



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office

P.O. Box 45155

Salt Lake City, UT 84145-0155

<http://www.blm.gov>



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May 25, 2010

## DECISION

Friends of the Great Salt Lake	:	Protest to the Inclusion of Certain
c/o Western Resource Advocates	:	Parcels in the November 21, 2006
425 East 100 South	:	Competitive Oil and Gas Lease Sale
Salt Lake City, Utah 84111	:	

### Protest Denied

On October 6, 2006, the Bureau of Land Management (BLM) provided notice that 280 parcels would be offered in a competitive oil and gas lease sale scheduled for November 21, 2006. The notice indicated that the protest period for the lease sale would end on November 6, 2006. By letter to BLM dated and hand delivered on November 6, 2006, the Friends of the Great Salt Lake (FGSL) submitted a timely protest to the inclusion of eight parcels in the lease sale. The protested parcels are located on public lands administered by BLM's Salt Lake Field Office (SLFO). The protested parcels are as follows:

UT1106-003A (UTU85095)	UT1106-003D (UTU85326)	UT1106-003G (UTU85099)
UT1106-003B (UTU85325)	UT1106-003E (UTU85097)	UT1106-004 (UTU85100)
UT1106-003C (UTU85096)	UT1106-003F (UTU85098).	

The FGSL protest contends that BLM's decision to offer and issue leases on the protested parcels violates the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., and the National Historic Preservation Act (NHPA), 16 U.S.C. 470 et seq., and their implementing regulations and policies. For the reasons set forth below, the protest is denied.

#### **A. BLM's Inclusion of the Protested Parcels in the November 2006 Lease Sale Complies with NEPA.**

The FGSL protest makes the two general arguments in contending that the BLM's inclusion of the protested parcels in the lease sale violates NEPA: (1) the BLM's inclusion of the protested parcels in the lease sale violates NEPA because the BLM failed to adequately consider the potential impacts on the Great Salt Lake ecosystem of oil and gas development; and (2) the BLM failed to consider significant new information on the Great Salt Lake and its public trust resources. As discussed below, the FGSL's general arguments fail to establish any error on the BLM's part.

The BLM adequately considered the potential impacts of leasing and development of the protested parcels.

Prior to the inclusion of the protested parcels in the November 2006 lease sale, the SLFO examined its existing NEPA analyses covering the parcels. Based on its review, the SLFO determined that the analyses sufficiently assessed the environmental consequences of leasing the parcels. The SLFO utilized a Documentation of Land Use Plan Conformance and NEPA Adequacy Worksheet (DNA) to make and document that determination. In sections D5 and D6 of the DNA, the SLFO assessed the impact analyses (of direct, indirect and cumulative impacts) in existing NEPA documents and concluded that the analyses were adequate. It is well-settled that a DNA is an appropriate means for BLM to assess whether existing NEPA analyses adequately analyze the potential impacts of an action so that the agency may proceed without performing further NEPA review.

In the protest the FGSL contend: "Here, BLM's NEPA analysis is insufficient in that it fails to consider adequately the impact of potential oil and gas development on the ecosystem of the Great Salt Lake." Protest at 3. However, the FGSL do not set forth any information or specific facts to support concluding that leasing or development of the protested parcels will have adverse impacts on any resource values, let alone the ecosystem of the Great Salt Lake. The FGSL contend that "there has been no analysis of the impact of development on the eared grebe and other birds that depend upon the North Arm [of the Lake] during periods of flood, estimated by the Division to be approximately 10% of the time." *Id.* at 4. However, the FGSL do not identify the analysis they believe should have been completed or set forth any information or specific facts to support concluding that leasing or development of the protested parcels will have adverse impacts on any the eared grebe or other birds. The FGSL also contend: "Finally, there has been no analysis of the cumulative impact of oil, gas and hydrocarbon development, together with other increasing pressures on public trust resources." *Id.* Apart from the fact that this contention is unduly vague, for the FGSL to show that the BLM's cumulative impact analyses found sufficient in the DNA were indeed inadequate, the FGSL must demonstrate the possibility of a particular cumulative impact that the BLM failed to consider and to establish that such impact would be significant. The FGSL's generalization about cumulative impacts does not meet that burden.

The BLM did not overlook significant new information.

The FGSL allege that the BLM failed to adequately consider significant new information on the Great Salt Lake and its public trust resources. The information that the FGSL points to as being the overlooked significant new information consists of the State of Utah Division of Fire, Forestry and State Lands Great Salt Lake Comprehensive Management Plan and Decision Document<sup>1</sup> (the Plan), completed in 2000, studies (not specifically identified) concerning levels of mercury and other contaminants in the Great Salt Lake, and a paper that an associate professor at the University of Utah sent to the Division on possible earthquakes in the vicinity of the Lake. Protest at 2-4.

Under 40 C.F.R. § 1502.9(c)(1), a federal agency must supplement a NEPA analysis when "there are substantial changes in the proposed action . . . or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." See, e.g., Marsh v. Or. Natural Res. Council, 490 U.S. 360, 374 (1989) (A federal agency must supplement a final NEPA document if there remains federal action to occur and there is new information showing that the remaining action will affect the quality of the

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<sup>1</sup> The Plan, which is found online at: <http://wildlife.utah.gov/gsl/gslidoc1.php>, concerns State of Utah-administered lands below or adjacent to the surveyed meander line of the Great Salt Lake. The Plan does not cover federal public land and, therefore, provides no information on any of the lands comprising the protested parcels.

environment in a significant manner or to a significant extent not already considered.). There is nothing in the FSCL protest to establish that the Division's Plan, un-named studies on mercury and other possible contaminants, and/or an un-named paper on possible earthquakes shows that leasing and developing the protested parcels will affect the quality of the environment in a significant manner or to a significant extent not already considered. Consequently, under the applicable standards, the BLM has not overlooked significant new information.

In sum, the FGSL's NEPA-based arguments are merely general allegations unsupported by specific facts, and the FGSL do not attempt to explain how any of the allegations may apply to any of the protested parcels. Consequently, the FGSL's NEPA-based arguments are unpersuasive and do not establish any error on BLM's part.

For the BLM to have a reasonable basis to consider any NEPA-based arguments in future protests by the FGSL, the FGSL must identify for each parcel that is protested the specific ground for protest and explain how it applies to the parcel. Any allegations of error based on fact must be supported by competent evidence, and a protest may not merely incorporate by reference arguments or factual information provided in a previous protest. Further, the FGSL must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to the FGSL allegations, and explain how such stipulations or notices do not obviate the allegations. Failure to comply with any of the foregoing may result in the summary dismissal of the protest.<sup>2</sup>

#### **B. BLM's Inclusion of the Protested Parcels in the November 21, 2006 Lease Sale Complies with the NHPA.**

The FGSL protest alleges that the inclusion of the protested parcels in the November 21, 2006 lease sale violates the NHPA. As with its NEPA-based contentions, the FGSL's NHPA-based arguments are general and lack merit.

As background, to comply with the NHPA at the oil and gas leasing stage, the BLM must: (1) identify the area of potential effect (APE) under consideration; (2) identify properties within the APE that are listed as historic properties or eligible for inclusion in the National Register of Historic Places; (3) make assumptions about the expected level of activity and extent of disturbance anticipated from the proposed leasing; and (4) determine whether the proposed leasing may have adverse effects on the listed or eligible properties. In the event the BLM concludes that the leasing may have adverse effects, it must identify ways of avoiding, minimizing, or mitigating those adverse effects. The BLM completed this process, known as Section 106 consultation, concerning the November 21, 2006 lease sale, and determined that leasing and development of the relevant parcels would not adversely affect any historic properties. On August 25, 2006, the BLM transmitted its "No Historic Properties Affected" determination to the State of Utah Historic Preservation Office (the SHPO) and, on September 1, 2006, the SHPO concurred in the BLM's determination, thus concluding the Section 106 consultation process in connection with the November 21, 2006 lease sale.

Nonetheless, the FGSL claim that the Section 106 consultation completed by the BLM in connection with the lease sale was inadequate. The FGSL do not provide any specific information on any possible adverse effects on any historic properties from leasing and development of the protested parcels. Instead, the FGSL simply opine that "BLM's reliance on

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<sup>2</sup> See, e.g., Southern Utah Wilderness Alliance, 122 IBLA 17, 20-21 (1992); John W. Childress, 76 IBLA 42, 43 (1983); Patricia C. Alker, 70 IBLA 211, 212 (1983); Geosearch, Inc., 48 IBLA 76 (1980). The BLM is under no obligation to sort through a protestant's general allegations of error and attempt to discern which alleged errors the protestant intended to invoke for a particular parcel. Such an unduly burdensome and inefficient process would unreasonably divert the time and resources that the BLM otherwise needs to manage the public lands as mandated by Congress.

a 'one well' determination to determine that the lease sale will have 'No Adverse Effect' is arbitrary and capricious." Protest at 4.

The "one well" assumption utilized by BLM was not arbitrary and capricious as alleged by the FGSL, especially given that the reasonably foreseeable development scenario for the area in question assumed that new exploratory wells would be drilled at the rate of one well every three to four years, and that the expected surface disturbance for the well pad and access roads was 6.8 acres per well. And, the BLM's determination assumed that at least one well could be located on each parcel without adversely affecting any cultural resources that might be present.

Moreover, to protect any cultural resources that may be found on a lease parcel, the BLM places the following stipulation on every lease parcel:

*This lease may be found to contain historic properties and/or resources protected under the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, E.O. 13007, or other statutes and executive orders. The BLM will not approve any ground disturbing activities that may affect any such properties or resources until it completes its obligations under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration, or development proposals to protect such properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated.*

Consequently, the FGSL's mere disagreement with the methodology employed by the BLM in the Section 106 consultation process, by itself, cannot establish any error in that process.

The FGSL next predicts that because two of the protested parcels (-003G and -004) include portions of the Central Pacific Rail Road Grade: "Opening this area with roads could adversely impact present and future historical and scenic conservation efforts of the National Park Service [presumably with respect to Golden Spike National Historic Site] and other agencies." *Id.* at 5. However, the FGSL's mere speculation, without more, obviously fails to establish any violation of the NHPA.

The FGSL next claim that BLM violated the NHPA by failing to adequately consult with members of the interested public regarding the effects of leasing all the protested parcels." *Id.* In the consultation process, the BLM sought input from the Native American tribes known to have an interest in the area of the subject parcels (Confederated Tribes of the Goshute Reservations, Skull Valley Goshutes, Northwestern Band of Shoshoni Nation Tribal Office, Eastern Shoshone Business Council, Kanosh Band, Ute Indian Tribe, the Paiute Indian Tribe of Utah, and the Uintah and Ouray Tribal Committee). In addition, as mentioned above, on October 6, 2009, the BLM provided notice of the November 21, 2006 lease sale, including listing the specific parcels proposed for inclusion in the sale. As demonstrated by the FGSL protest, members of the public had the opportunity to provide input to the BLM on any concerns regarding the parcels proposed for inclusion in the sale and the opportunity to protest such inclusion. Although the FGSL now argues that the BLM failed to adequately consult with members of the public, the FGSL have not informed the BLM what degree of public participation is required under the NHPA or provided any legal authority for their conclusory assertions. Moreover, the FGSL have not suggested, much less shown, that that BLM's consultation has overlooked a potentially eligible property. Consequently, the FGSL's claim that the BLM did not adequately consult with members of the public is groundless.

### Conclusion

For the above-stated reasons, the FGSL protest to the inclusion of parcels UT1106-003A, UT1106-003B, UT1106-003C, UT1106-003D, UT1106-003E, UT1106-003F, UT1106-003G and UT1106-004 in the November 21, 2006 oil and gas lease sale is denied. The BLM has received offers on all eight parcels and will issue leases for the parcels after issuance of this decision and any other necessary protest decisions.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1 (Attachment 1). If an appeal is taken, the notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. 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 pursuant to 43 C.F.R. § 4.21 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 must show sufficient justification based on the standards listed below. 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 be evaluated 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.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to each party named in this decision and to the Office of the Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find a list of those parties (Attachment 2) who purchased the subject parcels and therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.

Sincerely,



Selma Sierra  
State Director

### Attachments

1. List of purchasers (1pp)
2. Form 1842-1 (2pp)

cc: List of purchasers (1)  
James Karkut, Office of the Solicitor, Intermountain Region,  
125 So. State St., Ste 6201, SLC, UT 84138

**Attachment 1**  
**List of Purchasers**

Dobson Exploration LLC  
861 West Vine  
Tooele, UT 84074

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**

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- 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).
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- 2. WHERE TO FILE** Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0151
- NOTICE OF APPEAL..... or
- Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101
- and
- WITH COPY TO SOLICITOR... Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111
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- 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, Room 6201, 125 South State Street, Salt Lake City, Utah 84111
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- 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).
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- 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)).
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- 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.

### 43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

#### STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska  
Arizona State Office ----- Arizona  
California State Office ----- California  
Colorado State Office ----- Colorado  
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri  
and, all States east of the Mississippi River  
Idaho State Office ----- Idaho  
Montana State Office ----- Montana, North Dakota and South Dakota  
Nevada State Office ----- Nevada  
New Mexico State Office ----- New Mexico, Kansas, Oklahoma and Texas  
Oregon State Office ----- Oregon and Washington  
Utah State Office ----- Utah  
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

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(Form 1842-1, September 2006)