



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0187 0738 25

DECISION

Nevada Wildlife Federation : Protest of Parcels in the
Russell Kuhlman : December 5th, 2023
P.O. Box 71238 : Competitive Oil and Gas Internet Lease Sale
Reno, NV 89570

Protest Dismissed Parcels Offered For Sale

On November 6th, 2023, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from The Nevada Wildlife Federation (NVWF), which protested three of the four parcels located in the Battle Mountain District scheduled to be offered at the December 5th, 2023 Competitive Oil and Gas Internet Lease Sale (the Sale). The three protested parcels (NV-2023-12-6936, NV-2023-12-1664, and NV-2023-12-1663) rely on the Battle Mountain District Office's (BMDO) Environmental Assessment (EA), DOI-BLM-NV-B000-2023-0002-EA and Finding of No Significant Impact (FONSI).

BACKGROUND

The BLM posted the Sale Notice on October 6th, 2023, offering four parcels containing 3,498.342 acres for the December 5th, 2023 Lease Sale. The five originally nominated parcels included land in federal mineral estate located in the BLM 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. Parcel NV-2023-12-1994 was deferred from this lease sale for further consideration due to the low

¹ The protest is posted on the BLM website, located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

² 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.

preference value for leasing in accordance with IM 2023-007 for distance from existing development and mapped low potential for development.

On May 2nd, 2023, 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 National Environmental Policy Act (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 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 two (2) alternatives:

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 Shoshone-Eureka RMP, approved in 1986, and the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment, the associated Records of Decision, and all subsequent applicable amendments.

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

- 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- The “No Action” alternative, which considered rejecting all parcels nominated for the lease sale. This alternative is included as a baseline for assessing and comparing potential impacts.

The EA analyzed the proposed action and 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 (Section 1.7) and the Summary of Comments and Responses (*see* EA Supplemental Information H) sections.

On October 6th, 2023, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for December 5th, 2023*⁶ (Notice), resulting in a total of four parcels offered for lease. This protest challenges the Sale, BMDO EA (DOI-BLM-NV-B000-2023-0002-EA), FONSI, and the four parcels described in the Notice.⁷

ISSUES

The NVWF protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, and the FLPMA of 1976, 43 U.S.C. § 1701 *et seq.* The following addresses NVWF’s protest related to the Sale.

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

A. The BLM must defer parcels in crucial wildlife habitats and documented big game migration corridors.

BLM Response:

Impacts to wildlife habitat, including big game, are analyzed in Section 3.5.8 of the EA. The BLM has concluded that big game habitats are sufficiently protected by available measures. The Nevada Department of Wildlife (NDOW) reviewed all of the proposed lease parcels to assist the BLM in evaluating how future development of parcels may affect wildlife species in Nevada (*see* EA Supplemental Information H: Summary of Comments and Responses). The BLM also conferred with the NDOW regarding wildlife population and habitat

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

⁷ The December 2023 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>

distribution when identifying the appropriate lease stipulations from the RMPs to apply for protection of wildlife.

Three parcels (NV-2023-12-1663, NV-2023-12-6936, and NV-2023-12-6969) have the NV-B-02-A-TL timing limit stipulation applied, which provides no surface occupancy within crucial mule deer winter range habitat from January 15th through May 15th (*see* EA Supplemental Information A: Stipulations and Lease Notices). The boundaries of the stipulated area may be modified if the Authorized Officer, in consultation with NDOW, determines that portions of the area no longer contain the winter mule deer habitat or that the proposed action would not affect the species and habitat.

Lease notice NV-B-02-B-LN has been applied to two parcels (NV-2023-12-1663 and NV-2023-12-6969) located within or overlapping mule deer migration corridors. Surface disturbing activities within NDOW defined mule deer migration corridors may be restricted from November 1st through April 30th in order to protect mule deer migration corridors necessary to maintaining the critical life stages of mule deer wildlife populations. Additionally, none of the four lease sale parcels contain Pronghorn Antelope migration corridors as defined by NDOW's habitat delineation data.

At the time of the lease sale, it is unknown whether the proposed parcels will be leased, whether a future lessee would propose to develop the lease, or what specific locations and operating procedures may be proposed. Currently, neither the BLM, nor NDOW, has further information about future operations. If oil and gas operations are proposed for any of the leases, the BLM would verify site-specific NEPA compliance of the proposal using the best available tools and most current data. If any sensitive species and habitat are identified during the site-specific evaluation at the Application for Permit to Drill (APD) stage, the BLM determines that additional habitat conservation measures (beyond the BLM's lease stipulations) are needed, the BLM has discretion to incorporate those measures into the permit to drill as conditions of approval. If the analysis indicates the proposed action may affect listed species or critical habitat, the BLM will consult with the U.S. Fish and Wildlife Service (USFWS), in compliance with Section 7 of the Endangered Species Act (ESA).

For these reasons, the above NVWF is dismissed.

B. The BLM should defer parcels on low development potential lands.

BLM Response:

The BLM responds to EOIs to lease federal oil and gas resources through a competitive leasing process. In accordance with BLM IM 2023-007, the BLM has evaluated the parcels against the lease parcel preference criteria (*see* EA Supplemental Information G). After screening, IM 2023-007 states that *"The BLM will generally conduct environmental analysis for lease parcels with a high preference value first for potential inclusion in a lease sale; however, if there are no high preference parcels available, the officer may select one or more low preference parcels that present the least conflicts based on the criteria listed in the IM, including parcels deferred from previous sales, to analyze for potential inclusion in the sale."*

All five parcels analyzed in the December 2023 EA contain one or more ‘low’ ratings in the five preference criteria, which include proximity to existing development, habitat issues, cultural resources, oil and gas potential, and recreation/other resources. Oil and gas potential was determined by the NVSO for each parcel by utilizing the qualitative petroleum potential map of Nevada, which is the latest potential data provided by the Nevada Bureau of Mines and Geology.

Parcel NV-2023-12-1994 was deferred from this lease sale for further consideration due to the low preference value for leasing in accordance with IM 2023-007 for distance from existing development and mapped low potential for development. Parcels NV-2023-12-6936, NV-2023-12-1664, and NV-2023-12-1663 are located in a possibly low potential area, however the parcels are adjacent to historic oil shows (Table Mountain Well No. F-11X-6G, East Henderson Creek No. 1 Well, and the Jackpot Federal No. 1 Well), adjacent authorized oil and gas leases, and one of the highest potential areas in Nevada is approximately two miles north of the parcels in Pine Valley.

As all four parcels in the lease sale include one or more ‘low’ ratings in the preference criteria table, and the three parcels with possible low oil and gas potential are close in proximity to historic oil and gas shows, currently authorized leases, and a known high potential area, the BLM moved forward with leasing the remaining four parcels in accordance with IM 2023-007.

For these reasons, the above NVWF protest is dismissed.

C. The BLM should defer all parcels in Priority Habitat Management Areas and General Habitat Management Areas for Greater Sage-Grouse.

BLM Response:

Parcels overlapping with Greater Sage-Grouse habitat management areas are discussed in Section 3.5.8 of the EA. No parcels offered in the December 2023 Sale are in Priority Habitat Management Areas (PHMA) as delineated by the 2022 Plan Maintenance Action to the 2015 Nevada and Northeastern California Greater Sage-grouse Approved Resource Management Plan Amendment (Sage-grouse ARMPA). The State of Nevada Sagebrush Ecosystem Program’s *Fall 2019 Adaptive Management Trigger Summary* as well as the 2020 Supplemental Summary reported a population hard trigger has been reached in the Diamond PMU, where parcel NV-2023-12-1994 is located, with parts of the parcel in General Habitat Management Areas (GHMA). Since a hard trigger has been reached in the Diamond PMU, more restrictive stipulations and management actions were implemented in conformity with the adaptive management trigger responses detailed in the 2015 GRSG Plan Amendment, Appendix J, Tables J-1 and J-2. No Surface Occupancy (NSO) with limited exceptions (NV-B-16-B-NSO) were applied in GHMA based on the adaptive management trigger responses (*see* Supplemental Information, A: Stipulations and Lease Notices).

Parcel NV-2023-12-1994 was deferred from the December 2023 Lease Sale for further consideration due to the low preference value for leasing in accordance with IM 2023-007 for distance from existing development and mapped low potential for development. With the deferral of parcel NV-2023-12-1994, no parcels in the lease sale contain PHMA or GHMA, and the remaining four parcels are in Other Habitat Management Areas (OHMA).

For these reasons, the above NVWF protest is dismissed.

DECISION

To the extent that NVWF 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, NVWF's protest of the Sale, Battle Mountain District EA, and FONSI is dismissed, and four parcels were offered for sale on December 5th, 2023.

APPEAL INFORMATION

This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations set forth in 43 CFR 4, summarized in Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals. If an appeal is taken, a Notice of Appeal must be filed in writing with the BLM Nevada State Office, 1340 Financial Boulevard, Reno, Nevada, 89502-7147, no later than 30 days from receipt or issuance of this Decision Record. A copy of the Notice of Appeal and any statement of reasons, written arguments, or briefs must also be served to 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 the BLM Nevada State Office. The appellant has the burden of showing that the Decision being appealed 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. 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:

- 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 or not the public interest favors granting the stay.

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 the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the BLM Nevada State Office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

You may file a Notice of Appeal by paper hardcopy only. The BLM will not accept a Notice of Appeal transmitted electronically (e.g., by email, facsimile, or social media means). Also, the BLM will not accept a petition for a stay that is transmitted electronically (e.g., by email, facsimile, or social media means). Even if the BLM has previously corresponded with you by email, facsimile, or social media means, the BLM will not accept aforementioned documents transmitted electronically. Both the Notice of Appeal and any petition for a stay must be received by paper hardcopy at the BLM Nevada State Office address above.

If you have any questions regarding this decision, please contact Alex Jensen, Chief, Fluid Minerals Branch, Division of Energy and Minerals, at (775) 861-6500.

Justin R. Abernathy
Deputy State Director
Division of Energy and Minerals
Bureau of Land Management - Nevada

Enclosure:

1- Form 1842-1

cc (electronic):

WO310

NVB0000

NVB0100

NVB0200

NV0920 (J. Abernathy)

NV0922 (A. Jensen, F. Kaminer, K. Messer, J. Estrella)

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Lease Sale Book December 2023
Reading File: NV-922