



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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DECISION

PROTEST DISMISSED

PROTEST OF BLM'S SEPTEMBER 14, 2011, COMPETITIVE OIL AND GAS LEASE SALE

On June 16, 2011, the Bureau of Land Management (BLM) provided notice that four (4) parcels of land encompassing 2,605.40 acres would be offered at our regularly scheduled quarterly oil and gas lease sale to be held on September 14, 2011 (lease sale) in Sacramento, California. The notice indicated that protests would be accepted until close of business on the 30th calendar day after the posting of the sale notice (4:30 pm on July 18, 2011).

In a letter dated July 15, 2011, to the BLM's California State Office (CASO) and the Hollister Field Office (HFO) the Center for Biological Diversity (CBD) and the Sierra Club (SC) protested all four parcels included in the lease sale. In the same letter the Los Padres Forest Watch (LPFW) protested the lease sale with respect to those parcels located in Monterey County.

The protest was considered timely filed and accepted.¹

DISCUSSION

The protest alleges that BLM did not comply with the National Environmental Policy Act (NEPA). The protest requests that:

1. BLM cancel the sale and prepare an environmental impact statement (EIS) that addresses alternatives to reduce greenhouse gas (GHG) pollution, impacts from hydraulic fracturing (fracking), methane waste, water quality, air quality, biological resources and climate change impacts;
2. BLM advise prospective lessees that this sale is under protest and will likely be subject to litigation;
3. BLM stay issuance of the leases pending resolution of any litigation;
4. If leases are issued, BLM suspend all activities and operations pertaining to the leases, including unitization and other drilling agreements pending resolution of any litigation.

PROTEST STATEMENT OF REASONS and BLM RESPONSES

Protest. The EA violates NEPA by failing to take a hard look at the lease sale's environmental consequences and the EA underestimates anticipated well development, thereby resulting in an understated and cursory impacts analysis.

BLM Response: The protest states that the EA is flawed because the BLM utilizes a reasonably foreseeable development scenario (RFD) to minimize agency actions and avoid analysis of environmental impacts. The use of an RFD is an established BLM method that projects the amount of development that could reasonably be expected to occur on the four parcels being offered for lease, taking into statistical account historical drilling and development activity throughout the region and within the HFO specifically (EA at 78, 84). Based on historic levels of activity on new Federal leases in California within the last 20 years, we expect no more than one well to be drilled on all of the parcels offered, with no particular area more likely than another to be drilled (EA at 81, 83). The RFD specifically projects that one well may be drilled on the parcels in question. Data for the entire region dating back to 1990 have been analyzed (EA at 84). Those data reflect historical drilling activity and data on recent oil and gas prices.

¹ Bureau of Land Management Instruction Memorandum No. 2010-117, May 17, 2010

Utilization of that data shows that over the past 10 years no wells have been drilled on the Federal mineral estate within the entire HFO boundary (EA at 81). In fact, for nearly the past 20 years only one small producing field (the Rose Field) was discovered in the entire region (EA at 84). As of 2009 a total of 25 wells had been drilled in the Field. The field is located about 2 miles north of Wasco, California, in Kern County and is notably very distant from the sites considered for this sale. It is therefore reasonable to assume that on the four parcels analyzed in this EA a total of only one exploratory well may be drilled.

The impacts analyzed are appropriate for the action that is contemplated, which is leasing of parcels for exploration. The total number of acres included in the parcels to be offered is less than 1% of the total acreage of Federal mineral estate available in the HFO (EA at 81). Also, this is an administrative action that conveys mineral rights to a lessee and does not approve of any operational activities. When and if specific drilling activity is proposed, the lease-holder would be required to submit a specific plan, and a specific environmental analysis would be prepared to evaluate that plan's impacts. In the evaluation of those planned activities BLM reserves authority to modify or preclude proposed activities if the environmental consequences are unacceptable.

Protest. The Environmental Assessment relies on outdated data

BLM Response: The FONSI concludes that the action (leasing and future development which may occur subsequent to leasing) will not have a significant effect on the environment beyond those impacts identified in the Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS). This conclusion is based on historical data from more than ten years of previous BLM experience with oil and gas activity in the areas which are designated for leasing. No wells have been drilled during this time on Federal mineral estate anywhere within the HFO boundary even though parts of this area have been previously leased (EA at 81). Nothing in the proposed action counters or invalidates the assumptions that are incorporated into the RFD for this proposal.

Protest. The EA's RFD fails to account for recent increases in oil and gas activity nationwide and specifically in the Monterey Shale.

BLM Response: This discussion in the protest is introductory in nature and provides background information relating to hydraulic fracturing technology and local industry projections designed as marketing strategies to attract investors. It provides no substantive comments concerning specific proposals for future development. The EA acknowledges an increased interest in hydraulic fracturing technology and geologic targets such as the Monterey Shale (EA at 74-77). However there is no site specific information on exactly where and how these resources would be developed.

The EA recognizes local interest in exploration drilling and proposes a reasonable development scenario. The protest provides no substantive evidence that interest shown so far would invalidate the scenario or irretrievably commit all acreage in the offered parcels to permanent disturbance. Nor is evidence presented that convincingly portrays the type of drilling technology that will be utilized should exploration be proposed. Specific project analysis is constrained at

the leasing stage because there is no reliable information on where and how these resources may be developed. As stated previously, the impacts projected in the RFD are based on a valid historical analysis of past activities that span a period of time of wide product prices, and factor in the fact that the parcels being offered in this sale represent only a small fraction of lands already leased and available for drilling.

Protest. The EA fails to analyze cumulative impacts, particularly those from greenhouse gas pollution and fracking, and instead focuses on a *de minimis* project.

BLM Response: The protest mistakenly uses the term *de minimis* to refer to project size. The term refers to air quality criteria pollutant threshold values for which a conformity determination is required in nonattainment areas. The EA accurately describes the potential effects of the proposed action, in terms of both intensity and duration, and concludes that the proposed action will have a negligible contribution toward cumulative impacts (EA at 103-115). Key in this analysis is the fact that the total number of acres of Federal mineral estate currently under lease in Monterey and Fresno Counties is less than 8.4% of the total acres of Federal mineral estate currently leased in California. Under the proposed action, should an additional 2,605 acres be leased, that would result in only a 7.4% increase in leased Federal mineral estate in Monterey and Fresno Counties, and the projected one well would be less than a 1% increase in the number of Federal wells in the two counties.

The EA identifies special status species that may be affected by the range of alternatives considered (EA at 54-66). Tables G-2 through G-5 list the status of each Federal and State-listed species potentially affected by the leasing of Federal mineral estate, followed by an account for each Federally-listed plant and animal species. An analysis of impacts to each of the Federally-listed plant and animal species identified in Tables G-2 through G-5 with potential to occur on the parcels being considered for leasing is also presented (EA at 96-100).

The EA acknowledges that the effects of project specific GHG emissions are cumulative, but also concludes that the direct GHG emissions from the proposed action would be undetectable on a nationwide basis, or even a local basis, and would be expected to have a very minor influence on global climate change. Also, the proposed action is limited to the issuance of a lease and does not authorize operational activities, such as hydraulic fracking. The EA acknowledges potential impacts from hydraulic fracking but correctly concludes that incomplete site specific information related to future lease development and the minor disturbance anticipated in the RFD are not relevant to a cumulative analysis of impacts of an oil and gas lease sale.

Protest. The EA fails to analyze the nature, intensity, and extent of the lease sale's impacts to climate change and to adequately describe and identify emissions.

BLM Response: In light of the information that is available, the EA adequately addresses emissions and climate change impacts. BLM explains its impact analysis methodology when there is a lack of specificity in the data or where incomplete and/or unavailable information is identified during the preparation of an EA (EA at 72-74). Although the decision to lease does not result in any emissions, the EA discloses the suite of emissions that may result from subsequent lease development, based on the RFD. In these cases impacts are sometimes described using

ranges of potential impacts or in qualitative terms. In the absence of quantitative data, impacts are described based on the professional judgment of the interdisciplinary team of technical specialists using the best available information. Pursuant to 40 CFR 1502.22, a statement of reason explains that the incomplete or unavailable information related to climate change (i.e. greenhouse gas emissions) is not relevant to the analysis because the RFD anticipates very little (if any) disturbance to the human environment as a result of the alternatives, and information related to climate change (i.e. greenhouse gas emissions) cannot be obtained because the means to obtain it are not known (EA at 73).

In light of the impact analysis methodology utilized, the impact assessment of specific effects of anthropogenic activities cannot be determined. Additionally, specific levels of significance have not yet been established. Therefore, climate change analysis for the purpose of this document is limited to accounting and disclosing of factors that contribute to climate change. Qualitative or quantitative evaluation of potential contributing factors are included where appropriate and practicable (EA at 77).

Consistent with the methodology described above, the analysis of impacts to climate change from emissions of pollutants associated with oil and gas development (statewide and for one well) are quantified (EA at 92). The EA further describes the constraints of the analysis where regional and state specific inventories are in varying levels of development, and analytical tools necessary to quantify climatic impacts at the project level are presently unavailable. Therefore, the analysis is limited to a qualitative comparison of the direct GHG emissions from the alternatives considered in this EA, including the proposed action, consistent with the requirements of NEPA to provide high quality information that identifies specific sources of greenhouse gas emissions and the magnitude of those emissions.

The EA acknowledges that the effects of project specific GHG emissions are cumulative, and without mitigation their incremental contribution to global climatic change could be considered cumulatively considerable (EA at 92). BLM concludes that direct GHG emissions from the proposed action would be undetectable on a nationwide basis, or even a local basis, for that matter, and would be expected to have a very minor influence on global climate change. However, there is no reliable methodology to assess the relationship between the decision to lease and the ultimate consumption of the resources. BLM's analysis is consistent with the Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions provided by the Council on Environmental Quality (CEQ), which states that "...it is not currently useful for the NEPA analysis to attempt to link specific climatological changes, or environmental impacts thereof, to the particular project or emissions, as such a direct linkage is difficult to isolate and to understand."² Any attempt to analyze the impacts of GHG emissions and other climate change factors from issuance of these leases would be a highly speculative exercise and beyond the scope of BLM authority or control

Major sources of GHG emissions are identified (EA at 43-44) and are based on the American Petroleum Institute's (API) Compendium of Greenhouse Gas Emissions Methodologies For The Oil and Natural Gas Industry (EA at 91). These include emissions associated with company

² Council on Environmental Quality, Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions. February 18, 2010.

operations, such as off-site generation of electricity, hot water or steam, and compression for on-site power, heat and cooling. These emissions from human activities include carbon dioxide and methane. However, based on the constraints described in the EA BLM determined that the analysis of impacts on climate change from GHG emissions is adequate to inform decision-makers and the public regarding the proposed lease sale because the RFD scenario anticipates very little (if any) activity as a result of the lease sale, and the potential lessee, operator, drilling contractor, well type, target depth, and location of future proposals determine the intensity, duration, and characteristics of associated pollutants, but are presently unknown and not reasonably foreseeable.

The suggestion that the EA violates NEPA because it fails to quantify emissions using readily available methodologies and that thresholds of significance have been proposed or guidelines to establish thresholds have been adopted by some local air districts is irrelevant because meaningful analysis of emissions from oil and gas development and identification of appropriate mitigation measures (i.e. best performance standards) is only possible at the project-level based on the rationale provided above.

Protest. The EA fails to consider alternatives to reduce greenhouse gas pollution, including methane waste.

BLM Response: BLM considered a reasonable range of alternatives that was developed based on internal and external public involvement during the preparation of the EA and the purpose of and need for the proposed action (EA at 6-7). The EA also describes the rationale for alternatives that were considered, but not analyzed (EA at 26-27).

Although the protest incorrectly uses the terms “reasonable alternatives” and “mitigation measures” interchangeably, the EA meets the intent of CEQ Guidance on Mitigation and Monitoring referenced in the protest because it identifies leasing stipulations that are common to all the action alternatives (EA at 22). BLM recognizes that measures to reduce criteria pollutant emissions will provide co-benefit reductions of GHG emissions, including methane waste. In particular, the PRMP/FEIS includes the following measures to minimize the potential adverse impacts from GHG emissions associated with the range of alternatives for oil and gas leasing:

5. Measures to Protect Air Quality:

- A) All oil and gas exploration and development activities that require off-road vehicle use or surface disturbance would be required to obtain an air quality emission permit or verification that such permits are not appropriate from the regional air quality control board.
- B) All oil and gas exploration and development activities resulting in surface disturbance or requiring the use of motorized vehicles would be required to suppress fugitive dust emissions from paved and unpaved surfaces in accordance with local air pollution control district (APCD) regulations.

The EA explains that potential lessees/operators are responsible for ensuring operations are properly permitted with the appropriate agencies in compliance with all mobile and stationary source guidelines (EA at 89-90).

As noted above, BLM considered a reasonable range of alternatives, and all action alternatives include standard lease stipulations to reduce air quality impacts from oil and gas exploration and development activities, including greenhouse gases. The EA explains that BLM retains the authority to impose controls on engines (drilling rigs), roads, monitoring devices, haul vehicles, noise, and sources of VOCs (EA at 89). Furthermore, the EA indicates that all current and future activities on Federal leases will be subject to additional restrictions and requirements imposed on oil and gas drilling and production to reduce GHG emissions in accordance with AB 32 (EA at 90).

The level of analysis of impacts is commensurate with the level of detail provided in the EA and on the quality of data available to assess impacts at the leasing stage (EA at 72). In addition, mitigation measures are not applicable to issuance of a lease because this type of undertaking is administrative only, and no activities are approved on the lease without further review and approval by BLM officials (EA at 115). Accordingly, the EA properly concludes that the no action alternative would result in no effects on air quality because the leases would not be offered. The estimated levels of GHG emissions from both of the action alternatives would be similar because very little (if any) activity is anticipated as a result of the lease sale, based on the RFD scenario.

The Protest alleges that the EA violates NEPA because it fails to identify the many measures that would reduce greenhouse gas impacts from the proposed action and to consider those measures as reasonable alternatives. This allegation is specious because the EA describes the regulatory measures and efforts by the California Air Resources Board (ARB) to reduce GHG emissions of carbon dioxide and fugitive methane from oil and gas production pursuant to AB 32 (EA at 45). In addition, acknowledges that the effects of project specific GHG emissions are cumulative, and without mitigation their incremental contribution to global climatic change could be considered cumulatively considerable and that the best approach in addressing cumulative impacts would be to require all projects to reduce their GHG emissions, through project design elements or mitigation (EA at 92).

Furthermore, the EA clearly indicates there is no reliable methodology to assess the relationship between the decision to lease and the ultimate consumption of the resources, and BLM does not dictate the destination of the resource produced from Federal lands. The effects from consumption resulting from the proposed action are not only speculative, but are beyond the scope of BLM authority or control (EA at 93). Therefore, identification of appropriate mitigation measures is only possible at the project level.

Protest. Impacts to water quality

BLM Response: The EA describes water resources that may be affected by the range of alternatives considered and takes the appropriate hard look at water quality impacts from the proposed oil and gas lease sale where wells would generate significant amounts of waste water,

the environmental consequences section of the EA includes the following. The EA also identifies the current demand for groundwater resources for agriculture in Monterey and Fresno counties

As stated in the EA's impact analysis, BLM's standard stipulations and requirements from other agencies are expected to preserve water integrity in all cases. The assertion that the analysis is inadequate because federal or state standards for hydraulic fracturing do not exist is unreasonable because the EA only considers a range of alternatives for leasing federal mineral estate, and BLM retains the authority to preclude any drilling activities on the proposed leases until an application for a permit to drill has been approved by the agency.

The protest inappropriately attributes issues associated with the Marcellus Shale, including wastewater storage practices and radioactive isotopes, to the proposed action. Based on the age, location, and geophysical characteristics of the Monterey Shale, the levels of radioactive isotopes contained in wastewater are expected to be much lower, perhaps zero, and wastewater storage would have to meet both EPA and California standards for wastewater treatment and storage. Nevertheless, the EA acknowledges potential contaminants of concern to drinking water, including fracturing fluid chemicals and degradation products and naturally occurring materials in the geologic formation (e.g. metals, radionuclides) that are mobilized and brought to the surface during the hydraulic fracturing process (EA at 76-77).

The level of detail provided in the EA regarding issues associated with increases in water demand for oil and gas development, potential sources of water supplies and the destination of wastewater, wastewater treatment, and the potential impacts of treatment facilities is commensurate with the level of development anticipated in the RFD. The assertion that the EA must definitively answer these questions is unfounded because the proposed action is limited to leasing of federal mineral estate, and generating meaningful analysis of water quality issues associated with an unknown well type, target depth, in an unknown location, with an unknown lessee, operator, drilling contractor, etc. is not feasible. A more thorough analysis of impacts to water quality is only possible at the project-level or application stage because these factors determine the intensity, duration, and characteristics of associated effects.

Protest. Risks for inducing seismic impacts

BLM Response: Although concerns about increased seismic activity within the region were identified in the public comments submitted to the Hollister Field Office, BLM considers these to be among the many concerns about potential effects of hydraulic fracturing that are outside the scope of this EA (EA at 118).

As noted in the Protest, California is seismically active. However the alleged link between the injection wells and increased earthquake activity is not definitive. Due to the complexity of geologic formations and the inherently unpredictable nature of earthquakes, there is no known method to analyze potential effects of oil and gas development on seismic activity across wide regions, nor on a specific fault. Therefore, the analysis of impacts is limited to those anticipated in the RFD.

Pursuant to 40 CFR 1502.22,, a statement of reason is provided to explain that the incomplete or unavailable information related to hydraulic fracturing (i.e. increased seismic activity) is not relevant to the analysis of impacts from BLM's competitive oil and gas lease sale because the RFD anticipates very little (if any) disturbance to the human environment as a result of the alternatives, and information related to the alleged link between the injection wells and increased earthquake activity cannot be obtained because the means to obtain it are not known (EA at 73-74).

Protest. The EA fails to adequately identify and analyze impacts to threatened, endangered, and sensitive species and species and their habitats.

BLM Response: The EA provides a lengthy discussion of BLM's proposed leasing stipulations, mitigation measures, and consultation strategies to avoid adverse impacts to special status species. The EA describes the relationship of the proposed lease sale to the Endangered Species Act of 1973 (ESA) and BLM's existing Biological Opinions (BO) issued by the US Fish and Wildlife Service (FWS). The FWS has concluded that oil and gas leasing and development on BLM public lands and split-estate mineral lands in Fresno and Monterey counties is not likely to jeopardize the continued existence of Federally-listed species. As described in the EA, the FWS reached this determination because BLM's program guidance is generally designed to promote the conservation of these species; BLM has proposed to evaluate and survey public lands prior to conducting any project-level activities that may potentially affect any of the listed species or their habitats; and any potential future development of the parcels being considered for leasing would be subject to the reasonable and prudent measures and the re-initiation notices outlined in the BO's to avoid and minimize effects to species listed under the ESA (EA at 9-10). Additionally, the EA clearly identifies leasing stipulations that are common to all action alternatives (EA at 22).

To satisfy NEPA's requirement that an agency take a hard look at environmental impacts, an agency must prepare a detailed statement. The EA includes an analysis of the nature, intensity, and extent of the actual impacts of federal activities. BLM describes special status species that may be affected by the range of alternatives considered in the EA (EA at 54-66). Tables G-2 through G-5 list the status of each Federal and State-listed species potentially affected by the leasing of federal mineral estate, followed by an account for each Federally-listed plant and animal species. An analysis of impacts to each of the Federally-listed plant and animal species identified in Tables G-2 through G-5 with potential to occur on the parcels being considered for oil and gas leasing is also presented (EA at 96-100).

Based on evaluation of threatened and endangered species, the likely occurrences on the parcels proposed for leasing, and the potential effects of reasonably foreseeable development of the federal mineral estate on these species and their associated habitats, the EA concludes the proposed lease sale would have no direct effects on Federally listed species when compared to the environmental baseline under current management. The EA acknowledges the potential for indirect effects to biological resources from offering the parcels for lease, but explains that all development proposals will be subject to site specific NEPA and ESA review, including species and habitat surveys. Also, project design criteria, mitigation measures, and compensation, would be similar to those detailed in BO 1-8-07-F-19 and would be applied at the time of the site-

specific NEPA analysis and implementation of the ESA Section 7 biological opinion. BLM provides project-specific oversight of the implementation of all measures. The BLM also requires post-project compliance reports to be submitted to document implementation of mitigation measures and their effectiveness (EA at 98). If monitoring and evaluation determine that mitigation measures are not effective, BLM would utilize adaptive management to facilitate changes that would best ensure that desired resource conditions and outcomes are met.

The analysis of impacts referenced above constitutes a meaningful and exhaustive list of known and potential impacts to threatened and endangered species with potential to occur on the parcels being considered for leasing. The likelihood of impacts is clearly discussed in the EA, and is based on the RFD wherein one well may be drilled, with disturbance to one (1) acre. Given the total project area of approximately 2,600 acres, disturbance to one acre or less is reasonably insignificant. The EA also lists numerous other mitigation and avoidance measures that together constitute a meaningful strategy for avoiding adverse impacts to special status species (EA at 22).

San Joaquin Kit Fox: The Protest misquotes McDonald-Madden et al. 2008³ on the extinction threshold for San Joaquin kit fox. The paper is a theoretical modeling exercise which tests the effects of resource allocation on species protection, and the cited 24-year extinction threshold is the output from a model intended to indicate the efficacy of the model itself, rather than make a real-world prediction about a specific date when kit foxes will go extinct. Data from historical spotlight studies and current data from population genetic studies suggest that kit foxes are stable and/or increasing in their core recovery populations.

The Protest cites the Recovery Plan for Upland Species of the San Joaquin Valley to the effect that oil and gas development remains a threat to the species. This is another misquote of the language in the Recovery Plan concerning the impacts of oil and gas on San Joaquin kit fox. The pertinent language in the Recovery Plan is found on page 130, in the species account for the kit fox: "...recent studies indicate that areas of moderate oil development may provide good habitat for kit foxes, as long as suitable mitigation policies are observed...impacts of oil activities at the Elk Hills Naval Petroleum Reserves in California on kit fox population density, reproduction, dispersal, and mortality appeared to be similar on developed and undeveloped areas of the Reserve..." These statements, which arise from intensive studies with large sample sizes, constitute the most reasonable prediction of the impacts of oil and gas on San Joaquin kit fox from the proposed lease sale. The EA predicts one well on 2600 acres of land, which cannot be considered to be any other than an "extremely low" level of oil development in the Monterey County parcels, which in any case have low to nonexistent likelihood of supporting kit fox habitat in the first place. Under any circumstances, the development on kit fox habitat in the Fresno parcels, with the No Surface Occupancy stipulation, will be zero.

The EA acknowledges that while effects can result from oil and gas development, the likelihood and extent of such potential impacts from leasing the subject parcels would be reduced because of BLM's site specific NEPA and ESA reviews. The probability of disturbing important habitat for any special status animal species is low throughout Units 1 & 2 due to the absence or sparse

³ McDonald- Madden, E., P.W.J. Baxter and H.P. Possingham 2008. Subpopulation triage: How to allocate conservation effort among populations. *Conservation Biology* 22(3): 656-665

presence of the target species there. On Unit 4 special status species have a higher likelihood of occurrence (particularly San Joaquin kit fox and blunt-nosed leopard lizard) but once again, the total predicted disturbance represents only a small fraction of potential habitat (EA at 98- 99). The EA properly concludes that the type and the extent of the impacts to the species and the associated habitat are negligible based on the low levels of reasonable foreseeable development, ESA Section 7 consultation requirements with FWS, and the special status species leasing stipulations proposed by BLM.

Blunt-nosed Leopard Lizard: The Protest argues that BLM should have undertaken surveys for the blunt-nosed leopard lizard in order to analyze impacts or proposed oil development. In the event that oil and gas development activity were to be proposed on any parcel in Fresno County, the No Surface Occupancy stipulation would mean that the impacts to leopard lizards and their associated habitat will be zero on the parcels in question. Activities would only be allowed offsite, and only where unacceptable impacts to the Blunt-nosed Leopard Lizard could be avoided. Habitat for this species does not occur in Monterey County. BLM's site specific NEPA and ESA review and the probability of disturbing important habitat for any special status animal species is low throughout Units 1 & 2 due to the absence or sparse presence of the target species there. The EA properly concludes that the type and the extent of the impacts to the species and the associated habitat are negligible based on the low levels of reasonable foreseeable development, ESA Section 7 consultation requirements with FWS, and the special status species leasing stipulations proposed by BLM.

South Central Coast Steelhead and its Critical Habitat: By letter dated August 7, 2006, BLM requested consultation with the National Marine Fisheries Service (NMFS) pursuant to the ESA and 50 CFR 402 concerning the Hollister Field Office's Proposed Resource Management Plan for the Southern Diablo Mountain Range and Central Coast of California. The letter identifies anadromous fish species that may be affected by the implementation of the Hollister RMP, including Central Coast Coho ESU (*Oncorhynchus kisutch*), and Central Coast Steelhead ESU (*O. mykiss*). The letter also indicated critical habitat for Central Coast Coho ESU (*O. kisutch*) and Central and South-Central California Coast Steelhead ESU (*O. mykiss*) may be affected.

Based on information included in BLM's Biological Assessment (BA) for the Hollister RMP (received via email by NMFS on November 7, 2006), the NMFS issued a letter of concurrence to the Hollister Field Office on December 21, 2006, which states that "NMFS agrees that effects to listed salmonids appear non-existent on all areas covered by the RMP except for the Coast Dairies property. For example, [bullet] the majority of BLM lands managed by the Hollister Field Office are located away from anadromous fish bearing streams."

Although concerns about impacts on anadromous fisheries and their critical habitats were identified in the public comments submitted to the Hollister Field Office, BLM considers these to be among the many concerns about potential effects of hydraulic fracturing that are outside the scope of this EA. The impacts pursuant to hydraulic fracking are not reasonably expected to be significant based on the small amount of projected development and the lack of any evidence that fracking will even be performed and that fracking would cause problems if it is performed. Therefore, the analysis of impacts is limited to the assumptions expressed in the RFD.

California Condor: The EA provides a thorough discussion of the status of the California condor as well as the lack of documented effects of oil and gas development on the condor (EA at 57, 99). The protest concurs with BLM that such documentation would be available if indeed a negative interaction between condors and oil & gas development had occurred (Protest at 20). As stated in the EA (EA at 9) BLM formally consulted with the FWS in 2006 to consider the effects of BLM oil and gas leasing on Federally-listed species that are known or have potential to occur on public lands and split-estate mineral lands within the boundary of the Hollister Field Office, including the California condor. The resulting BO⁴ concluded that oil and gas leasing and development on BLM public lands and split-estate mineral lands in Fresno and Monterey Counties are not likely to jeopardize the continued existence of Federally-listed species because (1) BLM's program guidance is generally designed to promote the conservation of these species; (2) BLM has proposed to evaluate and survey public lands within the Hollister Field Office prior to conducting any project-level activities that may potentially affect any of the listed species or their habitats, and (3) any potential future development of the parcels being considered for leasing would be subject to the reasonable and prudent measures and re-initiation notices outlined in the BO to avoid and minimize effects to the California condor.

The EA acknowledges that while effects can result from oil and gas development, the likelihood and extent of such impacts from leasing the subject parcels would be reduced because of the BLM's avoidance measures and COAs that would be developed during the site specific NEPA and ESA reviews.

Mountain Plover: On May 12, 2011, the FWS announced the decision to withdraw the proposed listing of the Mountain Plover (*Charadrius montanus*) as a threatened species under the ESA.⁵ Nonetheless, Table G-3 (EA at 60) acknowledges that the Mountain Plover was proposed to be listed under the ESA and is currently a State Species of Concern and a BLM Sensitive Species with potential to occur on the parcels being considered for leasing in Fresno County. Again, the total predicted disturbance represents only a small fraction of potential habitat (EA at 98-99). The EA properly concludes that the type and the extent of the impacts to the species and the associated habitat are negligible based on the low levels of reasonable foreseeable development, ESA Section 7 consultation requirements with FWS, and the special status species leasing stipulations proposed by BLM.

Important Bird Areas: Both bird areas identified in the Protest are some distance from the proposed lease sale parcels. Bird areas are established because they are loci of bird concentrations. Birds already navigate past unsuitable intervening habitat (including oil fields, cities, and vast agricultural fields) to use the bird areas. The BLM properly concludes that the addition of 1 well in an intervening region cannot constitute a reasonable threat to bird populations in a bird area.

Protest. The EA improperly ignores the significant risks to species and habitats from foreseeable oil and gas production related spills

BLM Response: The Protest cites the Sespe-Tar Creek spill, an event that took place in a region with hundreds of oil wells. The Protest also cites a study in which 20% of the oil and gas

⁴ Memorandum No. 1-8-07-F-19 (6-8-07) from FWS to BLM Hollister Field Manager.

⁵ Federal Register, 75 FR 27756, May 12, 2011,

facilities examined experienced spills. With 1 well predicted for development in regions with a low likelihood of an accidental spill, multiplied by the low likelihood of a special status species actually interacting with the spilled oil, foreseeable impacts to species and habitats from oil and gas production related spills arising from the proposed lease sale are extremely unlikely.

Oil spills are rare, accidental occurrences. Despite the Protest's claim that the EA ignores risks to species and habitats from oil and gas production related spills, the EA acknowledges that indirect impacts to soils, water, and biological resources that could result from the proposed action are primarily associated with the potential for spills and releases.

The level of detail provided in the EA regarding issues associated with production related spills is commensurate with the level of development anticipated in the RFD. The assertion that the EA must definitively answer spill-related questions is not reasonable because the proposed action is limited to leasing of federal mineral estate, and generating a meaningful analysis of spill-related issues associated with an unknown well type, target depth, in an unknown location, with an unknown lessee, operator, drilling contractor, etc. is not feasible. A more thorough analysis of potential impacts from spills is only possible at the project-level or application stage because these factors determine the intensity, duration, and characteristics of associated effects.

Protest. The EA improperly ignores the significant risks to species and habitats from foreseeable contamination by toxins in oil and gas, fracking fluids and wastewater

BLM Response: The proposed lease parcels are in a semi-arid landscape where no terrestrial special status species are expected to be resident and where no documented special status aquatic species exist. Because the reasonably foreseeable development resulting from the lease sale is one well, it is unlikely that any toxins arising from the one well will pose a significant risk to any special status species or their habitat.

The level of detail provided in the EA regarding issues associated with toxins, fracking fluids, and waste water is commensurate with the level of development anticipated in the RFD scenario. The assertion that the EA must definitively answer specific questions is not reasonable because the proposed action is limited to leasing of federal mineral estate, and generating a meaningful analysis of issues associated with an unknown well type, target depth, in an unknown location, with an unknown lessee, operator, drilling contractor, etc. is not feasible. A more thorough analysis of potential impacts from toxins, fracking fluids, and wastewater is only possible at the project-level or application stage because these factors determine the intensity, duration, and characteristics of associated effects.

Protest. The EA fails to take a hard look at the impacts of hydraulic fracking.

BLM Response: The Protest incorrectly suggests that the proposed action would permit drilling of wells using a technique known as hydraulic fracturing. In fact, the proposed action is limited to issuance of a lease and would not authorize any surface disturbing activities on parcels overlying federal mineral estate. The EA clearly explains there is a review process required before oil and gas drilling can occur, which is described in detail at 43 CFR 3100 and in BLM Manual 3100 (EA at 9).

Pursuant to 40 CFR 1502.22 a statement of reason is provided and explains that the incomplete or unavailable information related to site specific analysis of future lease development and/or hydraulic fracturing is not relevant to the analysis of impacts from BLM's competitive oil and gas lease sale because the RFD scenario anticipates very little (if any) disturbance to the human environment (EA at 73-74). Furthermore, such analysis is constrained at the leasing stage because there is no reliable information available on where and how these resources would be developed. Actually, withholding analysis of impacts until an Application for a Permit to Drill (APD) is submitted is the only meaningful way to analyze such issues as air quality impacts, water quality impacts, and infrastructure extensions because analyzing site-specific impacts across large tracts of lands that may or may not be developed is not feasible (EA at 74).

In light of these constraints, the EA provides a thorough discussion of the public concerns and potential impacts associated with hydraulic fracturing to foster both informed decision-making and informed public participation (EA at 74-77). In addition to the information provided on the EPA website for hydraulic fracturing, BLM also included a link to the extensive study by the U.S. House of Representatives Committee on Energy and Commerce Minority Staff titled "Chemicals Used in Hydraulic Fracturing (April 2011)."

By acknowledging public concerns and potential impacts associated with hydraulic fracturing, as well as the report from the U.S. House of Representatives, the EA clearly indicates there is a possibility that these chemicals will be used on leasing sites. The BLM's 2008 MOU with the California Division of Oil, Gas, and Geothermal Resources (CDOGGR) acknowledges that BLM is responsible for permits to drill on Federal mineral estate to prevent surface and groundwater contamination and ensure protection of sensitive resources. In the MOU BLM agrees to use any State regulations for oil and gas drilling where State regulations are clearly more stringent than Federal regulations, and CDOGGR will do the same for Federal wells under their jurisdiction (such as underground injection control (UIC) wells. However, both BLM and CDOGGR consider hydraulic fracturing to be a "routine" drilling operation, so there are no special regulations for the use of this technology on private or Federal mineral estate in California.

The EA identifies the risks of water quality contamination from surface storage of these compounds, and of other oil and gas wastes, including produced and flowback water from wells. Similarly, the EA identifies the risk of potential spills and blow-outs at well sites, but such major spills are not common, as alleged in the protest, as evidenced by the following statement (EA at 76):

Hydraulic fracturing technology has been in use in California for over thirty years in the Monterey Shale formation located on-shore in Kern County and off-shore in Santa Barbara County. In response to a 2011 inquiry from the Ranking Member of the House of Representatives' Committee on Natural Resources regarding the use of hydraulic fracturing on Federal lands, BLM's Bakersfield Field Office generated the following information.

Virtually all of the HF jobs on Federal mineral estate from 2000-2010 were on oil wells, which is what would likely be found if a well in the subject parcels was

successful. Nearly all of the HF jobs on Federal mineral estate in California were on one of the following leases: CAS 19376, CAS 19636, CAS 19314, and CAS 19314A for a total 355 wells fractured out of 2056 drilled on federal mineral estate in the state in the last 10 years, which equals about 17%. To date, there is no evidence of adverse effects on water quality and/or availability of groundwater for ranching and agriculture in communities where hydraulic fracturing has occurred, including in the Monterey shale.

Potential impacts from spills on soils, water, and special status species are addressed above as well as potential impacts to air quality from GHG emissions associated with hydraulic fracturing.

Protest. The EA fails to adequately address environmental justice concerns.

BLM Response: The Protest provides no specific information to substantiate allegations that BLM failed to address environmental justice concerns. No information in the EA shows any disadvantaged communities would be disproportionately impacted on any of the public lands where they may live, work, or recreate. The EA properly acknowledges its environmental justice review requirements and identifies and discusses ethnicity and income distribution in both Monterey and Fresno Counties (EA at 34).

II. **Protest.** BLM must prepare an EIS for the proposed action because the EA fails to adequately assess many of the lease sale's effects including, but not limited to, impacts to water quality and water resources and cumulative effects.

BLM Response: As previously discussed the EA reviewed the levels of activity that have occurred on existing leases over the past ten years and the foreseeable use of hydraulic fracturing (EA at 72-85). These levels of development were thoroughly documented in the RFD and form the basis for the Finding of No Significant Impact (FONSI) and Decision record (DR). The Protest provides no statistics or evidence to dispute the RFD data or substantiate claims of significant impacts from the potential use of hydraulic fracturing technology. In fact, a recent industry report indicates that a majority of development in the Monterey Shale will not employ hydraulic fracturing technology⁶

The FONSI for the EA determined that based upon a realistic estimate of the levels of activity and types of technology expected to be used in the area, and the types of disturbance and impacts commensurate with these levels and types, the final decision to lease the subject parcels "...does not constitute a major federal action having a significant effect on the human environment" (FONSI at 2). The FONSI further states "Therefore, an environmental impact statement or a supplement to the existing environmental impact statement is not necessary and will not be prepared."

⁶ Oil and Gas Journal Weekly E&D Report, *Venoco prefers Monterey vertical well economics*, August 4, 2011.

DECISION

The protest alleges that BLM did not comply with NEPA and requests that the sale be cancelled and an EIS prepared. BLM has complied with NEPA and appropriately addressed alternatives to reduce air, water, biological, and hydraulic fracturing impacts. The protest also requests that BLM advise prospective lessees that this sale is under protest and will likely be subject to litigation and should, therefore, stay issuance of leases pending resolution of any litigation and, if leases are issued, suspend all activities and operations pending resolution of the litigation. These requests are untimely because litigation has not been filed.

After careful consideration of the issues outlined in the Statement of Reasons, I have decided to dismiss the protest and offer all of the protested parcels at the September 14, 2011 oil and gas lease sale. Protesting parties have the right to appeal denied protests to the Interior Board of Land Appeals (IBLA) but appeals will not automatically halt the auction or issuance of leases.

/S/ Peter J. Ditton

Peter J. Ditton

Acting State Director

Enclosures

Form 1842-1 (1pg)

43CFR4.21 (1pg)

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 4.21 and Form 1842-1 (enclosed). If an appeal is taken, your notice of appeal must be filed in this office within 30 days from your receipt of this Decision. The protestor has the burden of showing that the Decision appealed from is in error.

If you wish to file a petition for a stay 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 on the attached document. Copies of the notice of appeal and petition for a stay must be submitted to the Interior Board of Land Appeals and the appropriate Office of the Solicitor (see 43 CFR §4.413) at the same time the original documents are filed with this office. Copy of the notice of appeal and petition for a stay must also be submitted to each adversely affected party named in this decision 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 regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

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

The "Competitive Oil and Gas Lease Sale Results" may be found on the BLM website at <http://www.blm.gov/ca/st/en/prog/energy/og/instructions/leasesale/2011.html> at the conclusion of the lease sale. The sale results will contain a list of persons who purchased parcels at the September 14, 2011 sale and are, therefore, adverse parties who must be served with any pleadings.