



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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AUG 12 2016

In Reply Refer To:
3100 (NV922.q)

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DECISION

Yomba Shoshone Tribe	:	Protest to All Parcels in the
Daryl Brady, Chairman	:	June 14, 2016
HC 61 Box 6275	:	Competitive Oil and Gas Lease Sale
Austin, NV 89310-9301	:	

PROTEST DISMISSED PARCELS OFFERED FOR SALE

On April 15, 2016, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest (enclosed) from the Yomba Shoshone Tribe (the Tribe). The Tribe protested the 42 parcels offered in the June 14, 2016 competitive oil and gas lease sale (the Sale) and the Battle Mountain District Office’s (BMD) oil and gas lease sale Environmental Assessment (EA), DOI-BLM-NV-B000-2016-0002-EA.¹

BACKGROUND

The BLM received nominated parcels for the Sale through September 18, 2015. The nominated parcels included land in Federal mineral estate located in the BLM Nevada’s Battle Mountain District (BMD). After the NVSO completed preliminary adjudication² of the nominated parcels, the NVSO screened each parcel to determine compliance with national and state BLM policies, including BLM’s efforts related to the management of Greater Sage Grouse Habitat on public lands. With the signing of the NV/CA Greater Sage Grouse 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,

¹ The EA was revised June 13, 2016 to further address public comments and concerns and is located at: http://www.blm.gov/nv/st/en/prog/minerals/leasable_minerals/oil_gas/oil_and_gas_leasing.html.

² 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.

Objectives, and Management Decisions in the Amendment although none of the 42 parcels offered in this sale are in identified sage-grouse habitat.³

On November 5, 2015, 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.⁴ The BMD's preliminary EA was made available for a period of public review from January 13, 2016, to February 5, 2016.

The EA tiered to the existing Land Use Plans (LUPs)⁵, in accordance with 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 2016 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 the Federal Land Policy and Management Act of 1976 (FLPMA). BLM authority for leasing public mineral estate for the development of energy resources, including oil and gas, is listed 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 the National Environmental Policy Act (NEPA) and other federal environmental laws and regulations.

³ BLM Nevada- Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment (2015).

⁴ 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.

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

The BLM is required by law to consider leasing of areas that have been nominated for lease if leasing is in conformance with the BLM land use plan. The oil and gas parcels addressed in this EA cannot be considered for leasing without supplemental analysis of changes in environmental conditions that have occurred since the completion of the current Land Use Plan (LUP) (e.g., increased growth, locations of special status species, identification of traditional cultural properties).

The EA considered two alternatives:

- The No Action alternative, which considered denying or rejecting all expressions of interest to lease (parcel nominations); and
- The “Proposed Action” alternative, which included offering 42 of the 64 nominated parcels that were sent to the BMD for review (a total of 22 complete or partial parcels deferred).

The EA also considered an additional alternative, which was eliminated from further analysis:

2.3 Alternatives Considered but not Analyzed in Detail

The BMD staff considered leasing all 64 parcels that were nominated for leasing. However, during scoping, it was determined that there were specific resource and land use conflicts that would require proposing deferral of specific parcels. This Alternative has been eliminated from further analysis.

On March 16, 2016, the NVSO published a *Notice of Competitive Oil and Gas Lease Sale for June 14, 2016*⁶ (Notice), resulting in a total of 42 parcels offered for lease. This protest challenges the EA and all 42 parcels described in the Notice.

ISSUES

The Yomba Shoshone Tribe protest generally alleges that the BLM failed to provide adequate consultation and failed to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* the National Historic Preservation Act (NHPA), the Mineral Leasing Act (MLA), and the Federal Land Policy and Management Act

The following addresses the Tribe’s arguments related to the June 2016 competitive oil and gas lease sale. The BLM has reviewed the Tribe’s arguments in their entirety; the substantive arguments are numbered and provided in bold with BLM responses following.

- I. **Nevada Drilling and the History of Fracking- (Examines the growth of fracking across the country and how it has made oil and gas drilling available in areas that**

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

could not have been previously been drilled and explains the environmental and human effects of the drilling technique)

BLM Response:

The BLM has reviewed the Tribe's information on Nevada's oil drilling history and presenting their concerns over "fracking" (HF) that has occurred mostly in other states. The BLM acknowledges that there is an abundance of literature available on the internet either for or against the use of HF in other states with very active drilling programs and production of oil and gas. When developing an EA in compliance with the NEPA process, BLM is obligated to use information that is supported by facts. BLM does not regulate the use of HF and must apply the laws and regulations equally and consistently to all operators seeking a permit on public lands. Based on the limited HF that has occurred in Nevada and what HF might be expected to occur in Nevada in the near future, the overall threat to human health and the environment, specifically in the State of Nevada from HF, when done properly in accordance with State and federal laws and regulations, is considered negligible. As documented in the recent University of Colorado, Boulder paper⁷ in the 11 documented cases of thermogenic methane detected in water wells in the Denver-Julesburg basin the cause of contamination was wellbore failure of older (pre-1993 Colorado casing regulation) wells and not due to high-volume hydraulic fracturing which has been taking place in the basin since 2010. In contrast, Nevada has not experienced nor documented any case where an HF procedure caused injury to human health, the land surface, surface water, groundwater, air, or created a seismic event. BLM is tasked with managing public lands as multi-use and is committed to protecting human health and the environment. Oil and gas exploration and development is one of the multiple uses of public lands that BLM administers and under NEPA must take a hard look at the activity prior to authorizing such actions to occur. In Nevada, due to the depth of the target resource, wells are drilled far below any useable drinking water zones and typically located away from populated areas. All authorized operations follow federal, state, and local laws which are designed to minimize risks to human health and the environment.

In conclusion, the BLM follows Nevada State laws regarding the implementation of HF and all other state and federal laws regarding drilling exploration and development. Therefore, the Tribe's statements and concerns have been considered and found to be without merit and are dismissed.

- II. BLM Violated the National Environmental Policy Act- (Alleges that BLM has violated NEPA by failing to take a "hard look" before concluding that significant oil and gas drilling is unlikely. The BLM made this decision without fully considering how fracking has changed the oil and gas industry and make the proposed parcels a much more economically-viable option. Also, that BLM further violated NEPA by**

⁷ Sherwood, O.A., et al. 2016. "Groundwater methane in relation to oil and gas development and shallow coal seams in the Denver-Julesburg Basin of Colorado" in Proceedings of the National Academy of Sciences available at <http://www.pnas.org/content/early/2016/07/05/1523267113.full.pdf>

failing to prepare an Environmental Impact Statement instead of a less rigorous Environmental Assessment. (The Yomba Shoshone Tribe's Protest at page 5).

BLM Response:

The Tribe alleges that BLM violated NEPA through arbitrary decision-making, and failed to complete an EIS. The Tribe also states that BLM is required under NEPA “*to consider all reasonably foreseeable development*”. 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 BMD 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 BMD, the increased use of HF nationally has not affected the number of APDs received or wells drilled specific to Nevada. The BMD 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.

BMD did review and consider all substantive comments made by government agencies, tribes, special interest groups, and members of the public by either providing a response to comments in Appendix H or by addressing the comments directly within the EA analysis itself. Many comments submitted are based on environmental issues that occur in other states and not in Nevada specifically. Comparing resource issues from other states with different levels of activity, resource conditions and concerns and differing environmental context is not appropriate on most issues. For example, the Tribe references in their protest that Stanford researchers linked fracking to drinking water contamination in Pavillion, WY. This reference does not represent the leasing situation in Nevada. The Pavillion case is distinguishable because the Wyoming case concerns a shallow gas field. In contrast, Nevada has only deep oil potential through current scientific understanding and contains no shallow gas fields or gas production. To date, no oil well has been horizontally drilled within Nevada, which is in contrast to operations in other states.

BLM has performed its due diligence by providing additional information and expanding analysis language in the Final EA to adequately address the substantive comments received by the Tribe on February 5, 2016. Therefore, BLM has considered the allegation above and find it to be an opinion, without merit, and is dismissed.

1. Preparation of an EIS

BLM Response:

Contrary to what the Tribe stated in its protest letter, BLM has not ignored the fact that according to the regulations, a lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold. However, CFR 3101.1-2, also states that the lessee and lease must still adhere to stipulations attached to the lease, statute restrictions, and reasonable measures required by the authorized officer to minimize adverse impacts to other resource values. A lease does not grant an operator unlimited rights or authorization to develop the parcel without additional project-specific NEPA and specific authorization from the BLM and the State of Nevada.

Prior to the issuance of leases for any parcels sold, the FONSI will document why the proposed action does not have significant impacts. None of the issues or potential direct, indirect or cumulative 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). Once lease development is proposed, additional site-specific NEPA will be conducted to address any new resource issues and potential impacts specific to the 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. Nevada's oil and gas industry is different in numerous ways from other producing states and has not experienced any of the environmental issues that other states encounter.

In conclusion, the BLM has determined there are no significant impacts that have been identified to warrant the preparation of an EIS. Also, the Tribe is unable to identify any effects specific to this lease sale that would warrant the preparation of an EIS. Under the circumstances, an EIS is

not required under NEPA and the above allegations have been considered and found to be without merit and are dismissed.

2. The No Action Alternative

BLM Response:

The BLM is not required to issue any specific lease if there are identified environmental concerns that preclude leasing the parcel. However, the BLM is required to analyze and consider leasing any nominated parcel under the Mineral Leasing Act of 1920 as amended, and under the Multiple Use and Sustained Yield mandate of FLPMA. Also under the Mineral Leasing Act, and the Department of Interior's Oil and Gas Leasing Reform, the BLM is required to prepare NEPA and hold four annual lease sales unless unresolvable environmental issues are identified and documented during the NEPA process. Therefore, the statement that the No-Action Alternative was not fully considered due to the BLM not considering the costs to the agency of preparing NEPA, holding the sale, and responding to protests as part of the Proposed Action is not a legitimate criticism as the BLM is required by law to proceed with the leasing process unless analysis identifies an unresolvable resource conflict.

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

3. Threats to Endangered Species

The BLM did consider threats to listed Threatened and Endangered Species for plants and animals, and their identified habitat. The BLM has previously consulted with the U.S. Fish and Wildlife Service in developing Land Use Plans and Stipulations and Lease Notices to be applied to parcels in the district. The EA states that the BLM would initiate further consultation with the U.S. Fish and Wildlife Service when a development plan is submitted that may impact listed species or habitat. The BLM can take actions to protect critical habitat for listed species and even modify or disapprove actions, if actions are or may be detrimental to the populations. The EA states that a Lease Notice was attached to all 42 parcels to serve the lessee with notice that the lease is subject to additional scrutiny, surveys, and potential mitigation to protect the specie(s) and or the specie's habitat from impacts caused by oil and gas exploration and development. Stipulations and Lease Notices, like this one, serve a vital role at the leasing stage by putting the BLM, lessee, and the public on notice that developing this lease may be difficult and may require additional mitigation and conformance.

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

III. BLM Violated the National Preservation Act- (Argues that the BLM violated the NHPA's scoping requirements by not involving the Tribe prior to nominating parcels.) (The Yomba Shoshone Tribe Protest at pages 10-12).

BLM Response

The Yomba Shoshone Tribe alleges that the BLM violated the NHPA's scoping requirements by not involving the Tribe prior to nominating parcels. The Tribe contends that appropriate consultations were not conducted prior to the development of the EA and the lease sale.

The nomination of parcels for leasing is conducted through the filing of Expressions of Interest (EOIs) by industry or other interested parties with the BLM Nevada State Office. These EOIs are collected, screened, adjudicated, and forwarded as a preliminary parcel list to the District Office responsible for managing those lands and are reviewed for consistency with Land Use Plans, and environmental review. Upon receiving this preliminary parcel list, the District Office initiates internal and external scoping, including tribal consultation; on the proposed action (lease sale) this is the earliest possible opportunity for BLM to engage the Tribe.

A summary of the consultation record between the BMD Native American Coordinator and the Yomba Shoshone Tribe is included below, this documents that the BLM attempted to initiate consultation at the earliest possible opportunity in the leasing process.

- *Letters regarding the 2016 BMDO Oil and Gas lease sale were sent to several tribes, including the Yomba Shoshone tribe on November 17, 2015. Return receipt from the US postal service indicated that the Yomba Shoshone Admin office received the letter on November 20, 2015. On December 9, 2015, I spoke with the Yomba environmental coordinator about a different project and asked if she had any questions about the Oil and Gas Lease Sale Parcels. She indicated that she thought she had missed the comment period. I informed her that the BLM would take comments from the Tribe at any point in the decision making process. I offered to have specialist and/or managers come out and answer any questions the Council or any Tribal members might have regarding the Lease Sale. The environmental coordinator informed me she would pass the information on to the Council and see what they wanted to do.*
- *On January 13, 2016, letters were sent to the Yomba Shoshone Tribal Council providing them with an additional comment period.*
- *On January 25, 2016 I called the Yomba Shoshone Tribe to see if they would like to set up a meeting to discuss the Oil and Gas lease Sale. The Tribal administrator told me she would talk to the council.*
- *On February 8, 2016 the BLM received a comment letter signed by the Yomba Tribal Chair. The letter did not request formal Government to Government consultation on the project. The Comments from the letter have been addressed in the EA. I again contacted the Yomba Tribe to set up a meeting. I was told that the Council was in flux and it would have to be scheduled at a later date.*
- *On March 8, 2016, I went to Yomba to try and talk to anyone about the Oil and Gas Lease Sale. I spoke with the Tribal Administrator and she informed me that the environmental coordinator had quit under pressure from the Tribal Chair. She then*

informed me that the Council was trying to have the Chair removed. And that they would not be able to have a Council meeting with the BLM until the issues with the Tribal Council were resolved.

- *On April 15 we received the petition notice on behalf of the Yomba Shoshone Tribe. It was not signed by any members of the Yomba Shoshone Tribal Council. On April 18, 2016 I called and spoke to the Administration office secretary and left a message for the Chairman to call me. To date I have not received a call from the Yomba Shoshone Tribe regarding the Oil and Gas Lease Sale.*
- *On May 11, 2016 I called and left a message with the Tribal Administrator regarding the Oil and Gas Lease Sale.*

Section 1.5 of the EA further documents the BMD's scoping and public involvement, including tribal consultation:

The BMD interdisciplinary team participated in internal scoping meetings on November 23, 2015. During the scoping meetings, parcels were evaluated for deferral based on resource concerns and land use conflict (see Appendix C).

Interested public letters were sent to the BMD mailing list outlining that the preliminary nominated parcel list, along with a map of nominated parcels, was available for review at the BLM National ePlanning website, for a 15-day scoping period which ended November 30, 2015. The BLM issued a press release the same day providing a link to the documents and instructions on how to comment. A total of five scoping letters were received. Please refer to Figure 2 for a map of the BMD June 2016 Oil and Gas Sale Offered Parcels.

Native American consultation letters for the June 2016 Lease Sale were sent to the Duckwater Shoshone Tribe, Yomba Shoshone Tribe and a group of the Te-Moak Shoshone Tribe known as the Descendants of the Big Smoky Valley on November 17, 2015. On November 30, 2015, the Mount Lewis Field Manager, Tonopah Field Manger and the Battle Mountain District Native American Coordinator (NAC), met with the Tribal Council of the Duckwater Shoshone Tribe. At that meeting, they did not identify or request to defer any parcels but asked to be contacted if APDs are submitted for any of the parcels. They also requested the BLM speak with the Tribal Environmental Coordinator regarding the parcels.

The BLM NAC also spoke with the Environmental Coordinator for the Yomba Shoshone Tribe on December 9, 2015. She stated that she would speak to the elders of the tribe to try and identify any concerns with the parcels. She expressed concern regarding fracking and asked that the Tribe be coordinated with in the event that any of the parcels were leased.

The BMD NAC met with the Duckwater Environmental Coordinator on December 17, 2015. The BMD NAC also met with a representative from the Descendants of the Big Smoky Valley on December 17, 2015. Both representatives identified resource concerns on 10 of the nominated parcels.

During the scoping and tribal coordination process, BLM identified 20 of the 64 nominated parcels for deferral due to resource concerns that were not analyzed in the current LUP. These parcels were not carried forward to the proposed action. BMD will request that a portion of the parcels be removed permanently from future lease sales. The remaining parcels will be deferred until the district can analyze and incorporate appropriate stipulations to minimize or eliminate impacts to resources. See Appendix C.

Nevada Department of Wildlife (NDOW) responded to the scoping letter with a formal comment letter that was received by the BMD on November 25, 2015. Only NDOW provided comments which recommended specific parcels for deferral or timing stipulations for wildlife. Commenters expressed concerns with regard to potential impacts to water usage, hydraulic fracturing, potential ground and surface water contamination, and wildlife impacts associated with potential exploration and development activities.

The preliminary EA was made available for public comment from January 13, 2016 until February 5, 2016. Letters were sent and a press release was sent to local newspapers. During the comment period BLM received seven comment letters. The comments and responses are in Appendix H. Changes in the document are in bold font.

In conclusion, the BLM provided numerous opportunities for tribal involvement in the leasing process through meetings and attempts to initiate Government to Government consultation with the Yomba Shoshone Tribe, based on the time constraints of the proposed action. Therefore, the Tribe's allegation above has been considered, found to be without merit and is dismissed.

- IV. BLM Violated the Mineral Leasing Act- (The Tribe argues that the BLM violated the MLA by not including stipulations to prevent the waste of natural resources, specifically by not including the explicit condition that a lessee will “use all reasonable precautions to prevent waste of oil or gas developed in the land.” (The Yomba Shoshone Tribe Protest at pages 12-13).**

BLM Response:

The BLM does not allow waste of oil or natural gas unless it is an emergency situation pursuant to NTL-4A, *Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases* (1980) (enclosed). 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. . . .”

Finally the BLM encourages capturing of gas being vented from their tanks and the recycling of it. The BLM only allows venting of natural gas during the initial testing phase of the well.

In conclusion as stated above, the BLM does not allow waste of natural gas and encourages capturing of gas being vented from their tanks and the standard stipulations in the BLM lease form 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. Therefore, the above Yomba Shoshone Tribe’s protest has been considered, found to be without merit and is dismissed.

- V. **BLM has violated FLPMA by failing to take “any action necessary to prevent unnecessary or undue degradation of [public] lands. (The Yomba Shoshone Tribe Protest at page 13).**

BLM Response:

The Yomba Shoshone Tribe contends that oil and gas activities necessarily involve wasting valuable resources and can be prevented by not engaging in development activities. The Tribe states that the action is therefore both undue and unnecessary.

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

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

degradation. 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 Yomba Shoshone Tribe's protest has been considered, found to be without merit and is dismissed.

VI. Concerns about Specific Parcels. (The Yomba Shoshone Tribe Protest at page 13-14).

BLM Response:

The BLM recognizes that the Tribe may have concerns over leasing public lands open to leasing in Township 15 North and Range 45 East. BLM is committed to working with tribes on projects that may negatively affect them. The BLM is reliant on tribes to provide sensitive information that can help identify and mitigate potential impacts from a proposed action. In order not to lease these identified sections of public lands, the Tribe would need to provide BLM specific data or evidence showing harm or injury to Native American resources or cultural concerns that cannot be avoided or mitigated at the leasing stage. If a lessee chooses to explore or develop their lease, the Tribe would have additional opportunity to comment on the proposed action and to provide the BLM with specific site locations that would require avoidance and protection.

The BMD's leasing process has a fixed schedule that must be followed to meet the legal timeframes for holding a competitive lease sale. BMD received the list of nominated parcels by November 4, 2015 and was required to complete coordination with tribes (determine if formal consultation is required), onsite parcel reviews, and NEPA analysis by February 19, 2016. If the Tribe is having difficulty meeting the deadlines set forth in the leasing process, then additional coordination between Tribe and BLM should occur to resolve the issue. Thank you for making the BMD aware of your specific parcel concerns and it is BLM's hope to improve communication between BLM and the Tribe on future lease sales, as well as, other projects that may affect your interests.

DECISION

To the extent that the Yomba Shoshone Tribe 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, the Yomba Shoshone Tribe protest of the Sale and the EA is dismissed and all 42 parcels were offered for sale on July 14, 2016.

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.

/s/ Marci L. Todd



John F Ruhs
State Director

Enclosures:

- 1- The Yomba Shoshone Tribe Protest dated April 15, 2016
- 2- DOI-BLM-NV-B000-2016-0002-EA (revised June 13, 2016); revised to further address public comments and concerns.
- 3- *Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases* (NTL-4A)
- 4- Form 1842-1

cc:

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NV0922 (A. Jensen)
NV0922 (J. Menghini)
NV0922 (D. Reynolds)

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