLM’s sale of the protested parcels will cause unnecessary or undue degradation to the lands underlying the subject parcels relies entirely on an unsupported assumption. Nothing in the NEPA analyses BLM relied on in determining which parcels to include in the sale in any way supports this assumption, and the WELC protest provides no substantive evidence to show otherwise. The mere issuance of leases does not constitute unnecessary or undue degradation of the public lands. See Colorado Environmental Coalition, et al., 165 IBLA 221, 229 (2005) (oil and gas development is not per se unnecessary or undue degradation). Further, for one to show that oil and gas development would have this detrimental effect, one must at a minimum show that a lessee's operations would be conducted in a manner that does not comply with applicable law or regulations, prudent management and practice, or reasonably available technology. See id. at 229. WELC’s assertion that leasing of the protested parcels will cause unnecessary or undue degradation is unsubstantiated. Therefore, the statement of reason has been considered, found to be without merit and is denied.

**The BLM failed to properly consult on the National Historic Preservation Act and has not completed Section 106 Consultation for the EA.**

BLM Response:

In order to comply with the National Historic Preservation Act (NHPA), the BLM must identify the area of potential effect (APE), identify properties within the APE that are listed as historic properties or eligible for inclusion in the National Register of Historic Places, and determine whether the proposed leasing may have adverse effects on the listed or eligible properties. Under Section 106 of the NHPA, the BLM is required to seek concurrence from the State Historic Preservation Officer (SHPO) in BLM's determination. The FFO did complete consultation with the NM SHPO, the National Park Service (Chaco Culture National Historical Park and National Trails Intermountain Region), Navajo Nation and seven potentially affected chapters (Nageezi, Counselor, Hogback, Nenahnezad/San Juan, Upper Fruitland, Ojo Encino, Torreon, and Pueblo Pintado), Jicarilla Apache Nation, Ute Mountain Ute Tribe, Southern Ute Tribe, the pueblos of Zia, Zuni, Jemez, Acoma, and Hopi, the National Trust for Historic Preservation, the Chaco Alliance and the Old Spanish Trail Association (OSTA). Only the SHPO, OSTA and the Hopi responded. See the October 2014 Lease Sale EA made available for the protest period (pp. 24-37 and 58-60). Therefore, the statement of reason has been considered, found to be without merit and is denied.

**8. BLM failed to protect areas with special designations. BLM also failed to uphold archaeological law.**

BLM Response:

The only special designation that the 13 proposed lease parcels are within is the USFS SFNF Inventoried Roadless Areas. The leases will have a No Surface Occupancy (NSO) stipulation attached to minimize impacts to the roadless areas. In addition, the protest mentions the following special designations:

- Old Spanish National Historic Trail -The closest proximity of the trail to any of the lease parcels is one mile, and at that point, the trail is overlain by State Highway 96. Any impacts to the viewshed of the OSNHT due to development of lease parcels, should it occur, would be mitigated.
- Chaco Site Protection System and Chaco Outliers Protection Act - The closest protected site is over 30 miles from the lease parcels.
- Discussion of the National Historic Preservation Act and Archaeological Resources Protection Act were included in the USFS SFNF 2008 EIS and were not raised as issues during the appeal of the EIS. Cultural sites, Rattlesnake Ridge and Nogales Cliff House, are protected with a NSO stipulation, and CSU stipulations are included for area known to contain high densities of archaeological sites.

Therefore, the statement of reason has been considered, found to be without merit and is denied.

**DECISION**

For the reasons stated above, we herein deny the protests. In this protest response decision, the NMSO has issued its final response decision for the 13 parcels within the SFNF and will take Federal action to issue these 13 leases to the successful high bidders.

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 § 4.400 and Form 1842-1 (Enclosure 1). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from 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 § 4.21, 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/ Sheila Mallory, Acting*

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