



United States Department of the Interior Bureau of Land Management



Eastern States
7450 Boston Boulevard
Springfield, Virginia 22153
<http://www.es.blm.gov>

IN REPLY REFER TO:

3100 (910)
Sept 2012 Protests

AUG 0 1 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

7009 1410 0001 2294 5296

Natural Resources Defense Council
1152 15th Street, N.W. Street Suite 300
Washington, D.C. 20005

DECISION (PART ONE)

PROTESTS DISMISSED IN PART, DENIED IN PART, AND DEFERRED IN PART

TWELVE PARCELS WILL BE ISSUED, WITH ISSUANCE OF THE REMAINING PARCELS TO BE DEFERRED UNTIL A FINAL PROTEST DECISION CAN BE ISSUED

On July 19, 2012, the Bureau of Land Management (BLM), Eastern State Office (ESO), timely received a letter from the Natural Resources Defense Council and nine other environmental-advocacy groups (NRDC et al.)¹ protesting 66 oil and gas lease sale parcels described in the Notice of Competitive Lease Sale (Sale Notice) for the September 13, 2012 Competitive Oil and Gas Lease Sale (September 2012 Sale).

The 66 parcels protested by NRDC et al. are located in the states of Louisiana and Mississippi. Fifty-four of the parcels (32,436.07 acres) are located in the State of Louisiana within the Kisatchie National Forest. These parcels are unleased Federal mineral estate with their surface estate administered by the Forest Service (acquired lands managed by the Forest Service). The remaining 12 parcels (2,194.65 acres) are located in the State of Mississippi within the boundaries of the Bienville and Homochitto National Forests. These parcels are unleased Federal mineral estate administered by the BLM with privately-owned surface.

Background

These parcels were nominated to the BLM by interested parties in accordance with 43 CFR § 3120.3. After preliminary adjudication of the nominated parcels by the ESO, the parcels were reviewed by the BLM's Southeastern States Field Office (SSFO), which included a request from the BLM for review by the Forest Service to ensure leasing of the parcels would be in conformance with the applicable Forest Plan decisions. Where applicable, the BLM also considered the pertinent BLM Resource Management

¹ NRDC submitted a single protest on behalf of NRDC and nine other environmental-advocacy groups (Atchafalaya Basinkeeper, Gulf Restoration Network, Louisiana Audubon Council, Louisiana Environmental Action Network, Lower Mississippi Riverkeeper, Ouachita Riverkeeper, Rapides Wildlife Association, the Delta Chapter of the Sierra Club, and Wild South). For the purposes of responding in this protest decision, the BLM will address the protestors, collectively, as NRDC et al.

Plans (RMPs), to ensure offering parcels on lands administered by the BLM is in conformance with the approved RMP. Prior to posting of the Sale Notice advertising the parcels to be offered at the competitive sale, the BLM prepared two Determinations of National Environmental Policy Act (NEPA) Adequacy, or DNAs.² One DNA prepared for the twelve parcels located in the State of Mississippi was signed on March 15, 2012 by the Southeastern States Field Office Manager, and posted to the BLM's public internet site.³ A second, unsigned DNA was prepared for the 54 parcels located in the Kistachie National Forest.

The role of the BLM in issuing oil and gas leases for acquired lands managed by the Forest Service (such as those in the Kistachie National Forest) was changed by the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA), which amended 30 U.S.C. § 226. As a result of FOOGLRA, the Forest Service must consent to leasing and can require the inclusion of appropriate stipulations (30 U.S.C. § 226(h)), but the BLM retains separate, independent authority to decide whether to include national forest lands in a lease sale and, if so, to impose additional stipulations, as described at 43 CFR §3101.7-2:

- (a) *Where the surface managing agency has consented to leasing with required stipulations, and the Secretary decides to issue a lease, the authorized officer shall incorporate the stipulations into any lease which it may issue. The authorized officer may add additional stipulations.*
- (b) *The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.*
- (c) *The authorized officer shall review all recommendations and shall accept all reasonable recommendations of the surface managing agency.*

In 2012 the Forest Service gave consent to offer the described parcels. During the BLM's review of these parcels prior to the sale, the ESO sent letters to the applicable state's Governors, inviting the states to participate in the leasing process. No responses were received by the BLM.

On June 15, 2012, the BLM posted the Sale Notice for public review.⁴ The Sale Notice described the manner in which a member of the public could protest inclusion of lands in the planned sale (at pages 6-7), including these requirements:

- *A protest must state the interest of the protesting party in the matter. . . .*
- *If the party signing the protest is doing so on behalf of an association, partnership or corporation, the signing party must reveal the relationship between them. For example, unless*

² A DNA "confirms that an action is adequately analyzed in existing NEPA document(s) and is in conformance with the land use plan." See the BLM's NEPA Handbook, H-1790-1 at pages 22-25.

³ See <http://www.blm.gov/style/medialib/blm/es/minerals.Par.60308.File.dat/Mississippi%20DNA%20Private%20surface.pdf>. This DNA was not signed by the BLM-Eastern States' Acting Deputy State Director for Natural Resources. However, under the BLM's delegation of authority, the Southeastern States Field Office Manager has been delegated the authority to sign documents prepared pursuant to NEPA. This DNA concluded that issuing the subject leases "conforms to the applicable land use plan and that the [NEPA] documentation fully covers the proposed action..." (DNA at page 6). The DNA identified the "Alabama and Mississippi Final Environmental Impact Statement [FEIS] for Public Lands and Minerals Administered by the [BLM's JFO]" as satisfying BLM's requirements to comply with NEPA. A Record of Decision for the Mississippi portion of the land use planning decision under the FEIS was signed on March 3, 2009. Available at:

http://www.blm.gov/es/st/en/fo/Jackson_Home_Page/planning/alabama_and_mississippi.html

⁴ Available at: http://www.blm.gov/es/st/en/prog/minerals/lease_sale_archive.html

an environmental group authorizes an individual member of its group to act for it, the individual cannot make a protest in the group's name.

In NRDC et al.'s protest letter (at pages 2-4), the groups provided a summary of their organizations' general objectives. The protest letter was signed by two individuals affiliated with NRDC (at page 28), and provided a list of the names, addresses, and contact information for each of the nine other groups, explaining (at page 27):

For your records, the names and contact information for each of the protesting parties NRDC is representing (in addition to itself) are . . .

The BLM's regulations addressing protests of competitive oil and gas lease sales (at 43 CFR §3120.1-3) do not describe any limitations as to who may protest inclusion of lands in a sale notice.⁵ Recently, the issue of standing for purposes of appealing a BLM decision to dismiss and deny lease sale protests was addressed by the Interior Board of Land Appeals (IBLA). In *Biodiversity Conservation Alliance et al.* (183 IBLA 97, decided January 8, 2013), the IBLA evaluated the standing of the appellants to challenge the BLM's decisions to dismiss and deny protests related to certain oil and gas lease sale parcels, and determined (183 IBLA 97, 108):

...since the BLM decision at issue involves the leasing of several parcels of land for oil and gas purposes, each of the appellants must show an adverse effect as a result of the leasing of each parcel to which it objects, in order to be recognized as having standing to appeal the decision to lease that parcel.

In NRDC et al.'s protest of the 66 parcels from the September 2012 Sale, none of the parties have provided to the BLM "colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, sufficient to establish a causal relationship between the approved action and the injury alleged" (183 IBLA 97, 107). The closest any of the groups come to establishing allegations of an adverse effect are within the description of NRDC's interests (NRDC et al. Protest at page 3), which states:

NRDC members use and enjoy national forest lands in Louisiana and Mississippi, including specific lands at issue in this protest.

However, it is not clear whether this statement establishes NRDC as a party to the case and as having a legally cognizable interest that would be adversely affected by the BLM's decision to issue any of the protested leases.

Other groups statements of interest are much less specific (e.g., Sierra Club's statement at page 4 purports interest in "the Earth's resources and ecosystems"), and do not allege any particular interests in the lands proposed for leasing. In addition, it is not clear that a legally cognizable interest can be demonstrated by the groups for those parcels located in the Bienville and Homochitto National Forests, where (though they are located within the boundaries of a National Forest unit) the surface estate is privately-owned and is not administered as public lands by the Forest Service or BLM.

Nonetheless, given the BLM's directions to the public in the Sale Notice regarding submittal of protests,

⁵ Other BLM regulations pertaining to administrative reviews of agency decisions do, in some cases, provide an indication of who may bring a request for review of the BLM's decision. For example, the BLM's State Director Review (SDR) regulations for onshore oil and gas operations (at 43 CFR §3165.3(b)) indicate that a requestor must be an "adversely affected party."

and the lack of specific agency guidance for adjudicating when an individual or group may have standing to protest lease parcels, the BLM has decided to answer the specific arguments made by the protestors. However, the BLM does so with the reservation that the protestors may not have standing to bring an appeal to the IBLA of our protest decision.

On September 13, 2012, the BLM conducted a competitive oil and gas lease sale during which all of the protested parcels were successfully bid upon, and the necessary monies were subsequently received by the BLM. Given the pending protest, the BLM has not issued the leases.

The remainder of our response will address the protestors' arguments related to the 66 parcels. The BLM has reviewed the protestors' arguments in their entirety; the protestors' substantive arguments are numbered and summarized in bold, with BLM responses following.

1. "BLM has not provided documents demonstrating compliance with the National Environmental Policy Act." (NRDC et al.'s Protest at page 5).

BLM Response

In this argument, NRDC et al. indicated that they had previously asked the ESO, by letter, for copies of NEPA documentation related to the September 2012 Sale. They believe that, without such information on the BLM's public internet site, "the public cannot readily determine what documents might provide relevant environmental analysis or gauge whether the agency is in compliance with the law." (NRDC et al. Protest at page 5). This argument regarding availability of information is distinguishable from NRDC et al.'s other NEPA claims, which will be addressed below.

The BLM's NEPA Handbook (H-1790-1) states (at pages 62-64):

Public involvement is an important part of the NEPA process. The level of public involvement varies with the different types of NEPA compliance and decision-making...

The [Council on Environmental Quality, or CEQ] regulations require that agencies "make diligent efforts to involve the public in preparing and implementing their NEPA procedures" (40 CFR 1506.6(a)). There are a wide variety of ways to engage the public in the NEPA process...

Notification methods include, but are not limited to: newsletters, Web sites or online NEPA logs, bulletin boards, newspapers, and Federal Register Notices.

The ESO has provided a variety of information on the proposed September 2012 Sale for public review at the ESO's public internet site and information access centers located in the field and State offices, including documents prepared pursuant to NEPA.⁶ The ESO has also posted NEPA documents related to land use planning decisions for Alabama and Mississippi on its public internet site.⁷

After NRDC et al. submitted their protest for the September 2012 Sale, NRDC also submitted a request under the Freedom of Information Act (FOIA) for records related to the September 2012 Sale, including

⁶ See http://www.blm.gov/es/st/en/prog/minerals/nominated_parcel.html. See also http://www.blm.gov/es/st/en/prog/minerals/current_sales_and.html.

⁷ See http://www.blm.gov/es/st/en/fo/Jackson_Home_Page/planning/alabama_and_mississippi.html. The BLM does not have an approved land use plan for lands in the State of Louisiana; the parcels protested in Louisiana are all located on U.S. Forest Service-administered surface estate, and so a BLM land use plan would not apply to those parcels, in any event.

documents prepared pursuant to NEPA. The ESO responded on April 30, 2013 with all responsive records.

We find that the ESO, through its public internet site and responses to NRDC, has made a diligent effort to involve the public in preparing and implementing its NEPA procedures, and NRDC et al.'s protest on this point is denied.

2. **“BLM will violate the Federal Onshore Oil and Gas Leasing Reform Act if it proceeds with leasing the parcels because it has not provided adequate maps.” (NRDC et al.'s Protest at page 5).**

BLM Response

In this argument, NRDC et al. allege that the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA) requires specific maps, labeled by parcel number, displaying the lands proposed to be leased and (among other things) “whether and where land in the general area is already under lease” (NRDC et al.'s Protest at page 6).

NRDC et al. cite FOOGLRA, as codified at 30 U.S.C. §226(f), for the requirements they allege the BLM failed to comply with.

30 U.S.C. §226(f) states:

At least 90 days before offering lands for lease under this section, and at least 30 days before approving applications for permits to drill under the provisions of a lease or substantially modifying the terms of any lease issued under this section, the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agencies. Such notice shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all leases already issued in the general area. The requirements of this subsection are in addition to any public notice required by other law.

The BLM's Manual Section 3120 (“Competitive Leasing” at Section .51(A)) requires:

The Notice of Competitive Lease Sale must contain a legal land description of each lease parcel being offered for oral auction, identification of the stipulations for each parcel, and all other pertinent, specific information concerning unique factors applicable to each parcel and the Web site address of the NEPA compliance documentation.

The BLM's Competitive Leasing Handbook (H-3120-1 at Illustration 2, page 2) provides guidance to the BLM in using maps, including (where available) Master Title Plats (MTPs), oil and gas plats, or other maps. The Sale Notice provided by the BLM contains accurate, detailed narrative descriptions of the parcels offered for lease.

BLM has provided a definition for “narrative description” in 43 C.F.R. § 3110.5-3 applicable to acquired lands:

- (a) If the lands applied for lie within and conform to the rectangular system of public land surveys

and constitute either all or a portion of the tract acquired by the United States, such lands shall be described by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands applied for do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described by metes and bounds . . . 53 Fed. Reg. 22814, 22842 (June 17, 1988).

As NRDC et al. acknowledge, the BLM posted 13 maps (and one corrected map) displaying parcels from the September 2012 Sale to its public internet site.⁸ In all cases, the BLM maintains “tract books” at the ESO that members of the public may view, and the BLM’s “Legacy Rehost 2000” internet-based application⁹ can be used by members of the public to identify information about areas leased for oil and gas development. While the BLM in some Western states provides access to MTPs and oil and gas plats through a public internet portal, the scattered tracts of public domain or acquired lands throughout the Eastern states greatly complicates gathering and publishing similar information for the lands within the ESO’s jurisdiction.

The preamble to the lease sale regulations construes section 226(f) as requiring maps or a narrative description, thus implying that maps will not be necessary where a narrative description is available. *See* 53 Fed. Reg. 22814 (1988).

While the mapped data may not be in the exact format as NRDC et al. would prefer, the BLM has complied with the applicable regulations and BLM’s policies with regard to describing and mapping lands proposed for leasing in the September 2012 Sale. For this reason, this portion of NRDC et al.’s protest is denied.

3. “The Kisatchie National Forest Plan and Environmental Impact Statement do not contain a site-specific analysis of leasing the Louisiana parcels.” (NRDC et al.’s Protest at page 8).

BLM Response

Where the context and intensity of environmental impacts remain unidentifiable until oil and gas exploration activities are proposed, the Application for Permit to Drill (APD) is the first useful point at which a site-specific environmental appraisal can be undertaken (*Park County Resource Council, Inc. v. U.S. Department of Agriculture*, 10th Cir., April 17, 1987). In addition, the IBLA has decided that, “the BLM is not required to undertake a site-specific environmental review prior to issuing an oil and gas lease when it previously analyzed the environmental consequences of leasing the land...” (*Colorado Environmental Coalition, et al., IBLA 96-243*, decided June 10, 1999). However, when site-specific impacts are reasonably foreseeable at the leasing stage, NEPA requires the analysis and disclosure of such reasonably foreseeable site-specific impacts (*N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 719-19 (10th Cir. 2009)).

Prior to surface-disturbing activities on leases, the BLM requires a detailed plan of operations for development of the lease. Prior to approval of the plan of operations, BLM conducts site-specific

⁸ See http://www.blm.gov/style/medialib/blm/es/og_sales.Par.53865.File.dat/Maps%20for%20Sept%20Sale.pdf. See also [http://www.blm.gov/style/medialib/blm/es/og_sales.Par.9854.File.dat/1N%207Wcorrected%202%20\(2\).pdf](http://www.blm.gov/style/medialib/blm/es/og_sales.Par.9854.File.dat/1N%207Wcorrected%202%20(2).pdf).

⁹ Available at: <http://www.blm.gov/tr2000/index.htm>

environmental review, and any APD will include (at a minimum) public posting (see 43 CFR §3162.3-1(g)). The BLM retains substantial authority to regulate environmental aspects of Federal oil and gas lease operations through approval (see 43 CFR §3162.3) of APDs or Sundry Notices (SNs), and through the issuance of orders and instructions of the authorized officer (see 43 CFR §3161.2). The BLM also controls the lessee's or operator's actions on the lease, as described in our regulations (such as 43 CFR §3101.1-2 and 43 CFR §3162.5-1(a)),¹⁰ on the BLM Lease Form 3100-11 (such as standard lease term Sec. 6), and under applicable laws (such as FLPMA). In addition, BLM retains regulatory authority to completely deny access to a leased area. *Chihauhan Grasslands Alliance v. Norton*, 507 F. Supp. 2d 1216, 1233 (D.C. NM 2007) (vacated as moot, *Chihauhan Grasslands Alliance v. Norton*, 545 F.3d 884 (10th Cir. 2008). (“43 C.F.R. § 3162.3-1(h) . . . authorizes the agency to explicitly disapprove applications for drilling permits.”)

For the BLM to provide a more site-specific and detailed analysis of the impacts from lease development activities for these parcels would require the BLM to speculate on the density of drilling locations, the number, characteristics, and specifications of related production equipment, and the rate at which the leases would be developed. The BLM cannot speculate in this manner; to do so would likely either under-estimate impacts or over-estimate impacts. The impacts associated with construction, drilling, production, abandonment, and reclamation of well locations can vary significantly in the area of the proposed leases.

Conducting a speculative exercise about the density, rate, and extent of drilling and the potential impacts from complex multi-year plans of operation on lease parcels would be not only likely be inaccurate and misleading for the BLM and public, but also unnecessary. BLM's NEPA Handbook H-1790-1 at page 59 states: “...you are not required to speculate about future actions.” See also *Southern Utah Wilderness Alliance*, 159 IBLA 220 (June 16, 2003): “a future action need not be considered significant when the reasonably foreseeable future action is speculative.” See *Jayne v. Rey*, 780 F. Supp. 2d 1099, 1113 (D. Idaho 2011) (NEPA “is tempered by . . . the preference to defer detailed analysis until a concrete development proposal crystallizes the dimensions of a project's probable environmental consequences”

We believe that NRDC et al. seeks analysis of impacts that is speculative, and is better addressed at the time a site-specific proposal is received by the BLM.

However, in our review of the documentation of NEPA compliance for the proposed parcels in the Kisatchie National Forest, we reached two findings. First, though the BLM prepared a DNA for the parcels, the DNA was never completed. Secondly, the DNA identified two documents that “cover the proposed action”: the 2008 “Kistachie National Forest Monitoring and Evaluation Action Plan & Report”, and the 2007 “5-Year Review and Recommendations for Kisatchie National Forest's Revised Land and Resource Management Plan.”

The BLM's NEPA Handbook (H-1790-1 at page 31) requires:

You may use another agency's EIS for BLM decision-making after adopting an EIS...

¹⁰ See also *Yates Petroleum Corporation*, 176 IBLA 144 (September 30, 2008): “When making a decision regarding discrete surface-disturbing oil and gas development activities following site-specific environmental review, BLM has the authority to impose reasonable measures to minimize adverse impacts on other resource values, including restricting the siting or timing of lease activities.”

If the BLM is a cooperating agency in the preparation of an EIS, you may adopt it without recirculating the EIS if you conclude that your comments and suggestions have been satisfied (40 CFR 1506.3(c))...

If the BLM is not a cooperating agency in the preparation of an EIS, you may adopt it after recirculating the document...

In the present case, the BLM has not adopted the Forest Service's August 1999 EIS for the Kisatchie National Forest – Forest Plan or participated as a cooperating agency.¹¹ As the IBLA has explained (*Board of Commissioners of Pitkin County and Wilderness Workshop, et al.*, 173 IBLA 173, 174, decided December 20, 2007):

In complying with the [NEPA], the [BLM] may adopt the environmental impact statements of other agencies as its own, provided BLM performed its own independent review and determined for itself that they adequately address all likely significant environmental impacts.

For the 54 parcels nominated in the Kisatchie National Forest, we find that the BLM has not yet provided documentation of compliance with NEPA, either through adopting the Forest Service's NEPA documents or through preparation of its own. Until then, the ESO will not issue the 54 protested leases located in the Kisatchie National Forest, and this portion of the protest is deferred.

4. **“The Mississippi Forests Plan and EIS do not analyze the effects of leasing where the surface is privately-owned... Because the Mississippi Forests Plan and EIS do not analyze the effects of leasing mineral rights under the private lands within the proclamation boundaries, they cannot fulfill any NEPA requirements with respect to the Mississippi parcels.” (NRDC et al.'s Protest at page 9).**

BLM Response

In this argument, NRDC et al. appears to assume that the BLM is relying upon the Mississippi Forests Plan and EIS in order to document compliance with NEPA for offering (and issuing) the 12 parcels located within the Bienville and Homochitto National Forests. This assumption is incorrect. As mentioned, above (see footnote 3), the BLM prepared a DNA that determined the Approved Resource Management Plan/Final EIS for Public Lands and Minerals Administered in Mississippi by the BLM-SSFO and ROD “fully covers” the offering (and issuance) of these 12 parcels (at page 6).

NRDC et al., by overlooking the DNA, FEIS/ROD, mistakenly assume that the BLM relied upon the Mississippi Forests Plan and EIS. In our review, we find that the BLM properly relied upon the approved RMP, and satisfactorily demonstrated through preparation of a DNA that the BLM's NEPA obligations were met. We deny this portion of NRDC et al.'s protest.

5. **“...the scope of the [Mississippi Forests Oil and Gas Leasing EA] does not include private lands within the forest boundary... Because the EA does not analyze the effects of leasing the oil and gas under private lands within the proclamation boundaries, it cannot fulfill any NEPA requirements with respect to these parcels.” (NRDC et al.'s Protest at pages 9-10).**

¹¹ Available at: <http://www.fs.usda.gov/detail/kisatchie/landmanagement/planning/?cid=STELPRDB5391441>

BLM Response

NRDC et al. next assume that the BLM relied upon the “Mississippi Forests Oil and Gas Leasing EA”¹² for purposes of NEPA compliance for the 12 parcels in the Bienville and Homochitto National Forests. Again, this assumption is incorrect.

NRDC et al. are correct in noting that this EA does not address the issuance of leases for private lands (even those overlying unleased Federal mineral estate) within the boundaries of the National Forests. As the EA explains, at pages 3 and 6, respectively:

The lands availability decision area includes the [National Forest System, or NFS] lands with Federally-owned mineral rights within the proclamation boundaries of the six [Mississippi National Forests]...

Lands excluded from the NFS availability decision are... [[The private lands (non-NFS lands) within the proclamation boundaries of the six [Mississippi National Forests].

As we describe above, NRDC et al. overlooked the BLM’s 2008 RMP FEIS and 2009 ROD for Public Lands and Minerals Administered in Mississippi by the BLM-SEFO. The RMP FEIS explains, at pages 2-6 through 2-7, that its decisions pertain to:

...Federal mineral estate underlying lands of BLM or other Federal surface management agencies (excluding USFS) and split-estate whereby the Federal Government owns all or a portion of the mineral estate, but the surface estate is State-owned or privately owned (i.e., non-Federal)... Split-estate (i.e., non-USFS [Federal mineral ownership] underlying private or State-owned surface lands) would be subject to stipulations deemed necessary to protect existing surface improvements or use.

By overlooking the BLM’s approved RMP, NRDC et al. are mistaken in asserting that the BLM has not complied with NEPA, or that it inappropriately relied upon NEPA documents prepared by the Forest Service.

In our review, we find that the BLM properly relied upon the approved RMP, and satisfactorily demonstrated through preparation of a DNA that the BLM’s NEPA obligations were met. We deny this portion of NRDC et al.’s protest.

6. **“BLM must supplement existing analyses to take account of the increased number of wells likely to occur from leasing because of new techniques like horizontal drilling and hydraulic fracturing and the presence of relevant resources, like the shale basins, under the forests.” (NRDC et al.’s Protest at pages 13-14).**

BLM Response

The Reasonably Foreseeable Development Scenario (RFDS) prepared for the Alabama-Mississippi Resource Management Plan, which was issued in August, 2008 forecast a total of 4,020 wells to be drilled in Alabama over the 20-year life of the plan, and 12,010 wells to be drilled in Mississippi. Of these, there would be 32 Federal wells drilled in Alabama, and 360 Federal wells drilled in Mississippi.

¹² We presume that NRDC et al. are referring to the August 2010 document entitled “National Forests in Mississippi: Lands Available for Oil & Gas Leasing – Environmental Assessment” and its corresponding “Decision Notice and Finding of No Significant Impact.” The EA is available at: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5210291.pdf

The Bienville and Homochitto National Forests in Mississippi are located within the Tuscaloosa Marine Shale. To date, there has been very little horizontal drilling in either National Forest. From our records, only one horizontal well has been drilled within, or in proximity to, either National Forest (it was not a Federal well) in the last 10 years. A total of 15 Federal wells were drilled during this time period, with nine wells plugged and abandoned; four completed as gas wells; and two as oil wells.

In our review, we find that the BLM properly relied upon the approved RMP, and satisfactorily demonstrated through preparation of a DNA that the BLM's NEPA obligations were met. The information available to BLM does not demonstrate a need to supplement existing analyses. BLM may defer analysis of site specific environmental review until ground-breaking activity is proposed. We deny this portion of NRDC et al.'s protest.

7. “[The BLM has not taken a] hard look at the impacts of unconventional oil and gas development on water resources.” (NRDC et al.’s Protest at page 14).

BLM Response

‘Unconventional’ wells are interpreted to mean wells drilled into unconventional geologic horizons, mainly shales. Shale beds are unconventional reservoirs because they have high porosity but very low permeability. Oil and gas will not naturally flow through the rock without artificial stimulation, which most often is hydraulic fracturing (HF). Across the United States, most wells are stimulated with HF.

For water resources, the two major concerns would be water supply and water quality. In Mississippi and Louisiana, there are ample supplies of water. Additionally, technology has advanced such that much of the flowback water from HF is reused in another well, and use of brackish water replaces the need for large volumes of fresh water.

The potential for HF water to contaminate surface or groundwater is significantly reduced if wells are properly cased and cemented. For Federal wells, the BLM reviews the casing plan for every well to assure that usable groundwater is isolated. While a well is being drilled, our inspectors are on site while the surface casing is installed and cemented to confirm that the operator is following the approved casing plan. Depending upon the location, BLM may approve the use of surface pits (lined or unlined) to hold drilling and HF flowback fluids. The pits are designed to hold the expected volume of drilling and/or HF fluids.

BLM may defer analysis of site specific environmental review until ground-breaking activity is proposed. We deny this portion of NRDC et al.’s protest.

8. “[The BLM has not taken a] hard look at the surface impacts of unconventional oil and gas development.” (NRDC et al.’s Protest at page 18).

BLM Response

Besides water resources (see BLM response directly above), other impacts related to unconventional well development would be similar to those for development of a conventional oil or gas reservoir.

BLM may defer analysis of site specific environmental review until ground-breaking activity is proposed. We deny this portion of NRDC et al.'s protest.

9. “[The BLM has not taken a] hard look at the impacts of unconventional oil and gas development on recreation.” (NRDC et al.’s Protest at page 20).

BLM Response

The BLM has no evidence that the impacts of development of unconventional oil and gas would be any different from the development of conventional oil and gas reservoirs. In fact, a single horizontal well typically replaces the need for several vertical wells and other resources and is a net reduction of surface impacts.

BLM may defer analysis of site specific environmental review until ground-breaking activity is proposed. We deny this portion of NRDC et al.’s protest.

10. “[The BLM has not taken a] hard look at the impacts of unconventional oil and gas development on human health.” (NRDC et al.’s Protest at page 20).

BLM Response

The BLM has no evidence that the impacts of development of unconventional oil and gas would be any different from the development of conventional oil and gas reservoirs.

BLM may defer analysis of site specific environmental review until ground-breaking activity is proposed. We deny this portion of NRDC et al.’s protest.

11. “[The BLM has not taken a] hard look at the impacts of unconventional oil and gas development on wildlife, including threatened and endangered species.” (NRDC et al.’s Protest at page 21).

BLM Response

The BLM has no evidence that the impacts of development of unconventional oil and gas would be any different from the development of conventional oil and gas reservoirs. In fact, a single horizontal well typically replaces the need for several vertical wells, which reduces the impacts to wildlife, reduces the number of well pads, and reduces infrastructure needs such as roads, pipelines and powerlines

BLM may defer analysis of site specific environmental review until ground-breaking activity is proposed. We deny this portion of NRDC et al.’s protest.

12. “[The BLM has not taken a] hard look at the impacts of unconventional oil and gas development on wilderness.” (NRDC et al.’s Protest at page 22).

BLM Response

The Alabama and Mississippi RMP state on page 1-21 that there are no designated or proposed wilderness areas, wilderness study areas, or lands with wilderness characteristics on lands administered by the BLM. The RMP states on page 4-59 that some of the Federal lands are in proximity to the Sipsey Wilderness Area in Alabama. The RMP concluded that, because emissions would be dispersed over a large geographic area, air quality impacts would not be anticipated.

BLM may defer analysis of site specific environmental review until ground-breaking activity is proposed. We deny this portion of NRDC et al.'s protest.

- 13. "The Forest Service and BLM will violate the National Forest Management Act (NFMA) if they offer the parcels in Louisiana for sale... ..the leasing appears to violate the NFMA by placing oil and gas development above other management prescriptions and other natural resources and by failing to ensure that lease stipulations for oil and gas development activities are sufficient to enforce all applicable Forest Plan standards." (NRDC et al.'s Protest at pages 22-23).**

BLM Response

First, as a matter of jurisdiction, the BLM is unable to respond to allegations directed at the Forest Service as to whether or not their actions comply with applicable laws and regulations. The Forest Service has its own procedures and requirements for addressing appeals of either an area or Forest-wide leasing decision or a leasing decision for specific lands. We believe that an appeal of the Forest Service's decisions to make certain lands open to leasing (which afforded their own opportunity for public review, comment, and protest) cannot be addressed through a protest to the BLM. To the extent that NRDC et al. believes the BLM's actions will violate NFMA, we note that the BLM and Forest Service coordinated on the September 2012 Sale, in accordance with the BLM-Forest Service Memorandum of Understanding (MOU) dated March 14, 2006 (BLM MOU WO300-2006-07) – see Exhibit 1. Wherever appropriate, the BLM requested, and received, concurrence from the Forest Service for offering the nominated parcels, including appropriate stipulations provided by the Forest Service. We find that the BLM appropriately relied upon the Forest Service's "Area-By-Area" analysis of the nominations within their jurisdiction and their concurrence for offering parcels within National Forest units at the September 2012 Sale.

As the IBLA determined in *Colorado Environmental Coalition* (125 IBLA 210, 218, decided February 5, 1993):

...objections raised with respect to the conformity of the Forest Service's actions either with its own internal operating procedures or with laws solely applicable to the Forest Service are not properly considered either by the BLM or this Board.

For the reasons described above, we dismiss NRDC et al.'s arguments regarding compliance with NFMA.

- 14. "BLM has not provided documentation of compliance with an applicable Resource Management Plan, in violation of the Federal Land Policy and Management Act." (NRDC et al.'s Protest at page 24).**

BLM Response

With respect to the 54 parcels located on lands administered by the Forest Service, NRDC et al. misunderstand the requirements of FLPMA. The scope of the BLM's obligation under FLPMA to prepare a land use plan (or "Resource Management Plan") is provided in our regulations at 43 CFR §1601.0-1, which describes:

...a process for the development, approval, maintenance, amendment and revision of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management.

Importantly, "public lands" are defined as (43 CFR §1601.0-5(1)):

...any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management...

Thus, the BLM is not required to prepare an RMP to address lands administered by the Forest Service, such as the 54 protested parcels located on the Kisatchie National Forest. In accordance with our 2006 MOU with the Forest Service, the BLM must first obtain concurrence from the Forest Service along with "stipulations and other necessary and appropriate documentation of NEPA compliance and LRMP consistency..." (at Exhibit 1, page 9 of the continuously-paginated document). In this manner, the issuance of leases located on Forest Service-administered surface estates will conform to the applicable land use plan. For the September 2012 Sale, the BLM requested and obtained all necessary concurrence from the Forest Service, including stipulations to be applied in order to ensure conformance with the applicable Forest Plans.

As for the 12 parcels located within the State of Mississippi, inside the boundaries of the Bienville and Homochitto National Forests, the parcels are located on split-estate private surface with a Federal mineral estate administered by the BLM. As previously described, the BLM prepared an RMP that included these lands. On March 3, 2009, the BLM Eastern States Director signed the Record of Decision for the public lands and minerals administered in Mississippi, which included a decision to designate certain lands as open to oil and gas leasing (see ROD at Table 1, page 13). In the BLM's DNA for the Mississippi parcels, the BLM identified this approved RMP for purposes of demonstrating conformance with the land use plan, and identifying applicable NEPA documents that cover the proposed action (DNA at pages 3-4). The BLM has reviewed the approved RMP for public lands and minerals in Mississippi, and determined that offering (and issuing) the proposed oil and gas leases is in conformance with the approved RMP. NRDC et al., overlooking the DNA and RMP prepared by the BLM, are incorrect in asserting that the BLM "has not identified an applicable resource management plan for the minerals it proposes to lease" (NRDC et al.'s Protest at page 24).

For these reasons, this portion of NRDC et al.'s protest is denied.

15. **"The Forest Service and BLM must consult with the Fish and Wildlife Service over impacts to listed species and critical habitat prior to issuing leases. Their failure to initiate consultation violates the [Endangered Species Act, or ESA]" (NRDC et al.'s Protest at page 26).**

BLM Response

Consultation with the FWS occurred during preparation of the Alabama and Mississippi Proposed RMP and Final EIS (2008). Further consultation with the FWS, pursuant to Section 7 of the ESA, would occur if a proposed management action may affect a Federally listed species (page 2-5 of the Proposed RMP). The consultation would occur after the BLM receives an application for permit to drill. BLM may defer analysis of site specific environmental review until ground-breaking activity is proposed. We deny this portion of NRDC et al.'s protest.

16. "BLM will violate the Clean Water Act if it proceeds with leasing." (NRDC et al.'s Protest at page 26).

BLM Response

We disagree with your statement that "...BLM conveys the right to drill somewhere on each of the protested parcels ..." A standard term of the prospective leases (lease form 3100-11), states that a Federal oil and gas lease grants "...the **exclusive** right to drill for, mine, extract, remove and dispose of all of the oil and gas..." (emphasis added). The BLM interprets this sentence to mean that no other entity has a right to develop the lease.

The next sentence states that "Rights granted are subject to applicable laws, the terms, conditions and attached stipulations of this lease, the Secretary of the Interior's regulations and formal orders in effect as of lease issuance, and to regulations and formal orders hereafter promulgated when not inconsistent with lease rights granted or specific provisions of this lease."

Further, the Mineral Leasing Act, as amended by FOOGLRA specifically provides that "[n]o permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary concerned . . ." 30 U.S.C. § 226(g). Thus, even after a lease has been issued, a lessee must obtain independent approvals of its project proposals following appropriate analyses under NEPA, the MLA, and other applicable law.

The BLM can, and has, denied approval of an application for permit to drill if the well would be located at a site that could result in undue damage to surface or subsurface resources. This office intends to carefully exercise its authority to deny permits when and as necessary pursuant to its regulatory authority noted above. Also, due to spacing, as well as directional and horizontal drilling technology, a Federal lease may be developed without a well being located within the lease itself. Current horizontal drilling technology can allow the development of several leases with a single well bore, and several wells from a single well pad.

You present no evidence in your last sentence that "... BLM has failed to ensure compliance with Louisiana and Mississippi anti-degradation policies."

BLM may defer analysis of site specific environmental review until ground-breaking activity is proposed. We deny this portion of NRDC et al.'s protest.

DECISION

The protests as to the 66 parcels are dismissed, denied, or deferred for the reasons described, above, and

as further detailed in Attachment 1. In this protest response decision, the ESO has issued its final protest response decision for the 12 parcels located within the Bienville and Homochitto National Forests (within the State of Mississippi), and will take the Federal action to issue these 12 leases to the successful high bidders. The ESO is deferring its final protest response decision for the 54 parcels located within the Kisatchie National Forest (within the State of Louisiana), pending completion of the BLM's review of NEPA documentation currently in preparation (see our responses to Argument No. 3, above). Upon completion of the NEPA documentation analyzing and disclosing the potential impacts arising from the Federal action of issuing the 54 leases (and other alternatives), the ESO will issue a second part to this decision.

This decision may be appealed to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (Attachment 2). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) 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 below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision, 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 protestor'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.



Tony Herrell
Associate State Director
Eastern States Office

2 - Attachments

- 1 - Summary of Protested Parcels' Dispositions
- 2 - Form 1842-1

cc: R&R Royalty
500 N Shoreline, Suite 322
Corpus Christi, TX 78401-0313.

Attachment 1

September 2012 Eastern States Office Competitive Oil and Gas Lease Sale

Parcel No:	Acres:	Protest Disposition:
ES-001-09/12 LAES 057522 ACQ	692.48	Pending Review of NEPA Documentation
ES-002-09/12 LAES 057523 ACQ	362.86	
ES-003-09/12 LAES 057524 ACQ	516.25	
ES-004-09/12 LAES 057525 ACQ	544.86	
ES-005-09/12 LAES 057526 ACQ	544.86	
ES-006-09/12 LAES 057527 ACQ	621.20	
ES-007-09/12 LAES 057528 ACQ	304.48	
ES-008-09/12 LAES 057529 ACQ	55.30	
ES-009-09/12 LAES 057530 ACQ	120.12	
ES-010-09/12 LAES 057531 ACQ	642.16	
ES-011-09/12 LAES 057532 ACQ	358.76	
ES-012-09/12 LAES 057533 ACQ	480.21	
ES-013-09/12 LAES 057534 ACQ	685.78	
ES-014-09/12 LAES 057535 ACQ	632.56	
ES-015-09/12 LAES 057536 ACQ	641.36	
ES-016-09/12 LAES 057537 ACQ	521.50	
ES-017-09/12 LAES 057538 ACQ	369.40	
ES-018-09/12 LAES 057539 ACQ	399.77	
ES-019-09/12 LAES 057540 ACQ	641.00	
ES-020-09/12 LAES 057541 ACQ	530.13	
ES-021-09/12 LAES 057542 ACQ	159.00	
ES-022-09/12 LAES 057543 ACQ	539.16	
ES-023-09/12 LAES 057544 ACQ	263.41	
ES-024-09/12 LAES 057545 ACQ	409.54	
ES-025-09/12 LAES 057546 ACQ	39.58	
ES-026-09/12 LAES 057547 ACQ	441.11	
ES-027-09/12 LAES 057548 ACQ	638.47	
ES-028-09/12 LAES 057549 ACQ	83.00	
ES-029-09/12 LAES 057550 ACQ	59.28	
ES-030-09/12 LAES 057551 ACQ	533.76	
ES-031-09/12 LAES 057552 ACQ	344.48	
ES-032-09/12 LAES 057553 ACQ	51.10	
ES-033-09/12 LAES 057554 ACQ	12.50	
ES-034-09/12 LAES 057555 ACQ	429.13	
ES-035-09/12 LAES 057556 ACQ	108.75	

ES-036-09/12 LAES 057557 ACQ	642.00	
ES-037-09/12 LAES 057558 ACQ	636.16	
ES-038-09/12 LAES 057559 ACQ	631.60	
ES-039-09/12 LAES 057560 ACQ	533.32	
ES-040-09/12 LAES 057561 ACQ	397.16	
ES-041-09/12 LAES 057562 ACQ	420.90	
ES-042-09/12 LAES 057563 ACQ	1,286.50	
ES-043-09/12 LAES 057564 ACQ	1,284.78	
ES-044-09/12 LAES 057565 ACQ	647.29	
ES-045-09/12 LAES 057566 ACQ	1,289.20	
ES-046-09/12 LAES 057567 ACQ	1,277.51	
ES-047-09/12 LAES 057568 ACQ	1,273.57	
ES-048-09/12 LAES 057569 ACQ	646.21	
ES-049-09/12 LAES 057570 ACQ	1,287.21	
ES-050-09/12 LAES 057571 ACQ	1,297.72	
ES-051-09/12 LAES 057572 ACQ	1,276.24	
ES-052-09/12 LAES 057573 ACQ	1,283.14	
ES-053-09/12 LAES 057574 ACQ	1,288.29	
ES-054-09/12 LAES 057575 ACQ	1,259.96	
ES-055-09/12 MSES 057576 PD	40.05	Dismissed or Denied - Lease Will Be Issued
ES-056-09/12 MSES 057577 ACQ	4.00	
ES-057-09/12 MSES 057578 ACQ	659.34	
ES-058-09/12 MSES 057579 ACQ	109.84	
ES-059-09/12 MSES 057580 ACQ	41.73	
ES-060-09/12 MSES 057581 ACQ	425.96	
ES-061-09/12 MSES 057582 ACQ	115.00	
ES-062-09/12 MSES 057583 ACQ	112.80	
ES-063-09/12 MSES 057584 ACQ	131.70	
ES-064-09/12 MSES 057585 ACQ	250.11	
ES-065-09/12 MSES 057586 ACQ	300.80	
ES-066-09/12 MSES 057587 ACQ	3.32	
Total Parcels 66	34,630.72	

Attachment 1

September 2012 Eastern States Office Competitive Oil and Gas Lease Sale

Parcel No:	Acres:	Protest Disposition:
ES-001-09/12 LAES 057522 ACQ	692.48	Pending Review of NEPA Documentation
ES-002-09/12 LAES 057523 ACQ	362.86	
ES-003-09/12 LAES 057524 ACQ	516.25	
ES-004-09/12 LAES 057525 ACQ	544.86	
ES-005-09/12 LAES 057526 ACQ	544.86	
ES-006-09/12 LAES 057527 ACQ	621.20	
ES-007-09/12 LAES 057528 ACQ	304.48	
ES-008-09/12 LAES 057529 ACQ	55.30	
ES-009-09/12 LAES 057530 ACQ	120.12	
ES-010-09/12 LAES 057531 ACQ	642.16	
ES-011-09/12 LAES 057532 ACQ	358.76	
ES-012-09/12 LAES 057533 ACQ	480.21	
ES-013-09/12 LAES 057534 ACQ	685.78	
ES-014-09/12 LAES 057535 ACQ	632.56	
ES-015-09/12 LAES 057536 ACQ	641.36	
ES-016-09/12 LAES 057537 ACQ	521.50	
ES-017-09/12 LAES 057538 ACQ	369.40	
ES-018-09/12 LAES 057539 ACQ	399.77	
ES-019-09/12 LAES 057540 ACQ	641.00	
ES-020-09/12 LAES 057541 ACQ	530.13	
ES-021-09/12 LAES 057542 ACQ	159.00	
ES-022-09/12 LAES 057543 ACQ	539.16	
ES-023-09/12 LAES 057544 ACQ	263.41	
ES-024-09/12 LAES 057545 ACQ	409.54	
ES-025-09/12 LAES 057546 ACQ	39.58	
ES-026-09/12 LAES 057547 ACQ	441.11	
ES-027-09/12 LAES 057548 ACQ	638.47	
ES-028-09/12 LAES 057549 ACQ	83.00	
ES-029-09/12 LAES 057550 ACQ	59.28	
ES-030-09/12 LAES 057551 ACQ	533.76	
ES-031-09/12 LAES 057552 ACQ	344.48	
ES-032-09/12 LAES 057553 ACQ	51.10	
ES-033-09/12 LAES 057554 ACQ	12.50	
ES-034-09/12 LAES 057555 ACQ	429.13	
ES-035-09/12 LAES 057556 ACQ	108.75	

ES-036-09/12 LAES 057557 ACQ	642.00	
ES-037-09/12 LAES 057558 ACQ	636.16	
ES-038-09/12 LAES 057559 ACQ	631.60	
ES-039-09/12 LAES 057560 ACQ	533.32	
ES-040-09/12 LAES 057561 ACQ	397.16	
ES-041-09/12 LAES 057562 ACQ	420.90	
ES-042-09/12 LAES 057563 ACQ	1,286.50	
ES-043-09/12 LAES 057564 ACQ	1,284.78	
ES-044-09/12 LAES 057565 ACQ	647.29	
ES-045-09/12 LAES 057566 ACQ	1,289.20	
ES-046-09/12 LAES 057567 ACQ	1,277.51	
ES-047-09/12 LAES 057568 ACQ	1,273.57	
ES-048-09/12 LAES 057569 ACQ	646.21	
ES-049-09/12 LAES 057570 ACQ	1,287.21	
ES-050-09/12 LAES 057571 ACQ	1,297.72	
ES-051-09/12 LAES 057572 ACQ	1,276.24	
ES-052-09/12 LAES 057573 ACQ	1,283.14	
ES-053-09/12 LAES 057574 ACQ	1,288.29	
ES-054-09/12 LAES 057575 ACQ	1,259.96	
ES-055-09/12 MSES 057576 PD	40.05	Dismissed or Denied - Lease Will Be Issued
ES-056-09/12 MSES 057577 ACQ	4.00	
ES-057-09/12 MSES 057578 ACQ	659.34	
ES-058-09/12 MSES 057579 ACQ	109.84	
ES-059-09/12 MSES 057580 ACQ	41.73	
ES-060-09/12 MSES 057581 ACQ	425.96	
ES-061-09/12 MSES 057582 ACQ	115.00	
ES-062-09/12 MSES 057583 ACQ	112.80	
ES-063-09/12 MSES 057584 ACQ	131.70	
ES-064-09/12 MSES 057585 ACQ	250.11	
ES-065-09/12 MSES 057586 ACQ	300.80	
ES-066-09/12 MSES 057587 ACQ	3.32	
Total Parcels 66	34,630.72	

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL..... A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE
NOTICE OF APPEAL..... Bureau of Land Management
Eastern States Office
7450 Boston Blvd
Springfield, VA 22153

WITH COPY TO SOLICITOR... Regional Solicitor, Southeast Region
U.S. Department of the Interior
75 Spring Street, SW., Suite 304
Atlanta, Georgia 30303

3. STATEMENT OF REASONS Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR..... Regional Solicitor, Southeast Region
U.S. Department of the Interior
75 Spring Street, SW., Suite 304
Atlanta, Georgia 30303

4. ADVERSE PARTIES..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY..... Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). 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 Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). 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 (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 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 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.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.