



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
3100 (9210)

October 23, 2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
7012 3460 0002 5451 4561

Trout Unlimited
409 Lincoln Street
Lander, Wyoming 82520

DECISION PROTESTS DENIED OCTOBER 22, 2014, OIL & GAS LEASE SALE

On August 15, 2014, the Bureau of Land Management (BLM), New Mexico State Office (NMSO) timely received a letter from Trout Unlimited and three additional environmental-advocacy groups (Trout Unlimited et al.)¹ protesting the offering of 13 parcels (NM-201410-001, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014, and -015) as described in the Notice of Competitive Lease Sale (Sale Notice) for the October 22, 2014 Competitive Oil and Gas Lease Sale.

The 13 parcels protested are located in Rio Arriba and Sandoval Counties, New Mexico within the Santa Fe National Forest (SFNF). The parcels are unleased Federal mineral estate administered by the BLM Farmington Field Office (FFO) with the surface estate administered by the United States Forest Service (USFS). The BLM issues and administers oil and gas leases on USFS lands only if the USFS does not object to leasing of specific lands. Altogether, the protested parcels aggregate approximately 20,146.67 acres.

BACKGROUND

These parcels were nominated by interested parties in accordance with 43 CFR § 3120.3. After adjudication of the nominated parcels by the NMSO, the parcels were reviewed by the USFS to ensure leasing of the parcels would be in conformance with the applicable SFNF Plan decisions. The USFS did not object to leasing of these parcels and required the inclusion of appropriate stipulations (30 U.S.C. § 226(h)).

¹ Trout Unlimited submitted a single protest on behalf of Trout Unlimited, New Mexico Wildlife Federation (NMWF), Hispanics Enjoying Camping, Hunting, and the Outdoors (HECHO), and Rio Grande Restoration (RGR). For the purposes of this protest, the BLM will address the protestors, collectively, as Trout Unlimited et al.

The role of the BLM in issuing oil and gas leases for lands managed by the USFS 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, when USFS-administered lands are being considered for oil and gas leasing, the BLM must not issue any lease over the objection of the USFS, and the USFS can require the inclusion of appropriate stipulations (30 U.S.C. § 226(h)). The USFS must verify the lands have been adequately analyzed in a forest plan level leasing analysis, that leasing decisions are based on the analysis, and that there is no new significant information or circumstances requiring further environmental analysis. Leasing analysis must comply with National Environmental Policy Act (NEPA) and its implementing regulations at 40 §§ CFR 1500-1508 in considering the effect of leasing on the human environment, including reasonably foreseeable future development. If the USFS does not object to leasing, then the BLM retains separate, independent authority to decide whether to include USFS-administered lands in a lease sale and to impose additional stipulations, as described at 43 CFR § 3107-2.

The parcels were also reviewed by the FFO including interdisciplinary review, field visits to nominated parcels (where appropriate), review of conformity with the land use decisions for the planning area and preparation of an Environmental Assessment (EA) documenting NEPA compliance. The NMSO also reviewed each of the parcels, and confirmed plan conformance and conformance with national and state BLM policies.

The preliminary parcel list was posted for a two-week public scoping period on March 10, 2014. Prior to posting of the Sale Notice advertising the parcels to be offered at the competitive sale, the BLM prepared an EA in which the BLM tiered the analysis to the SFNF Oil and Gas Leasing and Roads Management Environmental Impact Statement (EIS) and Record of Decision (ROD) issued in 2008 and Supplemental EIS issued in 2012. The purpose of the lease sale EA is to analyze specific parcels to determine what reasonably foreseeable impacts may occur from leasing. The EA augments the decisions made in the EISs with current on-the-ground information. The 30-day comment period of the EA and unsigned Finding of No Significant Impact (FONSI), commenced on May 1, 2014. Trout Unlimited did provide comments to the BLM during this period. The 30-day protest period commenced on July 16, 2014. A total of 116 protests were received. Trout Unlimited et al. requested the 13 parcels be removed from the sale.

On October 22, 2014, the BLM conducted a competitive oil and gas lease sale during which all of the protest 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.

ISSUES

The remainder of our responses will address the protestors' arguments related to the 13 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. Due to significant proposed changes foreseen with the increased development in oil and gas activities in the Mancos Shale Formation, the FFO parcels located on the Santa Fe National Forest should be deferred.

BLM Response:

Trout Unlimited et al. alleges that because the BLM has withdrawn 22 of the 35 parcels due to the Farmington Mancos Gallup Resource Management Plan Amendment (RMPA) undertaking, the 13 USFS parcels located on the SFNF should also be deferred as the parcels are part of the Mancos Shale/Gallup Formation.

Because these parcels are within the administrative boundary and jurisdiction of the USFS, the 2003 FFO RMP and any ongoing RMP revisions or amendments are not applicable. In accordance with the BLM-USFS Memorandum of Understanding (MOU) dated March 14, 2006 (BLM MOU WO300 -2006-07), the issuance of leases located on USFS-administered surface estates will conform to the applicable Forest Plan.

The USFS SFNF completed the 2008 and 2012 EISs for Oil and Gas Leasing and has not identified the need to amend or supplement the EISs or their Forest Plan to address unforeseen activities. As such, the USFS has determined they have valid EISs and a Forest Plan that supports leasing of the parcels proposed for lease.

If these parcels were not on USFS-administered surface estates and were within the scope of the 2003 FFO RMP decision space, the ongoing amendment process of the FFO RMP is not a reason to defer the offering of leases for lands that are open to leasing under the existing RMP. The BLM may offer parcels for lease and issue new leases when an RMP is being amended, if the leasing decision conforms to the existing RMP and is supported by the underlying EIS. See Powder River Basin Resource Council, 180 IBLA 1, 17 (2010); Montana Trout Unlimited, 178 IBLA 159, 171 (2009); and Sierra Club Legal Defense Fund, Inc., 124 IBLA 130, 140 (1992). The Interior Board of Land Appeals (IBLA) has also specifically held that the BLM is not required to suspend oil and gas leasing pending the RMP update process (see Wyoming Outdoor Council, 156 IBLA 377, 384 (2002)).

The parcels are outside of the scope of the decision area for the BLM Mancos Shale RMPA. The BLM appropriately relied upon the USFS's analysis of the lease parcels and their lack of objection of offering parcels. Therefore, the statement of reason has been considered, found to be without merit and is denied.

2. The BLM and SFNF failed to provide any reasoning as to why the 13 parcels were not deferred.

BLM Response:

The proposed leasing of the 13 parcels meets the purpose and need of the action. The purpose and need is stated as:

The purpose is to consider opportunities for private individuals or companies to explore for and develop oil and gas resources on public lands through a competitive leasing process.

The need of the action is established by BLM's responsibility under the Mineral Leasing Act (MLA), as amended to promote the exploration and development of oil and gas on the public domain. The MLA establishes that deposits of oil and gas owned by the United States are subject to disposition in the form and manner provided by the MLA under the rules and regulations prescribed by the Secretary of the Interior, where consistent with the [Federal Land Planning Management Act], the [NEPA] of 1969, as amended (Public Law 91-90, 42 U.S.C 4321 et seq.), and other applicable laws, regulations, and policies. (EA pp 3)

The USFS gave consent to lease the parcels. The USFS and BLM did not conclude any reason to not lease the parcels. Leasing the parcels would not violate any laws, rules, regulations, or policy and no additional information was identified that would require further analysis; therefore, the parcels were not deferred. The No Action alternative would address the alternative of not leasing the parcels and deferring the proposed lease parcels to a future lease sale. Therefore, the statement of reason has been considered and found to be without merit and is denied.

3. The EA is incomplete in its analysis and does not support a Finding of No Significant Impact (FONSI).

BLM Response:

The BLM has combined several of Trout Unlimited et al.'s statements of reason into this one category as they all have a relevant response. The statements of reasons are as follows:

- The EA is incomplete in its analysis of the 13 parcels on the SFNF. From air quality... to cultural resources...to cumulative effects...the EA fails to fulfill NEPA's basic tenet to "help public officials make decisions based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." Clearly the EA fails to provide the adequate and required NEPA analysis for this lease sale and we suggest the BLM select Alternative A as the only legal option at this time.
- The EA fails to adequately provide cumulative effects analysis for this lease sale.
- A FONSI is not warranted for EA DOI-BLM-NM-F010-2014-0154-EA which covers the parcels located on the SFNF.

Section 102(2)(C) of NEPA requires consideration of the potential environmental impacts of a proposed action in an EIS if that action is a “major Federal action[s] significantly affecting the quality of the human environment” (42 U.S.C. § 4332(2)(C)). The BLM must consider all relevant matters of environmental concern, take a “hard look” at potential environmental impacts, and make a convincing case that no significant impact will result that has not already been addressed in an EIS or that any such impact will be reduced to insignificance by adoption of appropriate mitigation measures (see Wyoming Outdoor Council, 173 IBLA 226, 235 (2007)).

In the October 2014 Lease Sale EA, the BLM identified, disclosed, and analyzed potential impacts that could arise from offering the parcels. The EA tiers to the USFS SFNF 2008 and 2012 EISs where appropriate, and includes additional information as necessary. “Tiering” and “incorporation by reference” are two concepts, which are provided in the Council on Environmental Quality (CEQ) regulations implementing NEPA, and which, are designed to reduce redundant paperwork and analysis in the NEPA process (see 40 CFR § 1502.20 and § 1502.2). Through the use of tiering or incorporation by reference, federal agencies need not repeat analysis and content that is already contained in another NEPA document previously prepared by that agency or another in order to comply with NEPA.

The October 2014 Lease Sale EA and USFS SFNF 2008 and 2012 EISs, concluded that the sale of parcels and issuance of oil and gas leases is strictly an administrative action that does not authorize ground-disturbing activities. While BLM acknowledges that leasing carries a right-to-use leased land subject to BLM controls, direct impacts from the act of leasing are not a foregone conclusion. Nonetheless, there are indirect effects, arguably caused by the act of leasing. Indirect effects are caused by the action, are later in time, but are still reasonably foreseeable, and may occur at some point after implementation of the proposed action (see 40 CFR § 1508.8(b)). The effects analysis in the section titled Environmental Consequences of the EA addresses indirect effects that could result from leasing these lands for oil and gas development and production. The EA addresses typical oil and gas exploration and development activities, including the potential future use of a particular type of well stimulation (hydraulic fracturing), which are generally anticipated as a result of lease issuance. Although the USFS SFNF 2008 and 2012 EISs do not provide site-specific information about oil and gas development activities, the EISs provide substantial information on potential surface disturbing impacts, as well as cumulative impacts related to the human and natural environment. The October 2014 Lease Sale EA and USFS SFNF 2008 and 2012 EISs identified several stipulations that the USFS and BLM would attach to the leases which are designed to protect cultural and visual resources, wildlife habitat, surface integrity, riparian areas and wetlands, and recreation areas. Lease stipulations attached to the parcels immediately mitigate some negative impacts from future development.

Ground disturbing activities cannot occur until a lessee applies for and receives approval for drilling on the lease. For this reason, without a discrete development proposal, the use of hydraulic fracturing in the oil and gas exploration and development process cannot be determined at the lease stage. When a well is proposed for development, it must undergo a

project-specific NEPA analysis when an Application for Permit to Drill (APD) is received. The site-specific analysis addresses the location, intensity, and timing of development, ensures that lease stipulations are applied and the project is in full compliance with Federal, State, Local, and Tribal laws, rules, regulations, and policy. When the proposed development is anticipated to or has the potential to have impacts on a resource(s), the analysis would identify Best Management Practices (BMP) and attach additional restrictions and mitigations, known as Conditions of Approval (COA) that would minimize or eliminate the impacts. If adverse impacts are unavoidable, the project may not be approved or additional environmental analysis will be performed to disclose the effects.

Based on the lease stipulations accompanying the parcels and the requirement for additional site-specific analysis and mitigation, the impacts of future development would not rise to the level of significance and a FONSI is warranted. As well, no new evidence was presented that was not already considered in the October 2014 Lease Sale EA or the USFS SFNF 2008 and 2012 EISs or that is not already regulated by Federal or State laws, rules, regulations, or policy. Therefore, the statement of reasons have been considered, found to be without merit and are denied.

4. The Santa Fe National Forest (SFNF) planning documents used for lease analysis are outdated and lacking in NEPA adequacy in evaluating these parcels. Documents referred to in the SFNF analysis include outdated BLM oil and gas analysis and a 1987 SFNF Land Use Plan (LUP).

BLM Response:

The “Santa Fe National Forest Plan” (Forest Plan), approved in 1987, provides broad direction regarding leasing and the management of oil and gas development on USFS surface estate. However, since the approval of the Forest Plan, it was determined that the Forest Plan and its analysis (1987 EIS) did not address the potential environmental effects of future leasing and development on the SFNF sufficiently enough to make new lease issuance decisions. A Forest Plan Amendment² and analysis (2008 EIS)³ was subsequently prepared. A supplement⁴ to the 2008 EIS was completed in 2012 to update the Air Quality section, as well as address threatened, endangered, and sensitive species.

Trout Unlimited et al. allege the SFNF 2012 EIS and the ROD are outdated and reference information provided by the FFO BLM 2001 Reasonable Foreseeable Development Scenario

² US Department of Agriculture, Forest Service (USDA-FS). 2008. Santa Fe National Forest Plan.

³ USDA-FS. 2008. Final Environmental Impact Statement for Oil-Gas Leasing and Roads Management. Santa Fe National Forest, New Mexico. MB-R3-10-6. June 2008. Available at: <http://www.fs.usda.gov/project/?project=11560>

⁴ USDA-FS. 2012. Final Supplement to the Final Environmental Impact Statement for Oil-Gas Leasing. Santa Fe National Forest, Rio Arriba and Sandoval Counties, New Mexico. MB-R3-10-17. November 2012. Available at: <http://www.fs.usda.gov/project/?project=11560>

(RFDS). The RFDS completed for the FFO RMP included USFS lands; however, when the SFNF began the plan amendment process, they had their geologist modify⁵ the RFDS to be more specific to their lands. The SFNF RFDS estimated the number of locations on a township and range basis. The locations were predicted using current and anticipated spacing units for formations beneath the study area, in addition to the locations of historical wells. The supplemental RFDS projected 20 wells (11 wells producing from the Pictured Cliffs Formation and 9 wells producing from the Mancos formation) over a 20 year period (2008-2027) (2008 USFS SFNF EIS pp 62-65).

In Colorado Environmental Coalition (125 IBLA 210, 218, February 5, 1993), the IBLA board determined:

...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

The IBLA also determined that the USFS consenting to issuance of leases that are allegedly in violation of Section 6(i) of the National Forest Management Act (16 U.S.C § 1604(i))⁶ should not be subject to review by BLM or the IBLA. Plan consistency and sufficiency is within the legal purview of the U.S. Department of Agriculture and does not grant independent or collateral authority to the BLM or the U.S. Department of Interior.

Following IBLA's decision, the BLM is unable to respond to allegations directed at the Forest Service, as to whether or not their Forest Plan is sufficient or leasing the parcels is in conformance with the Forest Plan. The BLM appropriately relied upon the Forest Service's analysis of the proposed lease parcels and their lack of objection of offering parcels, which included a review for consistency with the Forest Plan. For these reasons, this statement of reason has been considered, found to be without merit and is denied.

5. Leasing the FFO Parcels would be in conflict with Instruction Memorandum (IM) 210-117 language, requiring resource specialist be included in the lease review and the lack of a New Mexico BLM Oil and Gas Leasing Reform Implementation Strategy, required under this IM.

⁵ USDA-FS. 2004 Gore, Larry. Reasonably Foreseeable Development Scenario, San Juan Basin Oil and Gas Planning Amendment EIS, USDA Forest Service, Santa Fe National Forest. Cuba, NM

⁶ 6 U.S.C. § 1604(i) Consistency of resource plans, permits, contracts, and other instruments with land management plans; revision—Resource plans and permits, contracts and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.

BLM Response:

IM No. 2010-117 establishes a process for ensuring orderly, effective, timely, and environmentally responsible leasing of oil and gas resource on Federal Lands. The IM states:

The following policy applies to the leasing of Federal minerals under BLM-administered surface, state-owned surface, and private surface estates. The BLM does not manage leasing on tribal lands; therefore, this policy does not apply to tribal lands. In addition, sections I through III.F of this policy do not apply to the leasing of Federal minerals under lands managed by other Federal surface management agencies. Those sections, however, do apply to split estate lands within National Forest System (NFS) units if leasing decisions for such lands have not been analyzed in documentation prepared jointly by the U.S. Forest Service (FS) and the BLM for lands within the external boundaries⁷ of NFS units.

Trout Unlimited et al. argues that the second part of the statement applies because the EA did not reference any jointly prepared analyses by both agencies. This portion of the IM is specifically referring to split estate lands found within the administrative boundaries of the USFS. The BLM's split estate policy only applies to situations where the surface rights are in private ownership and the rights to development of the minerals resources are publicly held and managed by the Federal Government. In the case of the protested parcels, the parcels are within the administrative boundaries of the USFS where the surface is owned and managed by the USFS. The surface owner and the mineral owner are both Federal agencies and are, therefore, not considered split-estate. Following this guidance, Section III, C of the IM, which describes the need to form an Interdisciplinary Parcel Review Team of resource specialists and the requirement for a site visit, does not apply to these parcels. Regardless, the resource specialists from both the BLM and the USFS SFNF were part of the interdisciplinary team who reviewed and provided input in the October 2014 Lease Sale EA. Therefore, the statement of reason has no merit and is denied.

- 6. Current NEPA analysis in the EA is insufficient and fails to include any analysis or recognition of Rio Grande cutthroat trout (RGCT) habitat or the streams containing Rio Grande cutthroat trout that exist within and adjacent to these FFO parcels. As well existing stipulations are not adequate to protect fisheries (native and wild) and water quality resources located on and downstream of the parcels.**

⁷ IM-2010-117: "The external boundary of an NFS unit is defined as the outer boundary of an area encompassing all the National Forest System lands administered by a single administrative unit. The area often encompasses private lands and other governmental agency lands.

BLM Response:

The 2008 USFS SFNF EIS addresses fisheries in general as well as specifically analyzing leasing effects on Rio Grande cutthroat trout (pp 129-132), in which the BLM tiered to when reviewing the SFNF parcels. The EIS concluded that the entire 6.2 miles of occupied stream would be protected by a Controlled Surface Use (CSU) stipulation for riparian areas. The EIS also concluded that there is only a small amount of habitat within the oil and gas study area and low potential for development, so when combined with the CSU stipulation that would be attached to the lease parcel, leasing would not likely affect Rio Grande cutthroat trout populations or habitat.

The SFNF attached FS3 (NM) CSU3A Riparian Areas and Wetlands⁸ to parcels -001, -005 to -007, and -009 to -013. This stipulation is intended to protect riparian and wetland areas by prohibiting surface disturbance within these areas. The NEPA documentation is sufficient to support issuance of oil and gas leases. The analyses in the October 2014 Lease Sale EA and USFS SFNF 2008 and 2012 EISs are sufficiently detailed to identify the types of stipulations that must be attached to the oil and gas leases to retain BLM's and USFS's authority to protect fisheries and water quality through mitigation. In addition, site-specific analysis of impacts of oil and gas development on fisheries, particularly cutthroat trout, would be completed at the APD stage. Consultation and coordination with United States Fish & Wildlife Service (USFWS) and New Mexico Department of Game & Fish (NMDGF), if necessary, would be completed in accordance with all laws, regulations, and policy. Adherence with lease stipulations, project redesign or avoidance, and application of COAs and BMPs would be utilized where possible and mitigation utilized where impacts are not possible. Therefore, the statement of reason has been considered, found to be without merit, and is denied.

- 7. NEPA analysis in the EA is insufficient and outdated for big game habitat both on BLM and SFNF lands. The SFNF contains significant habitat for big game species, in particular important winter range for mule deer, and the EA fails to include a hard look at this required analysis.**

BLM Response:

Trout Unlimited et al. specifically contend that the BLM did not take a "hard look" at the potential impacts from oil and gas leasing on big game habitat, particularly winter range. Per BLM's H-1790-1, NEPA Handbook, (Jan. 2008) (p.55), the definition of "hard look," is:

A "hard look" is a reasoned analysis containing quantitative or detailed qualitative information.

The BLM took a "hard look" at the environmental consequences of leasing, including analyzing reasonably foreseeable oil and gas development. The analysis is documented in the EA starting on page 39 and ending on page 41 of the EA made available for the protest period. As well, the

⁸ This CSU is referred to as CSU-1 in Appendix 2 of the October 2014 Lease Sale EA.

2008 USFS SFNF EIS describes wildlife that may be present in the USFS parcels and the impacts associated with leasing the parcels (EIS pp. 103-157). Both documents conclude that wildlife, whether Threatened and Endangered Species, sensitive species, migratory birds, or common wildlife (including big game), have the potential to be affected by oil and gas development, particularly at the surface-disturbance phase. Anticipated impacts include: noise disturbances, habitat fragmentation, modification, and/or destruction, and wildlife displacement. Both documents also conclude that the magnitude of effects would be dependent on the rate and location of the oil and gas development and significant losses can be alleviated through site-specific analysis, project design features, and applying COAs and BMPs at the APD phase. The BLM consulted with the USFWS and the NMDGF in preparing the 2003 FFO RMP, and the NMDGF in preparing the October 2014 Lease Sale EA. The USFS consulted and coordinated with the USFWS and NMDGF during preparation of the 2008 SFNF EIS. Both of these agencies, who have jurisdiction by law and expertise of wildlife in the State, were involved in the review of BLM's and USFS's impact determinations and attachment of relevant stipulations and lease notices. No Surface Occupancy stipulations would protect all wildlife as these stipulations would not allow surface disturbance within the entire parcel or portions of the parcels (e.g. steep slopes, roadless recreation areas). A timing limitation stipulation (TLS-4) has been attached to parcels that have been identified as occurring within deer and elk winter range. The TLS is intended to protect and limit disturbance from oil and gas activities within prime deer and elk winter range and to minimize risks to health during a critical period.

The NEPA documentation is sufficient to support issuance of oil and gas leases. The analyses in the October 2014 Lease Sale EA and USFS SFNF 2008 and 2012 EISs are sufficiently detailed to identify the types of stipulations that must be attached to the oil and gas leases to retain BLM's authority to protect other resources through mitigation. In addition, the EA's analysis of indirect effects and the analysis of potential effects of development on big game habitat would be analyzed at the APD stage. Consultation with USFWS and NMDGF, if necessary, would be completed in accordance with all laws, regulations, and policy. Adherence with lease stipulations, project redesign or avoidance, and application of COAs and BMPs would be utilized where possible and mitigation utilized where impacts are not possible. Therefore, the argument has been considered, found to be without merit, and is denied.

8. NEPA analysis on impacts to important groundwater resources on the SFNF is insufficient to address possible effects of oil and gas exploration, in particular unconventional oil and gas development and high volume hydraulic fracturing.

BLM Response:

The FFO addressed potential impacts to water resources in the section titled Environmental Impacts, Water Resources which begins on page 37 of the October 2014 Lease Sale EA made available for the protest period. The EA analysis determined that there were no impacts to water resources from leasing the parcels; however, there could be indirect impacts to water resources from reasonably foreseeable oil and gas development on the leases, including groundwater contamination from inadequate casing and cementing of the wellbore; surface water

contamination from accidental spills or releases of drilling fluids, hydraulic fracturing fluids, produced water, or chemicals used during development and production of a well; and groundwater depletion. The EA also concluded that “Adherence to APD COAs and other design measures would minimize potential effects to groundwater quality.”

Quality

As stated in the October 2014 Lease Sale EA, “there are no verified instances of hydraulic fracturing adversely affecting groundwater in the San Juan Basin.” This can, in part, be attributed to the fact that “the producing zone targeted by both action alternatives is well below any underground sources of drinking water.” The EA states that the typical depth of groundwater in the San Juan Basin is 500 feet or less, and that any future hydraulic fracturing is expected to occur deeper than 5,700 feet as measured from the surface. The USFS SFNF 2008 EIS states the water depths in domestic wells are shallow ranging from six feet deep in the Arroyo Chijuilla watershed to 304 feet in the Rio Gallina watershed. Based on the distance between the groundwater and the targeted formations, no adverse impacts to groundwater are expected to occur.

The potential for drilling or hydraulic fracturing fluids or produced water to contaminate groundwater is significantly reduced if wells are properly cased and cemented. The BLM has adopted stringent requirements for casing and cementing of well bores (see Onshore Oil and Gas Order No. 2, Drilling Operations on Federal and Indian Oil and Gas Leases). As part of a complete APD package the operator must submit a drilling plan which includes the proposed casing and cementing program. The BLM thoroughly reviews these plans for every APD submitted to ensure that usable groundwater is isolated and that all BLM and state requirements for casing and cementing have been met or exceeded. While a well is being drilled, BLM inspectors are onsite when the surface casing is installed and cemented to confirm that the operator is following the approved casing and cementing plan. BLM inspectors verify cement integrity by witnessing casing pressure tests. These measures are intended to ensure that hydrocarbon-bearing strata at great depths remain isolated from surface waters and freshwater-bearing strata at shallow depths. New downhole tools are being used to detect the presence and quality of cement resulting in more precise results. If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing must be re-cemented, repaired, or an additional casing string run and the casing tested again. All results are recorded in the driller’s log.

Because there are a number of chemicals that are used, stored, and/or produced on each well site, there is a potential for spills and leaks (which are described as ‘undesirable events’) to occur. The BLM has established regulations that require -- to the extent possible -- prevention of spills and leaks, reporting (via NT L 3A, Reporting of Undesirable Events), and emergency response. The first mitigation measure is at the APD phase in which the BLM works with the operator to site the well pad, tank battery, and access road as far as possible from the water source and the use of a close-loop drilling system if practicable. In addition, COAs are attached to APDs (e.g. impermeable liners for pits, secondary containment structures around all storage facilities

including tank batteries, complying with the EPA Spill Prevention, Control and Countermeasure regulations (40 CFR § 112)), and BMPs, such as storing chemicals off the ground to prevent contact with the soil and standing water, to reduce the likelihood of these undesirable events occurring, and to mitigate damage from a spill or leak through remediation and reclamation.

Each field office maintains records of spills and leaks that occur within their jurisdiction. In addition, the New Mexico Oil Conservation District requires that all spills regardless of landowner be reported to the State of New Mexico. The BLM did identify the potential for these events to occur in the impact assessment section of FFO RMP, and analyzed the potential consequences of spills and leaks, as a means of evaluating the effectiveness of mitigating measures. However, because these are rare and unforeseeable events, it would be inappropriate to quantitatively estimate the volumes of oil or brine leaks and spills, and their environmental consequences.

The BLM is responsible for inspection and enforcement of wells and facilities that have a Federal lease nexus and to conduct regular regulatory inspections, such as but not limited to, drilling, production, environmental compliance, production audits and abandonment inspections. If at any time during the life of the well, a well site is causing or has the potential to cause environmental damage such as surface contamination, the BLM has the authority to issue Written Orders of the Authorized Officer, Incidents of Non-Compliance, citations and fines, and, in specific circumstances, cessation of operations when incidents of non-compliance occur.

Quantity

Water quantity is briefly addressed in the October 2014 Lease Sale EA made available for the protest period stating “Because large volumes of water are needed for hydraulic fracturing, the use of groundwater for this purpose might contribute to the drawdown of groundwater aquifer levels.” (pp. 61). The amount of water used during well development is highly dependent on a number of factors including but not limited to: vertical or horizontal well, length of well bore, closed-loop or reserve pit drilling system, type of mud, type of stimulation used (e.g. hydraulic fracturing or acidizing), formation being fractured, and use of recycled water or inert gases. Therefore, the amount of water that could actually be used is too speculative to reasonably quantify at the leasing stage. When an APD is received a quantitative analysis can be completed. Once a well is drilled, operators are required to report the volumes of water and gases used in completion of the well to the BLM and are available for review at NMOCD’s website:

ocdimage.emnrd.state.nm.us.

In response to the high demand for and the lack of availability of water in the San Juan Basin, operators have successfully developed fracturing techniques that use considerably less water by substituting inert gases such as nitrogen and carbon dioxide as the carrier of the fluid for the frack. These can replace up to 95 percent of the water used for the frack fluids. The BLM encourages operators to utilize this new technology to lessen the impact of oil and gas development on water availability in the area.

The New Mexico Constitution establishes that all the water in the State belongs to the public and, to the extent that it is unappropriated, it is available for appropriation. The Office of the State Engineer is responsible for permitting all surface and groundwater withdrawals apart from water rights acquired before 1907 and small scale stock watering. An application for a new appropriation or a change in an existing water right is reviewed for the existence of unappropriated waters, if the application will impair existing water rights, whether granting the application would be contrary to the conservation of water within the state, and if the application will be detrimental to the public welfare. Because of these statutes and process, the BLM does not generally have control of permitted water wells, their intended uses, or to regulate if they are exceeding their permitted allocation. The BLM requires full compliance with applicable state regulations.

No new evidence was presented that was not already considered in the October 2014 Lease Sale EA or that is regulated by Federal or State laws, rules, regulations, or policy. In conclusion, the BLM adequately addressed potential impacts to water resources from oil and gas development, including hydraulic fracturing, and the environmental consequences of how development may affect water quality and quantity. Therefore, the statement of reason has been considered, found to be without merit and is denied.

DECISION

For the reasons stated above, we herein deny the protests. In this protest response decision, the NMSO has issued its final response decision for the 13 parcels within the SFNF and will take Federal action to issue these 13 leases to the successful high bidders.

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 § 4.400 and Form 1842-1 (Enclosure 1). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from is in error.

If you wish to file a Petition for a Stay of this Decision, pursuant to 43 CFR § 4.21, the Petition must accompany your Notice of Appeal. A Petition for a Stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for a Stay must also be submitted to each party named in the Decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR § 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a Decision pending appeal shall show sufficient justification based on the following standards:

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

/s/ Sheila Mallory, Acting

Aden L. Seidlitz
State Director

1 Enclosure
1- Form 1842-1

cc: w/o enclosure
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