



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Eastern States
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Washington, DC 20003
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SEP 15 2015

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

DECISION (PART TWO)

Natural Resources Defense Council	:	September 2012 Competitive
1152 15 th Street, N.W. Street Suite 300	:	Oil & Gas Lease Sale Protest
Washington, D.C. 20005	:	

PROTEST AFFIRMED AND RESOLVED

On July 19, 2012, the Bureau of Land Management (BLM), Eastern States Office (Eastern States), 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 Oil and Gas Lease Sale for the September 13, 2012 lease sale (September 2012). In a decision letter dated August 1, 2013 and titled "DECISION (PART ONE)," the BLM Eastern States identified 16 substantive arguments and either denied or dismissed 15 of the 16 arguments. The substantive argument identified as item number "3" from the August 1, 2013 decision letter was deferred, to be addressed later. The BLM Eastern States now addresses the sole remaining argument of that protest. For the reasons discussed below, Eastern States affirms the remaining argument and has resolved the protest through preparation of additional *National Environmental Policy Act of 1969* (NEPA) analysis.

Background

The 66 parcels protested by NRDC et al. are located in the states of Louisiana and Mississippi. The Notice of Competitive Oil and Gas Lease Sale erroneously listed one of the Louisiana parcels twice; so in fact, there were 65 parcels offered and sold at the September 2012 lease sale. Fifty-three of the parcels (28,581.86 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.

Subsequent to the issuance of the August 1, 2013 Decision (Part One) letter, the BLM issued oil and gas leases for the 12 privately-owned surface parcels within the Bienville and Homochitto National Forests to the winning bidders of the September 13, 2012 oil and gas lease sale. The remaining 53 parcels located within the Kistachie National Forest are now being addressed in this protest resolution decision letter.

¹ The 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.

The substantive argument number “3” from the August 1, 2013 decision letter noted that “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 letter, page 8).

The BLM’s response in the August 1, 2013 decision letter noted that the BLM has not adopted the Forest Service’s August 1999 EIS for the Kisatchie National Forest-Forest Plan nor participated as a cooperating agency. As such, the BLM may not use a “Documentation of NEPA Adequacy” (DNA) to comply with its NEPA obligation. In response to this protest argument, the BLM has completed an environmental assessment (EA) which addresses the potential impacts of leasing on the 53 parcels nominated in the Kisatchie National Forest, including potential cumulative impacts and a reasonably foreseeable development scenario for oil and gas activities.

The EA analyzes and discloses the purpose and need, alternatives, the affected environment, and the environmental consequences, to the extent reasonably foreseeable, of potentially issuing 53 leases. The BLM has considered and prescribed highly restrictive environmental protection measures through the use of lease stipulations (such as those referenced in the Appendix B of the EA and in the lease sale notice), additional mitigation measures which are more stringent than US Forest Service requirements, and Best Management Practices described in the Proposed Action. These constraints were developed in consultation with the surface management agency, the U.S. Forest Service, to avoid conflicts with surface uses and resources. These constraints are consistent with the authorities granted to the BLM in 43 CFR §3101.1. The constraints include 10 parcels with a no surface occupancy stipulation for the protection of jurisdictional wetlands, a developed recreation site, and the protection of Longleaf Vista, Bayou Pierre Overlook, and Bayou Cypre Overlook. Controlled Surface Use stipulations #1 and #2 apply to virtually all of the parcels for the protection of streamside zones, streamside habitat protection zones, and riparian zones.

Based on the analyses presented in the reasonably foreseeable development (RFD) scenario (RFD, Appendix D) and the proposed action, the BLM estimates a maximum of 20 wells and a net surface disturbance of 264 acres, which is not considered significant across the total acreage of the Kisatchie National Forest (0.03%). The finding of no significant impact of issuing the 53 leases with “no surface occupancy” (NSO) and “controlled surface use” (CSU) stipulations which considerably restrict potential surface disturbance, is consistent with the context and intensity criteria in 40 CFR §1508.27. The BLM has provided a rational basis for the decision to offer the subject parcels for oil and gas leasing without causing significant adverse environmental impacts, in conformance with NEPA (40 CFR §1501.4).

This EA does not include a site-specific analysis of drilling as the context and intensity of those environmental impacts remain unidentifiable until oil and gas exploration activities are proposed. At the leasing stage, a more site-specific and detailed analysis of the impacts of drilling 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 is not required to speculate about potential future actions as such endeavors are likely to be misleading to the public.

Any future approved APD will contain Conditions of Approval that reflect necessary mitigation measures. In accordance with 43 C.F.R. § 3101.1-2 BLM may require reasonable mitigation measures to ensure that the proposed operations minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights. The BLM will incorporate any mitigation requirements, including

Best Management Practices, identified through the APD review and appropriate NEPA and related analyses, as Conditions of Approval to the APD

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). 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 has authority to disapprove drilling permits if the situation warrants [43 CFR §3162.3-1(b)]. The BLM has the authority to require additional terms, provisions, and stipulations for environmental protection when an Application for Permit to Drill (APD) is filed for review and consideration.

Before a lessee may disturb the surface of a lease parcel, he must submit an APD and a SUPO to the BLM for approval, modification, or disapproval [43 C.F.R. §3162.3-1(d), (h)]. Before it may approve the APD, the Forest Service first must approve the SUPO [30 U.S.C. §226(g); 36 C.F.R. §§228.106-.108; 43 C.F.R. §3162.3-1(h)]. Moreover, the agencies must verify that leasing on the applicant's parcel has been adequately addressed in a NEPA document. 36 C.F.R. §228.102(e). For forest lands, the Forest Service must initiate formal consultation with the FWS. Considered together, the stipulations, reservations and remaining procedural hurdles demonstrate that while a lessee has a legal right to apply for permission to conduct oil and gas operations, his right to development of the lease parcel is far from certain. There remains significant uncertainty as to whether, when, and where a well would be drilled on a lease. Because lease development is so uncertain at the lease issuance stage, the protest claims are too reliant on contingent future events that may not occur as anticipated, or may not occur at all.

Decision

The sole remaining argument, identified as item number “3” from the August 1, 2013 decision letter and described above, is hereby affirmed and resolved through the completion of an environmental assessment (enclosed) which address the potential environmental impacts of leasing 53 parcels within the Kisatchie National Forest, including potential cumulative impacts and a reasonably foreseeable development scenario for oil and gas activities. The BLM has also completed a “finding of no significant impact” and a separate decision record for the environmental assessment (enclosed).

As a result of this protest response decision (Part II), the BLM will take the Federal action to issue the 53 leases to the successful high bidders at the September 13, 2012 oil and gas competitive lease sale.

Appeal

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 (Enclosure 1). 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. 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.



Marci L. Todd
Acting State Director

Enclosed:

1. Environmental Assessment/FONSI/Decision Record
2. Form 1842-1