



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

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**JUN 12 2017**

In Reply Refer To:  
3100(NV922)

CERTIFIED MAIL 9171 9690 0935 0137 7441 19

### **DECISION**

WildEarth Guardians	:	Protest to the Inclusion of Parcels
2590 Walnut Street	:	in the June 14, 2017 Competitive
Denver, CO 80205	:	Oil and Gas Lease Sale

#### Protest Dismissed Parcels Offered For Sale

On May 25, 2017, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest<sup>1</sup> from the WildEarth Guardians (Guardians). Guardians protested all 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.<sup>2</sup>

### **BACKGROUND**

The BLM received nominated parcels for the Sale through September 16, 2016. The nominated parcels included land in Federal mineral estate located in the BLM Nevada's Battle Mountain District Office (BMDO). After the NVSO completed preliminary adjudication<sup>3</sup> 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 habitat on public lands. With signing of the Nevada and Northeastern California Greater Sage Grouse Approved Resources Management Plan Amendment (Sage-Grouse RMPA), and the decision of the U.S. Fish and Wildlife Service not to list the Sage-Grouse; the BLM is currently allowing

<sup>1</sup> 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>

<sup>2</sup> 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>

<sup>3</sup> 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 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 District/Field Office for National Environmental Policy Act (NEPA) analysis and leasing recommendations.

leasing in Greater Sage Grouse habitat consistent with the Goals, Objectives and Management Decisions in the Amendment.<sup>4</sup>

On November 2, 2016, the NVSO sent a preliminary parcel list to BMDO for review. Pursuant to Washington Office (WO) Instructional Memorandum (IM) IM-WO-2010-117, as incorporated into Nevada (NV) IM-NV-2016-037, an interdisciplinary team was formed with BLM specialists to review the parcels. This review is comprised of: (1) field visits to nominated parcels (where appropriate) to determine if there are any resource conflicts; (2) review parcels to ensure they are in conformance with the District's Resource Management Plan's (RMP)<sup>5</sup> decision that these lands are open to fluid mineral leasing; (3) and preparation of an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.<sup>6</sup> The BMDO's preliminary EA was released on January 5, 2017, for a 30-day period of public review that ended on February 5, 2017.

The EA tiered to the existing RMP in accordance with the Code of Federal Regulations (CFR) 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 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*

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

<sup>5</sup> The Tonopah RMP, approved on October 6, 1997, for the Tonopah Planning Area and the Shoshone Eureka RMP and associated Record of Decision (1986).

<sup>6</sup> 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 Environmental Impact Statement (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.



*compliance with the spirit and objectives of NEPA and other federal environmental laws and regulations. This action is being initiated to facilitate 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” alternative, which included offering all 106 nominated parcels with stipulations from the existing RMP that were sent to the BMDO for review as well as one reinstatement;
- 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 and RMP update which would develop and apply 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 rejecting all parcels nominated for the lease sale in June 2017. This alternative is included as a baseline for assessing and comparing potential impacts.

On April 26, 2017, the NVSO published a *Notice of Competitive Oil and Gas Lease Sale for June 14, 2017*<sup>7</sup> (Notice), resulting in a total of 106 parcels offered for lease. This protest challenges the EA and all 106 parcels described in the Notice.

## **ISSUES**

Guardians protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, the Minerals Leasing Act of 1920, as amended (MLA), 30 U.S.C. § 181 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.* The following addresses the Guardians' protest related to the Sale.

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

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

**A. The Proposed Leasing Violates the Mineral Leasing Act.**

Guardians alleges that the BLM violated its own statutory requirements for oil and gas leasing which only allows leasing where there is known or believed to be oil and 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 Guardians protest has been considered, found to be without merit and is dismissed.

**B. The Proposed Leasing Violates NEPA**

BLM Response:

The BLM correctly followed the NEPA process and Council on Environmental Quality regulations (40 CFR 1500-1508) by developing an EA first rather than proceeding straight to an EIS. An EIS is required, if a Finding of No Significant Impacts (FONSI) cannot be reached through the EA process. 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.* Through its EA analysis, BLM has not documented any impacts that are considered to be significantly affecting the quality of the human environment; therefore, in this case, a FONSI is an appropriate conclusion prior to signing the Decision Record and issuance of any leases.

BLM is required to consider Reasonably Foreseeable Development (RFD) in its analysis. The NEPA handbook states clearly that, "*Analytical assumptions may include any reasonably foreseeable development (RFD) scenarios for resources, such as RFDs for oil and gas development. A reasonably foreseeable development scenario is a baseline projection for activity for a defined area and period of time*" ... The RFD scenario developed by BMDO is valid in determining future oil and gas exploration and development within their district boundary and the RFD thresholds have not been met or exceeded. Within BMDO, the increased use of HF nationally has not affected the number of APDs received or wells drilled specific to Nevada. The BMDO RFD is fact-based on what has occurred on the district in the past and what is likely to occur in the Battle Mountain District in the foreseeable future.



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 106 nominated parcels containing 196,653.94 acres of public land, where the specialists had enough information and data to adequately analyze any potential direct or indirect impacts on affected resources present. 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 all 106 nominated parcels containing 196,653.94 acres, as mandated by 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, indirectly, or cumulatively with other actions 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 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). Once lease development is proposed, additional 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.

In conclusion, the BLM did comply with NEPA, as stated above. Therefore, the above Guardian's protest has been considered, found to be without merit and is dismissed.

### **1. The BLM Inappropriately Rejected Reasonable Alternatives**

#### 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.

In conclusion, the BLM did comply with NEPA, as stated above. Therefore, the above Guardian's protest has been considered, found to be without merit and is dismissed.

### **2. The BLM Failed to Fully Analyze and Assess the Direct, Indirect and Cumulative Impacts of Greenhouse Gas Emissions that Would Result from Issuing the Proposed Lease Parcels**

#### BLM Response:

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 NEPA documentation is sufficient to support issuance of oil and gas leases. The BLM's analysis in the EA of the effects of leasing and development is sufficiently detailed to identify the types of stipulations that must be attached to the oil and gas leases to retain BLM's authority to protect other resources through mitigation. In addition, the EA's analysis of indirect effects and the analysis of potential effects of Hydraulic Fracturing would be further analyzed at the APD permitting stage when additional project specific information is available.

The BMDO addressed the potential impacts and environmental consequences to air quality and climate change in the EA in sections 3.2.1. Additional analysis on the effects of Hydraulic Fracturing on Air Quality and Human Health and Safety is provided in Hydraulic Fracturing White Paper.

Potential impacts to air quality and climate change from Hydraulic Fracturing are addressed in the EA and in the referenced Hydraulic Fracturing White Paper. Any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Air Act, Hazardous Waste regulations, and OSHA regulations.

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

**3. The BLM Failed to Analyze the Costs of Reasonably Foreseeable Carbon Emissions Using Well-Accepted, Valid, Credible, GAO-Endorsed, Interagency Methods for Assessing Carbon Costs that are Supported by the White House**

BLM Response:

As stated in the CEQ Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews: "Inherent in NEPA and the CEQ Regulations is a "rule of reason" that allows agencies to determine, based on their expertise and experience, how to consider an environmental effect and prepare an analysis based on the available information. The usefulness of that information to the decision-making process and the public, and the extent of the anticipated environmental consequences are important factors to consider when applying that "rule of reason."

Further: "NEPA does not require monetizing costs and benefits. Furthermore, the weighing of the merits and drawbacks of the various alternatives need not be displayed using a monetary cost-benefit analysis and should not be when there are important qualitative considerations. When an agency determines that a monetized assessment of the impacts of greenhouse gas emissions or a monetary cost-benefit analysis is appropriate and relevant to the choice among different alternatives being considered, such analysis may be incorporated by reference or appended to the NEPA document as an aid in evaluating the environmental consequences."

Therefore, the above Guardians allegation above has been considered, found to be an opinion and without merit, and is dismissed.



## **DECISION**

To the extent that Guardians 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, Guardians' 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)

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bcc: Erica Niebauer, Office of the Solicitor, Pacific Southwest Region,  
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Lease Sale Book March 2017  
Reading File: NV-922