



**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/ut/st/en.html>



IN REPLY REFER TO:
3100 / (UT-922)

CERTIFIED MAIL – Return Receipt Requested

August 17, 2009

DECISION

Theodore Roosevelt Conservation Partnership : Protest to the Inclusion of
Attn: Joel A. Webster : Parcels in the August 18, 2009
2321 Gerald Ave. : Competitive Oil and Gas Lease Sale
Missoula, Montana 59801 :

Protest Denied

On July 2, 2009, the Bureau of Land Management (BLM) provided notice (Notice of Competitive Lease Sale) that 37 parcels of land would be offered in a competitive oil and gas lease sale scheduled for August 18, 2009. The notice also indicated that the protest period for the lease sale would end on August 3, 2009. In a letter received by BLM on August 3, 2009, the Theodore Roosevelt Conservation Partnership (TRCP) protested the inclusion of 19 parcels in the sale. The protested parcels are on public lands administered by BLM's Fillmore, Price, Moab and Vernal Field Offices.

The 19 protested parcels are as follows:

Fillmore Field Office

UTU87451 (UT0809-001)
UTU87452 (UT0809-002)

UTU87453 (UT0809-003)
UTU87454 (UT0809-004)

Price Field Office

UTU87469 (UT0809-056)

Moab Field Office

UTU87473 (UT0809-125)
UTU87474 (UT0809-127)
UTU87475 (UT0809-128)
UTU87476 (UT0809-129)
UTU87480 (UT0809-141)
UTU87481 (UT0809-142)

UTU87482 (UT0809-143)
UTU87483 (UT0809-144)
UTU87484 (UT0809-145)
UTU87485 (UT0809-146)
UTU87486 (UT0809-147)

UTU87470 (UT0809-072)
UTU87471 (UT0809-095a)

UTU87477 (UT0809-139)

As a preliminary matter, many of the protest points express TRCP's concern about the potential effects of oil and gas development on public lands on wildlife, including big game and sage grouse, and on TRCP's stated organizational goal of working to ensure that oil and gas development in the western states is balanced with the needs of fish and wildlife resources and with the recreational needs of TRCP's members. However, most of the TRCP protest points set forth only very general statements or conclusions. For BLM to have a reasonable basis to consider protests that TRCP may submit in the future, TRCP should be as specific as possible in its protest and should identify for each parcel it protests 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 should not merely state general concerns or conclusions, or simply incorporate by reference arguments or factual information. Further, TRCP must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to its 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.¹

A. TRCP Protest Contentions and BLM Responses.

- TRCP contention: The BLM has not considered the importance of habitats and is not protecting the habitats of species as outlined in comprehensive habitat management planning for mule deer, elk, pronghorn, greater sage-grouse and Gunnison sage-grouse. The BLM is also negligent on how it manages habitats to meet Utah Division of Wildlife Resources (UTDWR) objectives for populations, since leasing and subsequent surface development and road construction will render these lands unsuitable for management of mule deer and elk crucial winter range and migration routes along with overall habitat for greater sage-grouse and Gunnison sage-grouse.

BLM response: The BLM coordinated extensively with and requested comments from UTDWR on the August 2009 Oil and Gas Lease Sale Parcel List on a parcel-specific basis. UTDWR provided comments via email on a parcel-specific basis and each of its recommendations were incorporated into the final parcel list. The review by the UTDWR field specialists considers the effect of oil and gas leasing activity on elk, mule deer, and big game in general (winter range and fawning or calving), greater sage-grouse, and Gunnison sage-grouse, along with other species. UTDWR also participated in the development of the relevant stipulations and notices in the Resource Management Plans and other NEPA-based decisions related to oil and gas leasing, and is aware of what each are for the field offices. The UTDWR also considers migration corridors and comments on any important migration pathways if and when affected by parcels being offered in a lease sale. Therefore, development of the protested parcels, with the attached stipulations, should not have a significant impact on elk, mule deer, greater sage-grouse and Gunnison sage-grouse.

¹ It is well established that BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant's allegations are unsupported by facts in the record or competent evidence. 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).

- TRCP contention: The BLM is not following the recommendations of the Western Governors' Associations Policy Resolution 07-01, which recommends protection of wildlife migration corridors and state wildlife agency designated crucial habitats.

BLM response: TRCP's contention is incorrect, as BLM is following and will continue to follow the recommendations of Policy Resolution 07-01. BLM has engaged the UTDWR, throughout the pre-leasing process and BLM continues to inform the UTDWR on its activities and solicit its input on wildlife matters. In the pre-leasing review process conducted for the August 2009 sale, BLM consulted with UTDWR regarding the potential for impacts to big game and both agencies concluded that there are no migration corridors currently identified on any of the subject parcels. BLM will continue to cooperatively manage habitats and take every opportunity to communicate with UTDWR and consider any concerns raised by it in BLM's management of public lands and wildlife habitats.

- TRCP contention: The National Environmental Policy Act (NEPA) was violated by BLM's preparing an Environmental Assessment (EA) instead of an Environmental Impact Statement (EIS) for Fillmore Field Office (FFO) managed lands included in the August 2009 lease sale because of the significant impact of oil and gas leasing on mule deer and elk. An EIS is warranted because of the reasonable foreseeable development (RFD) scenario is arbitrary and it contains no analysis on potential impacts to hunting.

BLM response: BLM's preparation of an EA concerning the FFO lands fully complies with NEPA. BLM coordinated with UTDWR throughout the EA process, including the finalization of the EA. Drafts of the EA were sent directly to the UTDWR before releasing it to the public to receive comments and modify accordingly. The UTDWR has also coordinated with BLM on the parcel-specific issues for the FFO parcels that TRCP is protesting and UTDWR is satisfied with the notices and protections afforded to big game.

The RFD was carried forward from two Implementation EAs that analyzed oil and gas leasing within the FFO (Warm Springs Resource Area RMP Oil and Gas Leasing Implementation EA (BLM 1988b) and the House Range Resource Area RMP Oil and Gas Leasing Implementation EA (BLM 1988a)). The RFD was reviewed by a BLM petroleum geologist and validated during the EA process. The FFO EA is based on an assumption of an average of one well per year, consistent with the RFD. The FFO is within an area of low potential for oil and gas, and the RFD has not been exceeded over the last 20 years. Therefore, the RFD remains valid. Leasing the FFO parcels is not inconsistent with the RFD.

TRCP's contention that the August 18, 2009 sale "will likely have a significant impact on hunting opportunities" in FFO lacks merit. TRCP submitted no data to support its contention. Further, because of the low potential for exploration reflected in the RFD, there will likely be little to no impact to hunting, which is addressed within the recreation portion of the EA. Finally, UTDWR, which is in charge of this aspect of wildlife management, did not express any concern during the EA process regarding potential impacts to hunting.

- TRCP contention: The most recently updated information on designated big game crucial winter ranges and migration routes, and sage-grouse strutting and nesting areas developed by the UTDWR has provided the BLM with significant new information

concerning these and other special surface values of these areas that needs to be studied in supplemental National Environmental Policy Act (NEPA) analyses.

BLM response: BLM carefully considered current UTDWR information in determining what parcels to include in the August 2009 lease sale. In that process, BLM determined that although the information is relatively new, it is not the type of “significant new information” that requires BLM to complete supplemental NEPA analyses prior to sale and lease of the subject parcels. As set forth in the Council of Environmental Quality (CEQ) regulations implementing NEPA, the duty to supplement arises when there is new information showing that the proposed action will affect the quality of the environment in a significant manner or to a significant extent not already considered. See 43 C.F.R. § 1502.9; Marsh v. Or. Natural Res. Council, 490 U.S. 360, 374 (1989). The UTDWR information does not fall within those parameters, and nothing in the general allegations in the TRCP protest establishes otherwise. Moreover, BLM also contacted UTDWR in May and June 2009 to ensure that it did not have additional information that might give rise to the duty to supplement, and UTDWR did not have any such information.

Throughout the section of the protest referencing sage-grouse, TRCP attempts to use various studies and claimed “new information” to its benefit, including Wyoming research on full-field development (which is obviously a very different stage of development than leasing). TRCP also cites as an example of inadequate sage-grouse protection the FFO sage-grouse notices described in the FFO EA. However, because the Decision Record states that there will not be any leasing in sage-grouse habitat until a Land Use Planning effort can be undertaken, TRCP’s contention is moot.

This section of the protest also focuses on the ¼ mile sage-grouse stipulation (involving leks) in the Vernal FO RMP, while failing to acknowledge other protective RMP stipulations involving sage-grouse habitat. All of the sage-grouse stipulations were developed in the RMP process in cooperation with UTDWR and other agencies. Moreover, TRCP fails to recognize there is no need to attach the ¼ mile sage-grouse stipulation to any of the Vernal FO parcels included in the August 2009 sale.

- TRCP contention: BLM violated NEPA by failing to consider NSO (no surface occupancy) lease categories and No Leasing Alternatives.

BLM response: The generality of TRCP’s contention underscores both the lack of value in generalized protest points that are mere conclusions lacking any underlying analysis, and the well-established precedent that BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant’s allegations are unsupported by facts in the record or competent evidence. TRCP’s present contention regarding the alternatives it believes BLM should have considered clearly falls within these principles. For BLM to consider and respond to the contention, the TRCP protest should have set forth which of the four Field Office NEPA analyses (or all four Field Offices analyses if applicable) it is referring to and explain why TRCP believes the underlying analysis or analyses is not adequate. In that sense, TRCP had the burden of providing objective evidence and explaining why the alternatives it believes should have been studied (NSO and no leasing) would have accomplished the purpose of the proposed action, be technically and economically feasible, and have a lesser impact than the leasing categories BLM studied. Since TRCP was unwilling to shoulder that burden, BLM has no duty to respond to TRCP’s general contention. BLM also notes that the TRCP contention is not factually accurate. For example, the Fillmore Field Office’s

Oil and Gas EA (UT-010-2008-050) analyzed the no-leasing alternative in detail but did not choose that as the preferred alternative.

- TRCP contention: BLM violated FLPMA by failing to prevent undue or unnecessary degradation of mule deer crucial ranges, elk winter ranges, mule deer and elk migration routes, and active sage-grouse leks and associated habitat.

BLM response: TRCP correctly recognizes that FLPMA requires BLM to prevent unnecessary or undue degradation in its management of the federal public lands. However, TRCP's contention that BLM has violated FLPMA relies entirely on TRCP's unsupported assumption that the sale of the protested parcels will cause unnecessary or undue degradation to the lands underlying the subject parcels. However, nothing in the NEPA analyses BLM relied on in determining which parcels to include in the sale in any way supports TRCP's assumption, and the TRCP protest provides no evidence to show otherwise. Contrary to TRCP's assumption, the mere issuance of leases does not constitute unnecessary or undue degradation of the public lands. See Colorado Env'tl. Coalition, et al., 165 IBLA 221, 229 (2005) (oil and gas development is not per se unnecessary or undue degradation). Further, for one to show that oil and gas development would have this detrimental effect, one must at a minimum show that a lessee's operations would be conducted in a manner that does not comply with applicable law or regulations, prudent management and practice, or reasonably available technology. See id. at 229. TRCP's mere assumption that leasing of the protested parcels will cause unnecessary or undue degradation is premature and groundless.

- TRCP contention: Executive Order 13443, "Facilitation of Hunting Heritage and Wildlife Conservation," Sec. 2 (c) states that federal agencies must, "Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning."

BLM response: Implementation and compliance with Executive Order 13443 is important to BLM. The past and present cooperative relationship between BLM and the UTDWR has resulted in exceptional recreational hunting and fishing opportunities throughout the State. The expansion of these opportunities will continue as current partnerships and initiatives, like the Healthy Lands Initiative and the Utah Partnership for Conservation and Development, which work to enhance habitats, move forward. The results of these efforts continue to improve the health of existing habitats and provide for expansion and improvement of habitats for important and sensitive species of wildlife.

In conclusion, for the above-stated reasons, the TRCP Protest of the 19 protested parcels is denied.

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. If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) 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. Part 4, Subpart B § 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 Regional 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 attached a list of those parties who purchased the subject parcels at the August 2009 lease sale and who therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.

/s/ Selma Sierra

Selma Sierra
State Director

Enclosures

1. Form 1842-1 (2pp)

cc: James Karkut, Office of the Solicitor, Intermountain Region,
125 South State Street, Suite 6201, Salt Lake City, UT 84138