

## **The Wilderness Society**

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## **FAX**

**To:** 17758616711

**From:** Barbara Young

**Re:**

**Date:** 01/13/2017

1660 Wynkoop St #850, Denver, CO 80202



January 13, 2017

VIA FAX: (775) 861-6711

John Ruhs, State Director  
BLM Nevada State Office  
1340 Financial Blvd.  
Reno, NV 89502

Re: Protest of the Nevada March 2017 Oil and Gas Lease Sale

Dear Mr. Ruhs,

The Wilderness Society (TWS) hereby protests the following parcels included in the notice for the Nevada Bureau of Land Management's March 2017 oil and gas lease sale:

NV-17-03-001	NV-17-03-019	NV-17-03-040	NV-17-03-055
NV-17-03-002	NV-17-03-020	NV-17-03-041	NV-17-03-057
NV-17-03-003	NV-17-03-028	NV-17-03-042	NV-17-03-058
NV-17-03-005	NV-17-03-029	NV-17-03-043	NV-17-03-059
NV-17-03-010	NV-17-03-033	NV-17-03-044	NV-17-03-061
NV-17-03-012	NV-17-03-034	NV-17-03-045	NV-17-03-062
NV-17-03-013	NV-17-03-035	NV-17-03-047	NV-17-03-063
NV-17-03-014	NV-17-03-036	NV-17-03-049	NV-17-03-064
NV-17-03-015	NV-17-03-037	NV-17-03-051	NV-17-03-065
NV-17-03-016	NV-17-03-038	NV-17-03-053	NV-17-03-067
NV-17-03-018	NV-17-03-039	NV-17-03-054	NV-17-03-068

TWS is filing this protest because of BLM's failure to inventory for lands with wilderness characteristics, failure to analyze impacts of this lease sale on lands with wilderness characteristics, and failure to follow public engagement direction set forth in the National Environmental Policy Act (NEPA) and Instruction Memorandum 2010-117. The obligations BLM has failed to comply with in the March 2017 oil and gas lease sale arise from the Federal Land Management and Policy Act (FLPMA), NEPA, IM 2010-117, IM 2011-154 and BLM Manuals 6310 and 6320.

The Protested Parcels include lands that overlap with a GIS-based roadless analysis of potential lands with wilderness characteristics (LWC) conducted by TWS. For this reason, there is also high likelihood that the Protested Parcels overlap with lands that BLM identified in the Environmental Assessment (EA) as LWC "inventory areas", many of which BLM states have not been studied "in depth." The EA does not identify which lease parcels proposed for sale overlap with BLM's "inventory areas", so we additionally

request BLM defer all lease parcels that do overlap with those LWC inventory areas. For the reasons detailed below, BLM must defer the Protested Parcels from the lease sale.

Juli Slivka is a Planning Specialist with The Wilderness Society. She is authorized to file this protest on behalf of TWS and its members.

#### INTEREST OF PROTESTING PARTY

The Wilderness Society has a long-standing interest in the management of Bureau of Land Management lands in Nevada and engages frequently in the decision-making processes for land use planning and project proposals that could potentially affect wilderness-quality lands and other important natural resources managed by the BLM in Nevada and across the West. TWS members and staff enjoy a myriad of recreation opportunities on BLM-managed public lands, including hiking, biking, nature-viewing, photography, and the quiet contemplation in the solitude offered by wild places. Founded in 1935, our mission is to protect wilderness and inspire Americans to care for our wild places.

TWS submitted comments on the Nevada March 2017 oil and gas lease sale on November 17, 2016, in which we raised issues related to lands with wilderness characteristics inventory and impact analysis and public engagement.

#### STATEMENT OF REASONS FOR PROTEST

- I. BLM must inventory the proposed lease parcels for lands with wilderness characteristics and defer parcels where wilderness resources are identified in compliance with FLPMA, NEPA and relevant agency policy issued under those statutes.
  - a. **BLM's lands with wilderness characteristics inventory for the Elko District must be updated in accordance with BLM Manual 6310 prior to issuing leases that overlap with potential lands with wilderness characteristics.**

BLM must consider lands with wilderness characteristics in evaluating lease parcels to be offered for sale. Instruction Memorandum 2011-154 directs BLM to consider identified lands with wilderness characteristics in land use plans and when analyzing projects under the National Environmental Policy Act (NEPA). The IM promulgates current agency policy for considering the wilderness characteristics on public lands as part of its multiple-use mandate in developing and revising land use plans *and when making subsequent project level decisions*, consistent with the Federal Land Policy and Management Act (FLPMA). The IM directs BLM to "conduct and maintain inventories regarding the presence or absence of wilderness characteristics, and to consider identified lands with wilderness characteristics in land use plans and when analyzing projects under [NEPA]." BLM Manual 6310 directs BLM on how to conduct lands with wilderness characteristics inventories in compliance with FLPMA and agency policy.

Accordingly, BLM considered lands with wilderness characteristics in evaluating this lease sale. The EA states: "Proposed parcels were reviewed to determine if they were located in an area that possessed sufficient size, naturalness, and outstanding opportunities for solitude or primitive and unconfined recreation to qualify as lands with wilderness characteristics." 2017 Oil and Gas Lease Sale EA at 6. BLM also addresses LWC in the description of the affected environment and the environmental effects analysis. *Id.* at 3.2.13.

However, the EA is quite clear that BLM does not have an updated, policy-compliant LWC inventory for all of the parcels proposed for lease:

The EDO BLM began updating the lands with wilderness characteristics (LWC) inventory in 2011 on a project driven basis. The 86 parcels up for lease intersect 33 LWC inventory areas. Of those 33 inventory areas several have been previously analyzed under other projects. The remaining units have yet to be studied in depth, but based on the results of the 1979 initial wilderness inventory and the 1980 intensive wilderness inventory the potential exists for some unstudied areas to contain wilderness attributes.

2017 Oil and Gas Lease Sale EA at 73. Additionally, we have conducted a GIS-based roadless analysis of potential lands with wilderness characteristics in the Elko District and found overlap with Protested Parcels. Those potential lands with wilderness characteristics all merit in-depth review including field inventory to verify whether they possess wilderness character.

As stated above, under FLPMA, the BLM must maintain a current wilderness inventory for public lands under its jurisdiction. 43 U.S.C. § 1711(a); *see also Ore. Natural Desert Ass'n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2010) (confirming the obligation of BLM to consider wilderness characteristics in its planning process). Furthermore, the BLM must comply with its own policies that detail how to comply with FLPMA obligations on conducting inventories for wilderness characteristics and considering those inventories during land use planning.

BLM's current policies require the agency to evaluate alternatives to protect lands with wilderness characteristics. Per IM 2011-154:

Consistent with FLPMA and other applicable authorities, the *BLM will continue to consider the wilderness characteristics* on public lands as part of its multiple-use mandate in developing and revising land use plans and *when making subsequent project level decisions*. In accordance with NEPA, BLM offices must analyze the potential effects of proposed actions and alternatives for land use plan decisions on lands with wilderness characteristics when they are present.

(emphases added). In addition, BLM's leasing guidance, IM 2010-117, requires the agency to

review parcels in light of the most current national and local program-specific guidance to *determine availability of parcels for leasing and/or applicable stipulations* (e.g., to address conservation strategies and protect archaeological resources, traditional cultural properties, paleontological resources, specially designated areas on or near BLM-administered lands, sensitive species, watersheds, fisheries and wildlife habitat, visual resources, air quality, and *wilderness qualities*).

(emphases added).

Here, the Elko District acknowledges that it does not have current inventory information available for the majority of LWC units overlapping the proposed lease parcels. BLM indicates that some areas have been "previously analyzed under other projects," but no LWC inventory information is posted on BLM's website. The EA also includes a chart documenting the LWC inventory units that overlap with proposed lease parcels which have not been updated since the 1979-80 wilderness inventories, and indicates the

likelihood of each unit presently possessing wilderness characteristics. 2017 Oil and Gas Lease Sale EA at Table 3.2-3. However, there is no information in the EA or on BLM's website explaining how BLM has made these determinations. Regardless, BLM must actually complete updated LWC inventories prior to issuing leases that overlap with these potential LWC units, not make decisions based on whether the units may likely possess wilderness characteristics or not.

Elsewhere, BLM regularly defers proposed lease parcels when, as here, updated information on wilderness characteristics is not available to inform lease parcel analysis and decision-making. For example, the Bighorn Basin District Office in Wyoming deferred several parcels from Wyoming BLM's August 2013 lease sale because they overlapped with "Lands with Wilderness Characteristics inventory area" while BLM completed the RMP revision.<sup>1</sup>

Similarly, the White River Field Office in Colorado deferred leasing in areas identified as potential lands with wilderness characteristics:

To comply with this guidance, the WRFO did an initial assessment of the WRFO resource area and identified areas that have the potential to meet the criteria for Lands with Wilderness Characteristics. Parcels initially identified for the May 2011 lease sale containing any portions of lands that fell within these potential areas were deferred both to allow the BLM to take a closer look at these areas and to allow for another public comment period in which the new policy and the evaluation of these parcels could be discussed.<sup>2</sup>

The White River Field Office did not offer any leases that overlap with potential LWC until it had completed LWC inventory compliant with BLM Manual G310. In another oil and gas leasing EA, the White River Field Office also deferred leasing on over 250,000 acres that may possess wilderness characteristics while it was completing an oil and gas RMP amendment:

The WRFO is currently working on a Resource Management Plan Amendment and associated EIS that will address the potential impacts of significant increases in oil and gas development within the field office over the next 20 years... Because the leasing of lands with wilderness characteristics is likely to result in indirect, adverse impacts to this resource value, it is recommended that until a decision is made on the management of these units, the areas where lands with wilderness characteristics units overlap with nominated parcels be deferred, as under Alternative 3, with the exception being the tracts from Alternative 2 listed in the above . . . which can be leased, and mitigated if needed, to result in not impacting lands with wilderness characteristics.<sup>3</sup>

The Elko District must follow suit, and as required by FLPMA and associated policies, defer the lease parcels that may possess wilderness characteristics.

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<sup>1</sup> BLM, Final EA, August 2013 Lease Parcels, *available at* <http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/og/2013/08aug/ver3.Par.50960.File.dat/V3WRBBEA.pdf> at 4-37.

<sup>2</sup> DOI-BLM-CO-110-2011-0056-EA at 3.

<sup>3</sup> BLM, EA for the White River Field Office June 2014 Competitive Oil & Gas Lease Sale at 77, *available at* [http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/oil\\_and\\_gas/Lease\\_Sale/2014/may\\_2013.Par.34116.File.dat/WR\\_doiblmco11020130099ea\\_3.12.14\\_EA\\_MLP%20format\\_Master.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2014/may_2013.Par.34116.File.dat/WR_doiblmco11020130099ea_3.12.14_EA_MLP%20format_Master.pdf).

**b. Offering the lease parcels in the Elko District that may possess wilderness characteristics would violate NEPA.**

BLM has not evaluated a reasonable range of alternatives for protecting the wilderness characteristics of parcels in the Elko District Office. Under NEPA, BLM must consider a broad range of alternatives to mitigate environmental impacts. 40 C.F.R. § 1502.14(a); *see also Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 72-73 (D.C. Cir. 2011) (requiring BLM to consider a reasonable range of alternatives for oil and gas activity); IM 2010-117 (requiring consideration of "alternatives to the proposed action that may address unresolved resource conflicts."). Additionally, under current policies, BLM must fully "consider" wilderness characteristics during planning actions and evaluate a range of measures to protect wilderness characteristics during the leasing process, including measures not contained in existing RMPs. *See* IM 2011-154 at Att. 2; IM 2010-117 at III. E., F.

A "rule of reason" is used to determine if an adequate range of alternatives have been considered; this rule is governed by two guideposts: (1) the agency's statutory mandates; and (2) the objectives for the project. *New Mexico ex rel. Richardson*, 565 F.3d at 708. Here, there is no doubt that BLM's legal mandates under FLPMA and NEPA require it to fully consider the protection of wilderness values, and under IM 2010-117, the agency must treat the "protection of other important resources and values" as an equally important objective to leasing.

Yet, in the Draft EA, the BLM has failed to evaluate an adequate range of alternatives that would protect the wilderness characteristics of parcels in the Elko District Office from the impacts of the lease sale. Such alternatives include offering the parcels with NSO stipulations or deferring the parcels. Because the BLM has not considered those alternatives, or additional alternatives to protect the wilderness characteristics of the proposed parcels, it must defer the parcels from the lease sale.

Requested Remedy: BLM must defer the Protested Parcels from the lease sale, and future leasing, until the agency updates its lands with wilderness characteristics inventory in accordance with BLM Manual 6310 and is able to evaluate the impacts of leasing on lands with wilderness characteristics as required by FLPMA and NEPA. BLM must also defer any additional parcels that overlap with BLM-identified LWC "inventory areas" as described in the EA.

**II. BLM violated NEPA and IM 2010-117 by failing to publish notice of the scoping period and other information about the sale online.**

A key, overarching purpose of NEPA is to increase public knowledge and participation in agency decision-making. NEPA requires that agencies make "diligent efforts to involve the public in preparing and implementing their NEPA procedures." *See* 40 CFR § 1506.6(a). Agencies must provide "public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons or agencies who may be interested or affected." *Id.* § 1506.6(b).

IM 2010-117 also imposes specific public notice and outreach requirements as part of the NEPA process for federal oil and gas lease sales. As to public notice, the IM requires that BLM both "post the NEPA compliance documentation on the appropriate website and make the documentation available in the public reading room." IM 2010-117 at III.G. In making leasing decisions, BLM is supposed to actively identify and engage interested stakeholders and members of the public:

State and field offices will identify groups and individuals with an interest in local BLM oil and gas leasing, including surface owners of split estate lands where Federal minerals are being considered for leasing. Interested groups, individuals, and potentially affected split estate owners will be kept informed of field office leasing and NEPA activities through updated websites and email lists, and will be invited to comment during the NEPA compliance process.

*Id.* at III.C.7. Further, the IM clearly states that “the NEPA compliance documentation for oil and gas leasing *must include an opportunity for public review*” and requires that this documentation be posted “on the appropriate website. . . .” *Id.* at III.E (emphasis added), III.G.

For this sale, contrary to IM 2010-117, BLM neglected to provide online notice of scoping or any of the information necessary to inform public scoping comments, like maps of nominated parcels, until after the scoping period was complete. Even though the Draft EA states that BLM posted scoping information online, and provides a link to the relevant website, the site contains no actual information on the sale.<sup>4</sup> As such, BLM failed to make the “diligent efforts” necessary to involve the public or satisfy the public notice requirements of IM 2010-117. Further, BLM failed to post all of the NEPA compliance documentation associated with the sale online, as required by IM 2010-117.<sup>5</sup>

Requested Remedy: BLM Nevada must comply with NEPA and IM 2010-117 in future lease sales by facilitating public engagement. This includes providing online notices of scoping, relevant information such as maps and data for nominated parcels, and NEPA compliance documentation.

III. BLM violated NEPA and BLM’s NEPA Handbook by finalizing the Draft EA before the scoping period for the sale was complete.

NEPA imposes primarily procedural requirements on agency decision-making. It does not dictate the specific outcome of a decision, only the process used to reach it. As such, it is critically important that agencies execute the procedural duties and obligations imposed by NEPA “to the fullest extent possible.” *See Calvert Cliffs’ Coordinating Comm. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971).

Scoping is one of the first steps of NEPA. It is “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” 40 CFR § 1501.7. Comments and information gained from scoping are supposed to inform “the range of actions, alternatives, and impacts to be addressed” in subsequent, agency-prepared NEPA documents. *See Kootenai Tribe v. Veneman*, 313 F.3d 1094, 1116-17 (9th Cir. 2002). Further, BLM’s NEPA Handbook

<sup>4</sup> *See* Draft EA at p. 7 (“External scoping was conducted by posting the nominated lease parcels, stipulations from the RMP in the Nevada State Office, for 72 days from August 7th 2016 to October 18th 2016. Stipulation summaries, GIS shapefiles, and maps were posted on the BLM Nevada State Office website: [on.doi.gov/2dHk4Cz](http://on.doi.gov/2dHk4Cz).”). During the scoping period, there was also no information available on the e-planning website or the new BLM websites.

<sup>5</sup> A related problem is that Nevada BLM also does not appear to have drafted an Implementation plan for IM 2010-117. *See* IM 2010-117 at § IV (“Each state office will develop an implementation plan and timeline for accomplishing the tasks outlined in this IM.”). Implementation plans help ensure that BLM is complying with the reformed leasing process, including the important public participation components. Other states, including Colorado, Utah, Wyoming and Montana, have prepared implementation plans and made them available online. *See, e.g.*, UT BLM IM 2010-117 Implementation Plan available at [https://www.blm.gov/style/medialib/blm/ut/lands\\_and\\_minerals/oil\\_and\\_gas/mlp\\_-\\_master\\_leasing.Par.92141.File.dat/2010-117%20Final.10.15.10.1pdf.pdf](https://www.blm.gov/style/medialib/blm/ut/lands_and_minerals/oil_and_gas/mlp_-_master_leasing.Par.92141.File.dat/2010-117%20Final.10.15.10.1pdf.pdf).

states that BLM must use scoping to “help identify alternatives to the proposed action” and “begin identifying past, present, and reasonable foreseeable actions . . . that could have a cumulative effect. . . .” H-1790-1 at 6.3.

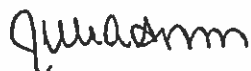
For this sale, contrary to normal agency practice, BLM published the Draft EA on the final day of the scoping period, October 18, 2016.<sup>6</sup> As such, BLM had clearly finalized and approved the Draft EA before scoping was complete, and comments filed on or near the scoping deadline could not inform the range of actions, alternatives, and impacts addressed in the Draft EA, as required by NEPA and BLM’s NEPA Handbook. By depriving the public of an opportunity to inform the Draft EA through scoping comments, BLM undermined the very purpose of scoping and the procedural requirements of NEPA.

We appreciate that BLM elected to conduct scoping as part of this lease sale. However, in undertaking scoping, BLM made a commitment to consider timely filed scoping comments and use them to inform the planning alternatives. Further, as required by IM 2010-117 and BLM’s NEPA Handbook, and as stated above, BLM must post all relevant information concerning these parcels on its website in a timely manner so as to provide the public with ample to time to review and provide comments to BLM.

Requested Remedy: BLM must honor the public participation process directed by NEPA by reviewing public comments and incorporating them into the agency’s decision-making process. BLM Nevada must ensure the public is provided with a meaningful opportunity to participate in the NEPA process for oil and gas lease sales.

Conclusion: For the foregoing reasons, BLM must defer the Protested Parcels from the March 2017 lease sale, and should not offer those parcels for lease until the Elko District Office has completed inventory and management decisions for lands with wilderness characteristics through a public process. BLM Nevada must comply with NEPA and IM 2010-117 in future lease sales by facilitating public engagement. This includes providing online notices of scoping, relevant information such as maps and data for nominated parcels, and NEPA compliance documentation.

Thank you,



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<sup>6</sup> The e-planning website for the sale shows the “Release Date” for the Draft EA as October 18, 2016, and the Draft EA itself states that the scoping period ran from August 7, 2016 to October 8, 2016. See Draft EA at p. 7 (“External scoping was conducted by posting the nominated lease parcels, stipulations from the RMP in the Nevada State Office, for 72 days from August 7th 2016 to October 18th 2016.”), p. 100 (“This document was released for public review October 18, 2016.”) and March 2017 Lease Sale E-Planning Website *available at* <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=99108>.