



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Nevada State Office
1340 Financial Boulevard
Reno, Nevada 89502-7147
<http://www.blm.gov/nv>

In Reply Refer To:
3100 (NV922)

JUN 12 2017

CERTIFIED MAIL 9171 9690 0935 0137 7441 02

DECISION

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

PROTEST DISMISSED **PARCELS OFFERED FOR SALE**

On May 25, 2017, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from The Wilderness Society (TWS). TWS protested 63 of the 106 parcels offered in the June 14, 2017 Competitive Oil and Gas Lease Sale (the Sale) and the Battle Mountain District Office's (BMDO) Oil and Gas Lease Sale Environmental Assessment (EA), DOI-BLM-NV-B020-2017-0002-EA.²

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 BMDO. After the NVSO completed preliminary adjudication³ 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 (Sage-Grouse RMPA), and the decision of the U.S. Fish and Wildlife Service not to

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 The EA was revised April 25, 2017 to further address public comments and concerns and is located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

³ 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.

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.⁴

On November 2, 2016, the NVSO sent a preliminary parcel list to BMD 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.⁵ The BMD's preliminary EA was made available for a period of public review from January 5, 2017, through February 5, 2017.

The EA tiered to the existing Land Use Plans (LUPs)⁶, 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 June 2017 Lease Sale in its EA as follows:

1.2 Purpose and Need for Action

Oil and gas leasing is necessary to provide oil and gas companies with new areas to explore and potentially develop. Leasing is authorized under the Mineral Leasing Act of 1920, 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 the public lands under 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.

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 for 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. This action is being initiated to facilitate

⁴ BLM Nevada- Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment (2015).

⁵ 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.

⁶ The Tonopah RMP, approved on October 6, 1997, and the Shoshone-Eureka RMP and associated Record of Decision (1986), both as amended.

Battle Mountain District's implementation of the requirements in Executive Order (EO) 13212 (2001) and the National Energy Policy Act (2005).

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, in this case the Tonopah RMP (Tonopah Field Office), approved in 1997, or the Shoshone-Eureka RMP (Mt. Lewis Field Office), approved in 1986. The oil and gas parcels addressed in this EA cannot be considered for leasing without supplemental analysis of new information and changes in environmental conditions since these RMPs were approved, such as increased growth, locations of special status species, identification of traditional cultural properties, and recognition of other sensitive resources that were not addressed in the RMPs.

The EA considered four (4) alternatives:

- The “Proposed Action”, which considered offering all of the 106 nominated parcels that were adjudicated and sent to the BMD for review.
- The “Partial Deferral Alternative”, which considered offering 58 parcels or portions of parcels consisting of 91,064 acres, while deferring the remaining approximately 104,668 acres pending development and review of additional stipulations.
- The “Additional Resource Protection Alternative”, which was developed in response to public and agency comments received on the Draft EA, and considered offering all 106 adjudicated parcels, but with additional resource protection measures including stipulations to mitigate potential resource conflicts with exploration and development; and
- The “No Action Alternative”, which considered denying or rejecting all expressions of interest to lease (parcel nominations).

On April 26, 2017, the NVSO published a *Notice of Competitive Oil and Gas Lease Sale for June 14, 2017*⁷ (Notice), resulting in a total of 106 parcels offered for lease. This protest challenges the EA and 63 of the 106 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 BLM responses following.

I. Inclusion of Additional Alternatives and Lease Stipulations

⁷ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

BLM Response:

In response to comments received from agencies such as USFWS and NDOW and the public the BLM considered a new alternative in the Revised EA, the “Additional Resource Protection Alternative”. This new alternative applied additional stipulations and lease notices to parcels with important wildlife habitats, or sensitive natural resources via this EA process. During the review of these comments and revision of the EA, the Additional Resource Protection Alternative was found to meet the BLM’s Purpose and Need, while addressing substantive comments received from the public.

Per BLM’s, H-1790-1, National Environmental Policy Act Handbook, (Jan. 2008) (p. 30), Section 5.3.2 When Supplementation is Not Appropriate:

Supplementation is not necessary if you make changes in the proposed action that are not substantial (i.e., the effects of the changed proposed action are still within the range of effects analyzed in the draft or final EIS).

If a new alternative is added after the circulation of a draft EIS, supplementation is not necessary if the new alternative lies within the spectrum of alternatives analyzed in the draft EIS or is a minor variation of an alternative analyzed in the draft EIS. In such circumstances, the new alternative may be added in the final EIS.

The Additional Resource Protection Alternative lies within the spectrum of alternatives analyzed in the draft EA. Therefore, the above TWS’s allegation above has been considered, found to be without merit and is dismissed.

II. Lands with Wilderness Characteristics

- a. BLM has failed to respond to significant new information submitted by the public regarding 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.”

As stated in the EA Appendix H response to comments:

BLM policy requires considering external input but ultimately relying on the agency’s own inventory. BLM’s inventory did not find wilderness characteristics on any of the proposed parcels.

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

- b. BLM must update its lands with wilderness characteristics inventory for all oil and gas lease parcels prior to offering them for sale because the governing RMPS for the Battle Mountain District are too outdated to tier NEPA to.**

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."

As stated in the EA Appendix H response to comments:

BLM Battle Mountain District undertook its most recent comprehensive wilderness characteristics inventory as part of the process of updating the RMP. BLM used the FNW inventory to focus on areas they identified, while conducting the agency's own inventory as required. BLM determined that while 12 of 14 units suggested by FNW did have wilderness characteristics, two including the Sulphur Springs unit did not; and updated our GIS layer accordingly. Subsequently the RMP update was put on hold. The District intends to update the inventory again in 2017, and will follow through with formal documentation.

Based on the BLM's most recent comprehensive wilderness characteristics inventory, 2012-2013 inventory data, 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 protest has been considered, found to be without merit and is dismissed.

- c. Offering the lease parcels in the Battle Mountain 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. BMDO did review and perform site-specific analysis on all 106 nominated parcels containing 195,653.94 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, BMDO was able to recommend to the State Director, the leasing of 106 of the nominated parcels, in conformance with regulations. 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.

The BMDO considered potential impacts to lands with wilderness characteristics during scoping and preparation of the EA, and in response to comments on the draft EA, from Appendix H:

As stated in Chapter 3, Table 1, an inventory conducted in 2012-2013 found no wilderness characteristics in the units which encompass the currently-proposed lease parcels. The inventory would be updated as part of the additional NEPA review that would be conducted at the time of any application for permit to drill or for any other specific project work on any leased parcel. If wilderness characteristics are found, potential effects to this resource would be addressed in the additional site-specific, project-specific NEPA analysis.

Based on the BLM's most recent comprehensive wilderness characteristics inventory, 2012-2013 inventory data, 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 protest has been considered, found to be without merit and is dismissed.

III. No Reasonable Belief Lease Sale Parcels Will Be Developed.

- a. The EA lacks "reasonable assurance" that the proposed parcels "are known or believed to contain oil or gas deposits."**

BLM Response:

The BLM is required by law under the Mineral Leasing Act of 1920, as amended, and under the regulations at 43 CFR 3100 to consider leasing areas that have been nominated for lease, if leasing is in conformance the BLM Land Use Plan (LUP). Each BLM state office is required by regulations to hold quarterly sales if lands are available for competitive leasing, 43 CFR 3120.1-2(a).

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

- b. The Additional Resource Protection Alternative conflicts with FLPMA's multiple-use and unnecessary and undue degradation mandates.**

BLM Response:

The BLM is directed by FLPMA to manage the public lands and resources to meet the goals of multiple use and sustained yield. The BLM is also mandated by the FLPMA to prevent unnecessary and undue degradation of the public lands and the Department of the Interior's regulations at 43 CFR §3160 defines a wide array of rules which govern the conduct of Onshore Oil and Gas operations. This lease sale and any future oil and gas exploration or development activities which result from it would be carried out in accordance with all applicable federal, state, and local laws including the Mineral Leasing Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Endangered Species Act, Hazardous Waste regulations, and OSHA regulations.

Next the BLM analyzed the potential impacts from leasing and development within the district in preparing the Resource Management Plans for Tonopah and Eureka-Shoshone planning areas and of the specific parcels nominated in this EA. Through that analysis and other programmatic and regional analyses the BLM has created and applied appropriate stipulations, and design features to manage development of the public lands without undue risk of environmental degradation. In addition, the MLA requires that all leases require a lessee to use reasonable precaution to prevent waste. The terms and conditions contained in the BLM standard lease form, Form 3100-11, require that the lessee conduct operations to prevent waste of resources. Sections 4 and 6 of Form 3100-11 require that a lessee use "reasonable diligence in developing and producing, and must prevent unnecessary damage to, loss of, or waste of leased resources" and require that a lessee "operate in a manner that minimizes adverse impacts" to public land resources.⁸ Thus, the BLM satisfies the requirements in the MLA (30 U.S.C. § 225) at lease issuance within the terms and conditions contained in Form 3100-11:

Sec. 4. Diligence, rate of development, unitization, and drainage – Lessee must exercise reasonable diligence in developing, producing, and must prevent unnecessary damage to, loss of, or waste of leased resources.

Sec. 6. Conduct of operations – Lessee must conduct operations in a manner that minimizes adverse impacts to the land air, and water, to cultural, biological, visual, and other resources, and to other land use or users. Lessee must take reasonable measures deemed necessary by lessor to accomplish the intent of this section. To the extent consistent with lease rights granted, such measures may include, but not limited to, modification to siting design of facilities, timing of operations, and specification of interim and final reclamation measures. . . "

In conclusion, the BLM permits responsible development of the public lands in accordance with the Multiple Use and Sustained Yield mandates and Federal, State, and local laws and regulation. The BLM does not permit any activity that would cause unnecessary or undue degradation of public lands. Therefore, the above TWS protest has been considered, found to be without merit and is dismissed.

IV. Leases in Greater Sage-grouse Habitat.

a. BLM failed to prioritize leasing outside of Greater sage-grouse habitat.

⁸ See *Center for Biological Diversity v. Bureau of Land Management*, 937 F. Supp. 2d 1140 (N.D. Cal 2013).

BLM Response:

The BLM NVSO utilized the required prioritization process during the adjudication of the nominated parcels. The BLM conducted a thorough analysis on potential impacts to the greater sage grouse from oil and gas exploration and development in the September 2015 Sage-Grouse RMPA that amended the BMDO's two RMPs. This amendment defines mitigation and implementation strategies necessary to protect the bird's habitat. The BLM NVSO and BMDO followed these instructions through the leasing process, by attaching stipulations to leases and leasing outside of habitat first before considering leasing within habitat.

In conclusion, the proposed action and alternatives are conformance with the Sage-Grouse RMPA, as stated above. Therefore, the above TWS protest has been considered, found to be without merit, and is dismissed.

b. BLM failed to apply and evaluate parcel specific factors, as required by IM 2016-043

BLM Response:

The BLM evaluated the nominated parcels during the adjudication process, factoring in the requirements of IM 2016-043 and utilizing both public information about existing leases and additional information about resource potential from nominators. The BLM conducted a thorough analysis on potential impacts to the greater sage grouse from oil and gas exploration and development in the September 2015 Sage-Grouse RMPA that amended the BMDO's two RMPs. This amendment defines mitigation and implementation strategies necessary to protect the bird's habitat. The BLM NVSO and BMDO followed these instructions through the leasing process, by attaching stipulations to leases and leasing outside of habitat and in areas of higher potential for development first before considering leasing within habitat or in areas of lower potential.

In conclusion, the proposed action and alternatives are conformance with the Sage-Grouse RMPA, as stated above. Therefore, the above TWS protest has been considered, found to be without merit, and is dismissed.

V. Water Resources

a. BLM has not taken a hard look at direct, indirect, and cumulative impacts on water resources.

BLM Response:

The BLM took a "hard look" at the environmental consequences of leasing in the BMDO, including the potential impacts from exploration and development. In Chapter 3 of the EA, Affected Environment and Environmental Consequences addresses the elements that must be reviewed in all environmental analyses, as well as other resources deemed appropriate for

evaluation. All resources that may be present or affected by leasing were analyzed for potential indirect impacts from leasing exploration and development.

The EA addressed potential impacts to water resources in Sections 3.2.4 and 4.2.4 and wildlife, including wildlife dependent on water features in Sections 3.2.8 and 4.2.8. The EA analysis determined that there were no significant impacts to water resources from the selected alternative. However, there could be indirect impacts to water resources from oil and gas development on these leases. To reduce potential conflicts with water resources from oil and gas leasing, the BMDO evaluated parcels located within high-value habitat for significant water resources and proposed to apply additional stipulations and mitigation measures to future development activities. Once lease development is proposed, additional site-specific NEPA will be conducted to address any water resource issues and potential impacts specific to the site not addressed at the leasing stage. Furthermore, these activities would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs).

Potential impacts to water quality and quantity from Hydraulic Fracturing are addressed in the EA and in the Hydraulic Fracturing White Paper (Appendix H). Any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Water Act, Safe Drinking Water Act, Hazardous Waste regulations, OSHA regulations, and the State of Nevada Hydraulic Fracturing Rules.

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

b. The Draft FONSI improperly relies on inadequate mitigation measures.

BLM Response:

The BLM took a "hard look" at the environmental consequences of leasing in the BMDO, including the potential impacts from exploration and development. In Chapter 3 of the EA, Affected Environment and Environmental Consequences addresses the elements that must be reviewed in all environmental analyses, as well as other resources deemed appropriate for evaluation. All resources that may be present or affected by leasing were analyzed for potential indirect impacts from leasing exploration and development.

Through that analysis and other programmatic and regional analyses the BLM has created and applied appropriate stipulations, and design features to manage development of the public lands without undue risk of environmental degradation. Once lease development is proposed, additional site-specific NEPA will be conducted to address any resource issues and potential impacts specific to the site not addressed at the leasing stage. Furthermore, these activities would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs).

The BLM does not permit any activity that would cause unnecessary or undue degradation of public lands. Therefore, the above TWS protest has been considered, found to be without merit and is dismissed.

c. BLM has violated Executive Order 11990.

BLM Response:

In the BLM NEPA Handbook H-1790-1, and in CEQ guidance, the BLM is directed in NEPA documents to evaluate the proposed action, the no action alternative as a baseline, and other “Reasonable Alternatives” which meet the BLM’s Purpose and Need and are within the BLM’s authority. The BLM is not required to evaluate alternatives which do not meet the agency’s Purpose and Need, are not within the BLM’s discretion, or which are precluded by law.

The BLM’s Purpose and Need as stated in section 1.2 of the EA and reproduced in the Background section above are derived from the requirements of the Mineral Leasing Act of 1920, as amended. The Purpose and Need is consistent with the BLM’s responsibility under the Mineral Leasing Act (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 land use planning, FLPMA and other applicable laws, regulations, and policies.

As stated above, the BLM is constrained to alternatives which address the Agency’s Purpose and Need, therefore the EA complies with the “no practicable alternative” portion of Executive Order (EO) 11990. Next, regarding the EO requirement that “the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use”. In the selected Additional Resource Protection Alternative the BLM has created and applied appropriate stipulations, and design features to manage development of the public lands without undue risk of environmental degradation. Once lease development is proposed, additional project and site-specific NEPA will be conducted to address any resource issues and potential impacts specific to the site not addressed at the leasing stage. Furthermore, any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Water Act, Safe Drinking Water Act, Hazardous Waste regulations, OSHA regulations, and the State of Nevada Hydraulic Fracturing Rules, as well as the applied lease stipulations, Best Management Practices (BMPs), and Conditions of Approval (COAs).

In conclusion, the BLM did comply with NEPA and EO 11990, as stated above. The BLM does not permit any activity that would cause unnecessary or undue degradation of public lands; therefore, the above TWS protest has been considered, found to be without merit and is dismissed.

d. The ARPA violates the Clean Water Act.

BLM Response:

The BLM took a "hard look" at the environmental consequences of leasing in the BMDO, including the potential impacts from exploration and development. In Chapter 3 of the EA, Affected Environment and Environmental Consequences addresses the elements that must be reviewed in all environmental analyses, as well as other resources deemed appropriate for evaluation. All resources that may be present or affected by leasing were analyzed for potential indirect impacts from leasing exploration and development.

Through that analysis and other programmatic and regional analyses the BLM has created and applied appropriate stipulations, and design features to manage development of the public lands without undue risk of environmental degradation. Once lease development is proposed, additional site-specific NEPA will be conducted to address any resource issues and potential impacts specific to the site not addressed at the leasing stage. Furthermore, any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Water Act, Safe Drinking Water Act, Hazardous Waste regulations, OSHA regulations, and the State of Nevada Hydraulic Fracturing Rules, as well as the applied lease stipulations, Best Management Practices (BMPs), and Conditions of Approval (COAs).

The BLM does not permit any activity that would violate the Clean Water Act; therefore, the above TWS protest has been considered, found to be without merit and is dismissed.

VI. Updated Analysis is Required

BLM Response:

TWS alleges BLM violated NEPA (42 U.S.C. § 4321 *et seq.*) because the EA tiers to BMDO's two current Resource Management Plans (RMPs), the Tonopah Resource Management Plan (1997) the Shoshone-Eureka Resource Management Plan (1986), and the Sage-Grouse RMPA (2015) which do not address the emergence of new and significant information, including that relating to extraction methods of fracking and horizontal drilling, or the increased seismic risks from such extraction methods. In particular, BLM failed to take a hard look at the potential impacts of the proposed action on water resources, air quality, climate change, human health and safety, seismicity, and sensitive species of plants and wildlife.

Each RMP developed conservative Reasonable Foreseeable Development (RFD) scenarios for oil and gas exploration and development within the BMDO. Even with new shale-oil drilling technology being deployed in Nevada, none of the disturbance or impact thresholds identified in the RMPs have been reached or surpassed, therefore, BLM considers the continuation of oil and gas leasing within the BMDO viable on a case-by-case basis. The level of environmental analysis conducted by BMDO for the Sale is consistent with the NEPA handbook H-1790-1 and the purpose and need for the action.

In accordance with the NEPA Handbook, "Proposed actions are analyzed in an EA if the actions are not categorically excluded, not covered in an existing environmental document, and not

normally subject to an EIS.” An EA is used to determine if the action would have significant effects; if so, the BLM would need to prepare an EIS. An EA may demonstrate that a proposed action would have effects that are significant but could be reduced or avoided through mitigation. *Id.* None of the issues or potential indirect impacts discussed in the EA meets the “context” and “intensity” considerations for significance as defined in the CEQ regulations at 40 CFR 1508.27.

The EA does not support the claim that there would be significant impacts from leasing or development, thus automatically requiring an EIS. Based on the geographic location and resources, currently available lease stipulations and lease notices were applied to provide mitigation requirements to minimize potential impacts from leasing (EA at Appendix B and C). Once lease development is proposed, additional project and site-specific NEPA will be conducted to address any new resource issues and potential impacts specific to the project or site not addressed at the leasing stage.

The BLM does not consider the proposed action to be highly controversial, as courts have consistently specified that disagreement must be with respect to the character of the effects on the quality of the human environment in order to be considered to be “controversial” within the meaning of NEPA, rather than a mere matter of the unpopularity of a proposal. See *Como-Falcon Coalition, Inc. v. U.S. Dept. of Labor*, 609 F.2d 342 (8th Cir. 1978), cert. denied, 446 U.S. 936 (“Mere opposition to federal project does not make project controversial so as to require environmental impact statement.”) There is not a substantial dispute within federal agencies, the State of Nevada government agencies, or the scientific community as to the effects of oil and gas leasing and development in Nevada, specifically.

In conformance with federal regulation, reasonable mitigation is required to ensure that the proposed operations minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights. *Id.* The operator “must” conduct operations to minimize adverse effects to surface and subsurface resources, prevent unnecessary surface disturbance, and conform to currently available technology and practice. *Id.* The operator is responsible for protecting cultural and historic resources, endangered species, and surface resources. *Id.* In general, but without site specificity at the lease stage, potential impacts from the use of Hydraulic Fracturing as one type of well stimulation technique are addressed at Sections 2.5, 3.2.4, and Appendix E of the EA. An analysis of site specific impacts at the lease stage from a possible use of Hydraulic Fracturing on a lease for which an APD has not been submitted or approved would amount to speculation. As BLM explains in the EA, the right of the leaseholder to use leased lands is subject to specific non-discretionary statutes and lease stipulations. See EA at p.25. If BLM determines impacts are unacceptable, appropriate mitigation is required or the proposal may be denied to prevent unnecessary or undue environmental degradation of resources. *Id.*, at App. H, CBD Responses, and Decision Record, p. 3 (If the [NEPA] evaluation indicates that environmental impacts would be unacceptable, either the project would be modified, mitigation measures would be implemented as conditions of approval (COAs) to reduce the impact, or the proposal could be denied to prevent unnecessary and undue degradation). See also BLM, *Onshore Oil and Gas Order No. 1, Approval of Operations*, 72 Fed. Reg. 10308, at 10334 (Mar. 7, 2007) (BLM will...3. Deny the permit if it

cannot be approved and the BLM cannot identify any actions that the operator could take that would enable the BLM to issue the permit...).

In conclusion, the BLM did not violate NEPA process; therefore, the above TWS allegation 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 106 parcels will be offered for sale on June 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 Amme, Deputy State Director, Minerals Division, at (775) 861-6585.



for Marci L. Todd
Acting State Director

Enclosure:

1- Form 1842-1

cc (electronic):

WO310 (S. Wells)
NVB0000 (D. Furtado)
NVB0100 (J. Sherve)
NVB0200 (T. Coward)
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