



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
California State Office
2800 Cottage Way, Suite W-1623
Sacramento, CA 95825

March 11, 2011

In Reply Refer To:
3100(LLCA921)P

**CERTIFIED MAIL-
RETURN RECEIPT REQUESTED**

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Center for Biological Diversity
P.O. Box 31001
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DECISION

PROTEST DISMISSED

PROTEST OF BLM's December 8, 2010, COMPETITIVE OIL AND GAS LEASE SALE

On October 22, 2010, the Bureau of Land Management (BLM) provided notice that 5 parcels of land encompassing 2,743.76 acres would be offered at our regularly scheduled quarterly oil and gas lease sale to be held on December 8, 2010 (lease sale). The notice indicated that protests would be accepted until close of business on the 15th calendar day prior to the sale (4:30 pm on November 23, 2010).

In a letter dated November 22, 2010, to the California State Office (CASO), the Center for Biological Diversity (CBD) protested twenty one (21) parcels. However, BLM did not offer twenty one (21) parcels on the December 8, 2010, sale nor did the Environmental Assessment (EA) (DOI-BLM-CA-C060-2010-0189) analyze 21 parcels. The EA, which analyzed the 2,743.76 acres for competitive oil and gas lease, considered eleven (11) parcels. One (1) parcel was deferred and ten (10) were accepted for analysis. For purposes of the lease sale, these ten (10) parcels were re-parceled, resulting in five (5) sale parcels being offered totaling 2,743.76 acres. Nevertheless, the protest was considered to be timely filed and was accepted. After careful review of the protest and supporting documents, I elected to proceed with the sale while reviewing the protest's statement of reasons.

DISCUSSION:

The protest alleges that BLM did not comply with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Mineral Leasing Act (MLA). CBD requests that:

1. The BLM withdraw all parcels from the lease sale and suspend any decision to lease the proposed parcels until the agency has complied with federal law and considered all new information, changed circumstances, and other relevant issues;
2. The BLM prepare a full Environmental Impact Statement (EIS) before approving parcels for competitive lease. A full EIS is required due to the impacts the project will have on the San Joaquin kit fox and other federal and state protected species, as well as the impacts from greenhouse gas emissions on climate change. The EIS must provide a full analysis of all impacts; and
3. The BLM require mitigation measures, including those listed in EPA's Gas STAR program, to prevent leakage and unnecessary emissions of greenhouse gases, in order to comply with FLPMA and MLA.

PROTEST STATEMENT OF REASONS and BLM RESPONSES

- I. The EA fails to take a hard look at the December 8, 2010, lease sale's environmental consequences in violation of NEPA.
 - A. The National Environmental Policy Act

BLM Response: This discussion in the protest is introductory and provides no substantive comments concerning how the EA violates NEPA; however, this element of the protest statement of reasons seems to argue that the EA prepared for the lease sale does not comply with NEPA. On the contrary, the EA thoroughly addressed all of the points outlined in the protest, and fully complies with NEPA in all respects, as will be further documented below. One letter commenting on the EA was received, and the Decision Record¹ (DR) responded to that letter by identifying passages in the EA where relevant analysis could be found. (DR at 2-3.) The BLM also responded that it would encourage lessees/operators to adopt EPA's recommended technologies and practices under the Natural Gas STAR program during training, operator seminars, and conferences. Further, BLM clarified that all lessees/operators will be required to comply with all federal, state, and local laws and regulations to mitigate Greenhouse Gas (GHG) emissions. (DR at 2.) Finally, the DR corrected the number of wells drilled in California Division of Oil, Gas, and Geothermal Resources (CDOGGR) District 4 during 2008. (DR at 3.)

¹ Decision Record for December 8, 2010, Oil and Gas Competitive Lease Sale Environmental Assessment #DOI-BLM-CA-C060-2010-0189.

- B. The EA fails to adequately describe and consider existing environmental conditions.

BLM Response: This discussion in the protest is introductory in nature and provides no substantive comments as to how the EA fails to describe and consider the existing environmental conditions. As will be shown in the following discussion about specific allegations, the EA thoroughly addressed all of the points raised in the protest and fully complies with NEPA.

1. The EA fails to adequately describe global warming and its impacts on the affected area.

BLM Response: As the protest recognizes, the EA includes a more detailed description of climate change and its current effects when compared to previous BLM Bakersfield Field Office (BFO) oil and gas lease sale EAs. (Protest at 4.) BLM incorporated and utilized additional references, as CBD suggested in its comments on previous lease sale environmental documents. The EA does recognize localized effects of climate change in California. (EA at 12-14.) However, performing an “independent analysis of effects of climate change in California,” as the protest statement requests, is beyond the scope of an EA completed for a competitive oil and gas lease sale. (Protest at 5.) In the Analysis Assumptions, Reasonably Foreseeable Development (RFD) Scenario, BLM indicated that climate change analysis for the purpose of this document was limited to accounting and disclosing of factors that contribute to climate change. (EA at 24.) NEPA requires that:

“The affected environment section succinctly describes the existing condition and trend of issue-related elements of the human environment that may be affected by implementing the proposed action or an alternative.”²

Since the level of GHG associated with the proposed action (possibly one well) is not expected to detectably influence climate change, further qualitative evaluation of potential contributing factors are included under cumulative effects to biological resources from climate change and are therefore not entirely described in the affected environment section. (EA at 56-57.) The affected environment section of the EA does describe a range of effects that may (or may not) be anticipated to occur in the southern San Joaquin Valley, thereby recognizing baseline conditions may already be affected by climate change. Since current climate change models are not regionally scaled, climate information is available at a much coarser scale. The Department of the Interior is currently exploring whether global and regional climate modeling can be scaled to the point that it can be used to manage parks and refuges³. Following these guidelines, BLM will evaluate whether additional conditions or restrictions should be appropriately placed on existing leases, and what additional actions may be prohibited.

The EA prepared for this lease sale thoroughly documents the types of effects that are known to result from oil and gas development; furthermore, the level of analysis completed in the EA is commensurate with the level of impact that will result at the leasing stage, based on the RFD

² BLM National Environmental Policy Act Handbook; H-1790-1; 2008

³ GAO-07-863, 2007

scenario that one well will be drilled on one acre of habitat. (EA at 31-34.) The EA considers that a changing climate may necessitate or expedite the requirement for additional mitigation measures for actions permitted in the future. Site specific analysis of global warming effects on the “project area” is more appropriate at the application stage.

2. The EA fails to account for the status of increasingly imperiled species and diminishing habitat.

BLM Response: The EA identifies and provides extensive discussion of all Federal and State Listed and BLM Sensitive plant and animal species and their associated habitats. (EA at 17-21 and Biology Tables 1 – 6.) To further facilitate discussion of specific species and habitats, the EA establishes five Biological Units (Unit), i.e., groupings of adjacent parcels with similar ecological values, and discusses species and habitats within the context of these Units. (EA at 17.) Each Unit discussion includes general topography, notable disturbance, vegetation, common animals, and potential sensitive species. For some Units, particular characteristics of individual parcels are also noted.

The EA discusses the role of diminishing habitat and key features of the recovery strategy. (EA at 41, 54-55.) The EA further analyzes potential effects to listed species habitat and recovery efforts. (EA at 41-43, 55.) BLM specifically discussed the Recovery Plan for the kit fox and other listed species and incorporated reserve and corridor mitigation and compensation to meet regional conservation goals. (EA at 41.) In addition, BLM has established a cap on development disturbance in conservation reserves and corridors. (EA at 41-42.) Additional avoidance and mitigation measures are required to be incorporated at the site specific stage. (Id.) Finally, the leases offered for sale contain special stipulations to protect listed species. Lessees may be required to modify, move, or may be precluded from surface disturbing activities pursuant to these species stipulations. (Id.)

The current EA, which included a 30-day public comment period, allowed the BFO to consider the conclusions in the Caliente RMP and to consider whether any additional information was available that would alter those conclusions. (DR at 2.) The EA considers the potential impacts of leasing the parcels that have been identified because there is no available information upon which further analysis could be conducted; additional data is not available because a site-specific development proposal has not been submitted. The EA prepared for this sale thoroughly documented the types and intensity of effects that might be anticipated, based upon the level of development that would be predicted from the RFD scenario. The EA considers potential development of the parcels offered in the lease sale consistent with the levels that have actually occurred on similar parcels within the sale area since the RMP EIS was completed.

The EA states, and the protest acknowledges, that a 40-acre parcel that is within critical condor habitat was deferred from leasing pending completion of the Bakersfield RMP. (EA at 5.) However, the protest raises doubts about the utility of the FWS’s Condor Recovery Plan Figure 1 and GPS data in providing information sufficiently accurate to conclude whether or not parcels 4, 5, 6, 7 and 8 are outside Condor range. (Protest at 9.) Although the FWS’s Recovery Plan historic range map is presented at a broad scale, computerized geo-rectification using county boundaries, combined with information presented in the Recovery Plan on condor movements

and the influence of topography allows a reasonable determination to be made on the proximity of parcels 4, 5, 6, 7 and 8 to historic condor range. Historic observations and post-release satellite and GPS GIS data obtained from the USFWS Condor Recovery Program were also reviewed to confirm that the parcels are outside historic and current condor use areas. BLM's confidence in these data sources is such that a reassessment of whether the parcels are within condor habitat is not necessary. Because parcels 4, 5, 6, 7, and 8 are outside the area that condors are reasonably expected to occur on or fly over, no further analysis of the California Condor is necessary.

- C. BLM fails to take a hard look at the sale's impacts by only considering impacts resulting from a subset of the proposed action.

BLM Response: The protest ignores the thorough analysis of past development in the RFD scenario to reach the conclusion that the BLM is attempting to hide the real consequences of the lease sale. The EA analyzed the potential effects of one well with less than one acre of surface disturbance, because that is the result predicted by the field office comprehensive review of activities on all new leases that have been issued in the area covered by the Caliente RMP during the past ten years. (EA at 24-27.) This is not an unsubstantiated conclusion. To the contrary, it is based upon publicly available data. (EA at 24.) The EA further states that a site-specific environmental evaluation must be completed prior to drilling even the one well that is predicted in the RFD. (EA at 3 and 24.) The only action authorized by the completion of the EA is the offer of lease parcels at the regularly scheduled quarterly lease auction. In developing the RFD scenario the BLM is in full compliance with BLM Manual H-1624-1, Planning for Fluid Mineral Resources.

The protest clearly misinterprets the analysis in the EA, and has alleged that the BLM is intentionally underestimating the amount of development and associated impacts. This misinterpretation has resulted in a faulty analysis of potential impacts. The "special leasing stipulations" attached to each parcel offered at the lease sale provide additional assurance that the BLM is fully complying with its NEPA obligations in authorizing the level of disturbance that has been thoroughly analyzed in the EA. (EA at 63-76.) The application of these special stipulations follows a "two phase" approach that has been validated by previous environmental analyses and lease sales.

- D. The EA fails to analyze the nature, intensity, and extent of the lease sale's actual impacts.
 - 1. Impacts to threatened, endangered, and sensitive species and their habitat.
 - a. Impacts to the San Joaquin kit fox
 - b. Impacts to the California condor
 - c. Other species

BLM Response: The EA thoroughly discusses and analyzes the likelihood and extent of potential impacts based on the level of development that would be predicted from the RFD scenario, the application of strategies to avoid adverse impacts, and the actual level of

development based on lease sales in the past ten years. (EA at 36-37, 39, 41, 43.) The EA contains an analysis of the extent of potential impacts within the context of parcel size, presence of native habitat, topography, soil type, degree of oilfield development, complexity of native vegetation, and importance of lands to threatened, endangered and sensitive species recovery and conservation. (EA at 37-38, 42-43.)

The protest alleges that strategies to avoid adverse impacts are not discussed, but ignores the EA's detailed discussion of how project design criteria, mitigation measures and compensation would be applied to any site-specific development proposal. (EA 36, 39-42.) Any habitat disturbance will be compensated at a rate of 1.1 acre for every acre temporarily disturbed and three acres for every acre permanently disturbed. (EA at 39, 41-42.) In addition, disturbance to BLM surface requires an additional replacement factor of one acre for every acre disturbed and disturbance within the Western Kern County Kit Fox Core Area requires a 4:1 compensation ratio. (EA at 39, 41-42.) On-site biological monitors and post-construction reports are used to ensure and document application of measures to avoid or minimize impacts. (EA at 36, 40.) In addition to site-specific measures, all new oil and gas leases are subject to the Limited Surface Use Stipulation (LSU) which reserves to BLM the right to delay processing; move, modify or seasonally restrict activities; or prohibit surface disturbing activities on all or a portion of the lease to protect biological resources. (EA at 36, 41.) BLM has also established landscape safeguards for BLM surface consistent with regional conservation strategies (EA at 37, 41-42.) Disturbance on BLM surface in reserves would be limited to 10% and disturbance on BLM surface in corridors would be limited to 25%. (EA at 36-37.)

The protest also states that BLM must reinitiate consultation based on new information regarding the status of the San Joaquin kit fox. (Protest at 13.) The "new information" that is cited in the referenced McDonald-Madden⁴ paper is entirely theoretical because the paper's main hypothesis centers on a statistical model which may (or may not) be used to predict future kit fox populations by correlation to future budgets of resource management agencies. The paper actually disregards the site-specific survey data collection and analysis that is currently underway to preserve, improve, and acquire additional habitat to ensure species recovery (EA at 42, 55.) Reinitiating consultation based upon this entirely theoretical model is not appropriate or warranted.

The EA analyzes the cumulative effects to threatened, endangered and sensitive species in the San Joaquin Valley and concludes that potential development on any of the lease parcels will not have a significant effect on biological resources. (EA at 54-56.) Potential development of each parcel was analyzed in the context of the reserve and corridor strategy that support the regional conservation strategy. (Id.)

- d. Foreseeable oil spills and contamination present significant risks.

BLM Response: The BLM leasing process does not automatically produce adverse effects, and the lease sale itself does not provide authorization for a site specific development proposal. The protest fails to acknowledge the separate process for permitting and approving lease operations,

⁴ McDonald-Madden et al., 2008, Subpopulation Triage: How to Allocate Conservation Effort among Populations; *Conservation Biology*, V. 22, No. 3, 656-665.

including construction and maintenance, drilling and production, and reclamation and abandonment. These guidelines include provisions for pollution control and hazardous waste management.⁵ The EA also discusses standard engineering practices that would be incorporated into subsequent lease operations approvals. (EA at 85-88.) The discussion of future specific development is clearly far beyond the scope of the current proposal, and is not required by either federal regulations or by NEPA.⁶

2. Greenhouse gas emissions from the lease sale and subsequent oil and gas development.

BLM Response: BLM concludes that the action of leasing parcels for fluid mineral development does not directly result in GHG emissions; however, based on the RFD, the agency recognizes the direct and indirect effects associated with development that may (or may not) occur subsequent to leasing. (EA at 29-30, 32-33.) As indicated in the EA, it is extremely difficult to generate a meaningful estimate of emissions (including GHG) from oil and gas development at the leasing stage. (EA at 30.) A number of variables including, but not limited to, vehicle and equipment make and model, engine size, trip length, project acreage, and construction schedule are required to generate emissions estimates and would determine the intensity, duration, and characteristics of such pollutants. (Id.)

The analysis in the EA concludes that all current and newly approved projects are subject to Best Performance Standards (BPS) under development by the San Joaquin Valley Air Pollution Control District (SJVAPCD). (EA at 33-34.) There are currently no federal significance thresholds established for GHG emissions, or approved guidance on addressing GHG emission impacts under NEPA. Confirmed by correspondence with SJVAPCD staff, their policy and guidance on addressing GHG emission impacts is only available for CEQA analyses; however the air district's guidance may be generally used by land-use agencies for reference.⁷ The *SJVAPCD District Policy Addressing GHG Emission Impacts for Stationary Source Projects* indicates that the need to quantify project specific impacts is negated if emissions reductions are achieved by implementing BPS⁸. This approach is based on the use of BPS and their associated, pre-quantified GHG emission reduction effectiveness. Furthermore, the *SJVAPCD Guidance for Valley Land-Use Agencies in Addressing GHG Emission Impacts for New Projects Under CEQA* indicates that projects implementing BPS are not required to quantify greenhouse gas emissions. BLM concludes that the requirement to quantify GHG emissions and to implement SJVAPCD BPS to reduce GHG emissions would occur at the application stage, and would be analyzed in a site-specific NEPA analysis.

- E. The EA fails to adequately discuss cumulative impacts.

⁵ United States Department of the Interior and United States Department of Agriculture. 2007. Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development. BLM/WO/ST-06/021+3071/Rev 07. Bureau of Land management. Denver, Colorado. 84pp.

⁶ 43 CFR 3162.5-1(c) (d)

⁷ Bureau of Land Management 2011. L. Ashley Personal Communication with San Joaquin Valley Air Pollution Control District staff, Mark Montelongo. March 4, 2011.

⁸ San Joaquin Valley Air Pollution Control District. 2009. District Policy Addressing GHG Emission Impacts for Stationary Source Projects Under CEQA When Serving as the Lead Agency. December 17, 2009.

1. The EA fails to consider the cumulative effect of the lease sale with the extensive past, present, and reasonably foreseeable oil and gas and other development.

BLM Response: The EA accurately describes the potential effects of the proposed action, both in terms of intensity and duration, and concludes that the proposed action will have a negligible contribution toward cumulative effects. (EA at 52-57.) Key in that analysis is the fact that only 29.6 acres of the total 117,961 newly leased acres were ever disturbed during the previous ten years. (EA at 25.) This is only 0.0251% of the leased land. This refutes the Protest’s repeated allegations that all 2,743.76 acres would be subject to oil and gas development. Rather, if the historic percentage of disturbance (0.0251%) were applied to the 2,743.76 acres offered in the lease sale, less than one acre of land would be disturbed. Only nine of the 218 leases issued by BLM during the last ten years have wells drilled on them. (EA at 25.) Thus, the historic rate of new disturbance used in the EA clearly documents and supports the conclusion contained within the FONSI that “No significant adverse impacts (site specific or cumulative) have been identified.” (FONSI at 2.)

2. The EA fails to consider the sale’s incremental contribution to climate change.

BLM Response: The EA includes a qualitative discussion on the various direct and indirect GHG emissions from oil and gas exploration, development, and production. (EA at 31-34.) Where appropriate, the EA cites statistics from the California Air Resources Board and the California Energy Commission to demonstrate the context and intensity of emissions from the development of the RFD scenario, relative to the San Joaquin Valley and statewide emissions from oil and gas production. BLM concludes that direct GHG emissions from the proposed action would be undetectable on a nationwide basis, or even on a local basis, for that matter, and would be expected to have a very minor influence on global climate change. However, the EA also recognizes 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.⁹ (EA at 33.) 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 of Environmental Quality, which states “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 direct linkage is difficult to isolate and to understand.”¹⁰

- F. BLM failed to consider reasonable alternatives.

⁹ San Joaquin Valley Air Pollution Control District. 2009. CEQA GHG Guidance, June 30, 2009. Microsoft PowerPoint Presentation.

¹⁰ Council on Environmental Quality, Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions. February 18, 2010.

BLM Response: The protest alleges that the BLM did not consider a No Surface Occupancy alternative. This element in the Protest is clearly contradicted by the facts. The EA is tiered to the Caliente RMP, which did consider a “No Surface Occupancy” (NSO) alternative. (EA at 1.)

Another element of this protest point requests that BLM analyze a separate alternative that includes mitigation for GHG emissions, with five specific mitigation measures to be included. (Protest at 23.) While BLM agrees that these measures are valid techniques for reducing emissions; the small amount of development projected in the RFD is not likely to result in sufficient production to warrant new, separate facilities. In any case, any proposed production is more likely to be oil and not gas. Further, the DR reiterates the requirement for federal lessees/operators to comply with all federal, state, and local laws, policy, rules, and regulations to mitigate GHG emissions. (DR at 2.) BLM also will encourage lessees/operators to adopt the Environmental Protection Agency’s (EPA) recommended technologies and practices under the National Gas STAR program during training sessions, BLM operator seminars, conferences, etc. Several of the measures included in the EPA Gas STAR program are also referenced and cited on the BLM Best Management Practices (BMP) webpage, and are already recognized as BMPs for the protection of air resources.¹¹ Some of these BMPs were described in BLM’s most recent BFO Operator Seminar held on November 5, 2009, and will be reiterated in the next seminar scheduled for the fall of 2011. A copy of the BLM’s November 5, 2009 BFO Operator Seminar Microsoft PowerPoint presentation is available upon request.

For the reasons stated above, appropriate and reasonable alternatives have been identified and analyzed in the EA. Alternatives considering land disposal, exchange, or sale are appropriately beyond the scope of this document and properly eliminated from detailed analysis.

G. The EA does not adequately discuss mitigation measures.

BLM Response: As discussed earlier in this response, the EA describes numerous mitigation measures for all anticipated impacts. (EA at 77-88.) In addition, the EA contains extensive discussion of compensation plans in the kit fox core area. (EA at 96-105, Attachment Biology 1.) The protest alleges that the EA fails to assess the probability that mitigation measures or stipulations will not be enforced. However, the BFO has a proven track record over the course of many years of thoroughly analyzing impacts, monitoring development activities, and implementing mitigation where conditions and circumstances warrant. Years of experience in this area has shown that the BFO is effective in its implementation of design stipulations and mitigation implementation, and the potential for and intensity of adverse effect is considered low.

H. BLM failed to analyze in the EA whether the alternatives will meet federal and state air quality standards.

BLM Response: The protest alleges that the EA does not include a conformity analysis, citing 40 CFR §1508.27 (10). A conformity analysis is required by the SJVAPCD *unless* the emissions are determined to be below *de minimis* levels.¹² General *de minimis* thresholds were established

¹¹http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices/technical_information.html

¹² Rule 9110, General Conformity, adopted October 20, 1994.

in Rule 9110, and are generally set at 10 tons/yr for both Nitrogen Oxides (NO_x) and Volatile Organic Compounds (VOCs).¹³ Any oil and gas and lands activities authorized by BLM, including oil and gas leasing and rights-of-way, would also have to comply with all of the applicable air quality rules and regulations and air permit requirements. (EA at 11.) Operators are also required to comply with present and future policy related to the implementation rules for EPA air quality compliance and with implementation of California's *Global Warming and Solutions Act of 2006* (AB-32), meant to reduce or limit the production of GHG's. (EA at 14.) Emission levels typical of previously issued leases were analyzed and it was determined that the impacts to air quality fall below the *de minimis* standard and that no additional analysis is required. (EA at 29-34 and Appendix F.) Current EPA guidelines established this *de minimis* standard to limit the need to evaluate actions with minimal levels of emissions.¹⁴ As described in the EA, the possible addition of one new well would have a negligible impact on the levels of air pollutants that are currently subject to restrictions under both state and federal guidelines.

I. An EIS was required.

1. There are substantial questions as to whether the lease sale may have significant impacts, and therefore an EIS must be prepared.

BLM Response: As previously discussed, the EA reviewed the levels of activity that have occurred on existing leases and on those that have been issued in the more than ten years since the Caliente RMP and BO were first approved. (EA at 52-57.) These levels of development were thoroughly documented in the RFD and form the basis for the Finding of No Significant Impact (FONSI) and DR. The protest continually references the potential for significant effects, although it provides no statistics or evidence to dispute the RFD data, nor does it provide any data that the BLM could use to reconsider its analysis. This is therefore not considered to be a valid criticism.

2. The lease sale meets NEPA's significance threshold, and therefore an EIS must be prepared.

BLM Response: The FONSI for the EA determined that based upon a realistic estimate of the total number of wells that would be expected in this area and the type of disturbance commensurate with that level of development, the final decision to lease the subject parcels "...does not constitute a major federal action having a significant effect on the human environment." The FONSI further stated, "Therefore, environmental impact statement or a supplement to the existing environmental impact statement is not necessary and will not be prepared."¹⁵

J. The EA improperly tiers to the Caliente RMP, which must be supplemented.

BLM Response: The EA, which is based upon historical data from more than ten years of previous BLM experience with oil and gas activity in the areas which were designated for

¹³ *Id* at 6.

¹⁴ 40 CFR 93 § 153

¹⁵ DOI-BLM-CA-C060-2010-0189-EA, Finding of No Significant Impact, November 22, 2010

leasing, reaches the conclusion 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 Caliente RMP/EIS. The Caliente RMP is currently undergoing a plan revision (Bakersfield RMP), and public scoping meetings were held in 2009 to solicit public input to the NEPA planning process. BLM policy¹⁶ does not require that we suspend any activities that are currently authorized while the plan revision is underway, unless it can be demonstrated that the impacts of the action are determined to be significant, or will serve to limit the range of options that are available to be considered in the planning process. The lease sale does not satisfy either of these requirements. As shown in the FONSI, no significant adverse impacts (site specific or cumulative) have been identified.¹⁷ In addition, the planning process for the RMP revision will address oil and gas leasing activities in the Caliente Resource Area. Approval of this lease sale, and the potential development of the leases therein, does not preclude or limit any programmatic range of resource uses to be addressed in the RMP.

II. BLM violated FLPMA and the MLA.

BLM Response: The Federal Land Policy and Management Act (FLPMA) requires that the public lands be managed for multiple use and sustained yield, in a manner to protect certain land values, to provide food and habitat for species, and to provide for outdoor recreation and human occupancy and use, among other things.¹⁸ BLM manages public lands through land use planning, acquisition, and disposition, and through the regulation of use, occupancy and development of the public lands. In managing the use, occupancy and development of the public lands, the Secretary is directed to take any action necessary to prevent unnecessary or undue degradation of the lands.¹⁹ This standard is part of the Secretary's enforcement authority applicable to public land users.²⁰ In the case of federal oil and gas leases, the authority is applied through the application of lease stipulations, and later by the BLM's site-specific review and Application for Permit to Drill (APD) approval. (EA at 3.) For instance, special lease stipulations that are described in Appendix B of the EA are attached to all of the parcels. BLM's responses to the protest demonstrate that the BFO thoroughly reviewed the potential effects that might be associated with the lease sale. The protest fails to offer a persuasive argument that the EA did not fulfill the BLM's responsibilities, either under NEPA or FLPMA.

The Mineral Leasing Act (MLA) as amended and supplemented requires that all lessees conduct their oil and gas operations in a manner that prevents waste of the resources developed on the lease.²¹ This requirement of the Act is specified in the operating regulations²² and embodied in

¹⁶ WOIM 2001-146 "Oil and Gas Lease Implementation Actions during Resource Management Plan Development", and WOIM 2001-191 "Processing of Applications for Permit to Drill (APD), Site-Specific Permits, Sundry Notices, and Related Authorizations on Existing Leases and Issuing New Leases during Resource Management Plan (RMP) Development."

¹⁷ DOI-BLM-CA-C060-2010-0189-EA, Finding of No Significant Impact, November 22, 2010

¹⁸ See 43 USC 1701(a)(7), and (8).

¹⁹ 43 USC 1732(b).

²⁰ 43 CFR 3162.5-1(b)

²¹ Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 225).

²² 43 CFR 3162.7-1(d)

the lease form signed by the BLM and the lessee.²³ The requirement to prevent waste is the subject of Section 4 of the lease form and the spirit of waste prevention and undue degradation is further embodied in Sections 5 and 6, which address documentation, evidence, inspection, and conduct of operations on the lease. As discussed previously, the EA reviewed the levels of activity that have occurred on existing leases and on those that have been issued in the more than ten years since the Caliente RMP and BO were first approved. (EA at 52-57, Appendix B.) These levels of development are thoroughly documented in the RFD and form the basis for the FONSI and DR in this case. There is ample evidence that BLM is fully complying with all statutory requirements to prevent unnecessary and undue degradation and waste of resources. This action will not result in significant impacts to the human environment. Therefore, the protest has failed to show that BLM did not fulfill its responsibilities under the MLA.

DECISION

After careful consideration of the issues outlined in the Statement of Reasons, I have decided that it is in the public interest to dismiss the protest and issue leases for all of the protested parcels.

/s/ James Wesley Abbott
Acting State Director

Enclosures

Form 1842-1 (1pg)

43 CFR 4.21 (1pg)

December 2010 Oil and Gas Lease Sale Results (2pp)

²³ U.S. Department of the Interior Bureau of Land Management Form 3100-11 Offer to Lease and Lease for Oil and Gas (October 2008)

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.

Attached to this decision, you will find the "Competitive Oil and Gas Lease Sale Results" which contains a list of persons who purchased parcels at the December 2010 sale and are, therefore, adverse parties who must be served with any pleadings.