



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
3100 (NV922.a)

MAR 13 2017

CERTIFIED MAIL – 9171 9690 0935 0018 6196 97

DECISION

The Wilderness Society : Protest of 44 Parcels in the
Juli Slivka, Planning Specialist : March 14, 2017
11050 Pioneer Trail, Suite 202 : Competitive Oil and Gas Lease Sale
Truckee, California 96161 :

PROTEST DISMISSED **PARCELS OFFERED FOR SALE**

On January 13, 2017, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest (enclosed) from The Wilderness Society (TWS). TWS protested 44 of the 67 parcels offered in the March 14, 2017 Competitive Oil and Gas Lease Sale (the Sale) and the Elko District Office's (EDO) Oil and Gas Lease Sale Environmental Assessment (EA), DOI-BLM-NV-E000-2016-0004-EA.

BACKGROUND

The BLM received nominated parcels for the Sale through June 17, 2016. The nominated parcels included land in Federal mineral estate located in the BLM Nevada's EDO. After the NVSO completed preliminary adjudication¹ 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. With the signing of the Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment, and the decision of the U.S. Fish and Wildlife Service not to list the sage-grouse; the BLM is currently allowing leasing in Greater Sage Grouse habitat consistent with the Goals, Objectives, and Management Decisions in the Amendment.

¹ Preliminary adjudication is the first stage of analysis of nominated lands conducted by the State Office to prepare preliminary sale parcels for Field Office review. During preliminary adjudication, the State Office confirms availability of nominated lands for leasing pursuant to 40 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 Field Office for NEPA analysis and leasing recommendations.

On August 3, 2016, the NVSO sent a preliminary parcel list to EDO for review. This review included interdisciplinary team review by BLM specialists, field visits to nominated parcels (where appropriate), review of conformance with the Land Use Plans, and preparation of an EA documenting National Environmental Policy Act (NEPA) compliance.² The preliminary parcel list was also posted for public comment in the EDO Public Room, and the draft EA was made available for a period of public review from October 18, 2016, to November 18, 2016.

The EA tiered to the existing Land Use Plans (LUPs)³, in accordance with the Code of Federal Regulations (CFR) at 40 CFR 1502.20:

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review . . . the subsequent . . . environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.

The BLM described its purpose and need for the March 2017 Lease Sale in its EA as follows:

1.2 Purpose and Need for Action

The purpose of the Proposed Action is to consider opportunities for private individuals or companies to explore and develop oil and gas resources on specific public lands through a competitive leasing process.

The need for the action is to respond to the nomination or expression of interest for leasing, consistent with the BLM's responsibility under the MLA, as amended, to promote the development of oil and gas on the public domain. Parcels may be nominated by the public, the BLM or other agencies. The MLA establishes that deposits of oil and gas owned by the United States are subject to disposition in the form and manner provided by the MLA under the rules and regulations prescribed by the Secretary of the Interior, where consistent with FLPMA and other applicable laws, regulations, and policies.

The EA considered three alternatives:

- The No Action alternative, which considered denying or rejecting all expressions of interest to lease (parcel nominations);
- The “Proposed Action” alternative, which included offering all of the 86 nominated parcels that were sent to the EDO for review as well as two lease reinstatements; and

² 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.

³ The Elko RMP, approved on March 11, 1987, and the Wells RMP approved on June 28, 1986 both as amended.

- The “Defer Additional Parcels” alternative which would offer 67 of the parcels in part or in whole that are consistent with the BLM’s land use plans and do not contain resource conflicts which require additional study and consultation.

The EA also considered additional alternatives, which were eliminated from further analysis:

2.4 Alternatives Considered but Eliminated from Further Analysis

- *Offer the Industry Nominated Parcels*
Approximately 915,784 acres in EDO have been nominated by industry for the 2017 lease sale. This number of acres is too large to process in any one lease sale because the BLM does not have the staff to evaluate such a large area.
- *Defer Parcels Due to Proximity to Historic Trails, SRMAs, and Conservation Areas*
Historic Trail enthusiasts requested that parcels near the trails be removed from the offered list due to proximity to historic trails, SRMAs, and conservation areas. However, the BLM determined that these resource values would be protected in the Proposed Action by lease stipulation OG-010-05-10 (I-80 “Low Visibility Corridor”), lease stipulation OG-010-05-11 (Special Recreation Management Areas), and lease stipulation OG-010-05-13 (Congressionally Designated Historic Trails) (see Appendix B for full text of these stipulations). As such, it is not necessary for these parcels to be deferred in order to be protected.

On December 7, 2016, the NVSO published a *Notice of Competitive Oil and Gas Lease Sale for March 14, 2017*⁴ (Notice), resulting in a total of 67 parcels offered for lease. This protest challenges the EA and 44 of the 67 parcels described in the Notice.

ISSUES

TWS’s protest generally alleges that the BLM failed to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.*

The following addresses TWS’s protest related to the Sale. The BLM has reviewed TWS’s protest in its entirety; the substantive protests are numbered and provided in bold with the BLM responses following.

- 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**

⁴ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

- a. **BLM's lands with wilderness characteristics inventory for the Elko District must be updated in accordance with the BLM Manual 6310 prior to issuing leases that overlap with potential lands with wilderness characteristics.**

BLM Response:

Section 201 of FLPMA requires the BLM to maintain on a continuing basis an inventory of all public lands and their resources and other values, which includes wilderness characteristics. It also provides that the preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of public lands. The BLM Manual 6310 states "The BLM will determine when it is necessary to update its wilderness characteristics inventory."

The EDO considered potential impacts to lands with wilderness characteristics in the EA at section 3.2.12 (p. 71) and 3.2.13 (p. 72). Based on the inventories created by the BLM's Initial and Intensive studies of Lands with Wilderness Characteristics in 1979 and 1980, and 33 additional updated surveys conducted in the immediate area of the proposed parcels since 2011, as well as site visits conducted for this EA the BLM has determined that additional surveys and inventory updates are not required to proceed with the proposed action or the analyzed alternatives.

Therefore, the above TWS's protest has been considered, found to be without merit and is dismissed.

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

BLM Response:

The BLM did take a hard look at the specific parcels offered for oil and gas leasing, and the reasonably foreseeable impacts to the resources on these parcels. EDO did review and perform site-specific analysis on 86 nominated parcels containing 159,423 acres of public land. After conducting onsite reviews for each parcel, by a team of resource specialists, and disclosing to the public any potential impacts to resources from leasing these lands, EDO was able to recommend to the State Director, the leasing of 67 of the nominated parcels in part or in whole containing 115,969 acres, as mandated by regulations. The BLM does make several references throughout the EA stating that once an APD is submitted, that additional project and site-specific NEPA analysis would be performed in addition to the leasing EA. This should not be misconstrued that the leasing EA is not site-specific. Each parcel is reviewed, scrutinized, and evaluated for any potential impacts, and whether they may directly or indirectly affect resources. If there is scientific evidence that indicates that exploration and development of a particular parcel may have a substantial impact to a resource, it is not recommended for leasing, if no reasonable mitigation is available. Twenty-five parcels or portions of parcels were withheld from the sale due to the need for further analysis and additional consultation required to address Native American concerns.

The EDO considered potential impacts to lands with wilderness characteristics in the EA at section 3.2.12 (p. 71) and 3.2.13 (p. 72). Based on the BLM's Initial and Intensive studies of Lands with Wilderness Characteristics, and 33 additional updated surveys conducted in the immediate area of the proposed parcels since 2011 the BLM has determined that the proposed action and alternatives would not have a significant impact on lands with wilderness characteristics.

Therefore, the above TWS's protest has been considered, found to be without merit and is dismissed.

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

BLM Response:

The BLM had two public scoping periods regarding the lease sale, the first was the posting in the EDO Public Room of the preliminary parcel list from August 7, 2016 until October 18, 2016, and the second was a 30-day public comment period on the draft EA which was posted in the Public Room, and on the BLM ePlanning website on October 18, 2016 and ended on November 18, 2016. The EA was not finalized until after the public comment period had closed, and all substantive comments had been reviewed.

Therefore, the above TWS's protest has been considered, found to be without merit and is dismissed.

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

BLM Response:

The BLM did not finalize the EA before the scoping period for the sale was complete. The EDO had two public scoping periods for this lease sale, the first was the posting in the EDO Public Room of the preliminary parcel list from August 7, 2016 until October 18, 2016, and the second was a 30-day public comment period on the draft EA which was posted in the Public Room, and on the BLM ePlanning website on October 18, 2016 and ended on November 18, 2016. The EA was not finalized until after the public comment period had closed, and all substantive comments had been reviewed.

Therefore, the above TWS's protest has been considered, found to be without merit and is dismissed.

DECISION

To the extent that TWS has raised any allegations not specifically discussed herein, they have been considered and are found to be without merit. For this reason, and for those previously

discussed, TWS's protest of the Sale and the EA is dismissed and all 67 parcels were offered for sale on March 14, 2017.

APPEAL INFORMATION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (enclosed). If an appeal is taken, a notice of appeal and/or request for stay must be filed in writing, on paper, in this office, either by mail or personal delivery within 30 days after the date of service. Notices of appeal and/or request for stay that are electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as timely filed. The notice of appeal is considered filed as of the date our office receives the hard copy and places our BLM date stamp on the document.

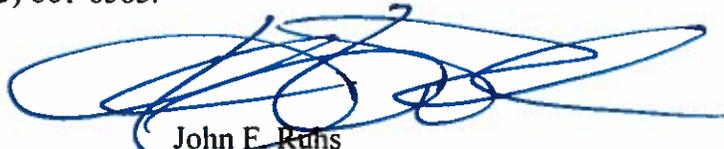
If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate office of the Solicitor (*see* 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions regarding this decision, please contact Brian C. Amme, Deputy State Director, Minerals Division, at (775) 861-6585.



John F. Ruhs
State Director

Enclosures:

- 1- The Wilderness Society Protest dated Jan 13, 2017
- 2- DOI-BLM-NV-E000-2016-0004-EA
- 3- Form 1842-1

cc (w/o enclosures):

WO310 (S. Wells)
NVE0000 (J. Silvey)

cc (electronic):

NVE0100 (M. Peterson)
NV0920 (B. Amme)
NV0922 (A. Jensen)
NV0922 (J. Menghini)
NV0922 (D. Reynolds)

bcc: Erica Niebauer, Office of the Solicitor, Pacific Southwest Region,
2800 Cottage Way, Room E-1712, Sacramento, California, 95825
Lease Sale Book March 2017
Reading File: NV-922