



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office
440 West 200 South, Suite 500
Salt Lake City, UT 84101
<http://www.blm.gov/ut/st/en.html>



IN REPLY REFER TO:
3100/(UT-922000)

March 11, 2013

Certified Mail – 7011 1150 0000 6739 7231
Return Receipt Requested

DECISION

Theodore Roosevelt Conservation Partnership : Protest to the Inclusion of Certain
c/o Katie Distler Eckman, Board Director : Parcels in the December 19, 2008
1660 L Street NW, Suite 208 : Competitive Oil and Gas Lease Sale
Washington, D.C. 20036

Protest Denied

On November 4, 2008, the Bureau of Land Management (BLM) issued its Notice of Competitive Lease Sale (NCLS) providing notice to the public that 241 parcels of land would be offered in a competitive oil and gas lease sale scheduled for December 19, 2008. The NCLS also indicated that the protest period for the lease sale would end on December 4, 2008. Based on the recommendations from the BLM Utah Field Office Managers, 131 parcels were ultimately offered at the lease sale on December 19, 2008.

In a letter received by the BLM on December 4, 2008, the Theodore Roosevelt Conservation Partnership (TRCP) protested 123 parcels listed in the NCLS.

By errata issued on December 2, 12, and 15, 2008, 77 of the protested parcels were deferred for additional review or deleted from the NCLS. By erratum dated December 2, 2008, a portion of one protested parcel was deferred. By memorandum issued by the Secretary of the Interior on February 6, 2009, 77 parcels, including 30 of the parcels protested by TRCP, were withdrawn from the lease sale. At the lease sale, competitive bids were not received on 3 of the protested parcels. A parcel that is not sold at a lease sale is available for noncompetitive leasing for a period of two years after the sale. The two-year period after the December 2008 lease sale passed without a noncompetitive lease of the 3 parcels. Enclosure 1 identifies the 123 protested parcels, and shows which of these parcels were deferred, deleted, or withdrawn from the lease sale, and which parcels were not sold at the sale and not noncompetitively leased after the sale. The TRCP protest as it pertains to these 110 deferred (whole or in part), deleted, withdrawn, or unsold parcels is dismissed as moot.

This decision addresses the TRCP protest as it pertains to the remaining 13 protested parcels, which are located on public lands managed by BLM's Vernal and Price Field Offices as follows:

Vernal Field Office

UTU86953 (UT1108-099)	UTU87004 (UT1108-140)	UTU87023 (UT1108-157)
UTU87002 (UT1108-138)	UTU87005 (UT1108-141)	UTU87024 (UT1108-158)
UTU87003 (UT1108-139)	UTU87022 (UT1108-156)	UTU87025 (UT1108-295)

Price Field Office

UTU86839 (UT1108-320)	UTU86849 (UT1108-329)	UTU86855 (UT1108-352)
UTU86863 (UT1108-356)		

Overall, TRCP alleges that in offering the subject parcels for lease, BLM violated the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA), and failed to comply with Executive Order 13443 (Facilitation of Hunting Heritage and Wildlife Conservation) (EO 13443). TRCP maintains that the subject parcels contain important key habitats that are essential for the survival of big game and sage-grouse. TRCP expresses concerns with respect to habitat for elk and mule deer crucial winter range, fawning and calving areas and associated migration routes; pronghorn crucial range; and sage-grouse winter range. TRCP alleges that energy development is a main cause of habitat loss for these species, leasing of lands for oil and gas development reduces hunting opportunities for Utah's sportsmen, and leasing conducted without consideration of the goals and objectives of EO 13443 is arbitrary and capricious.

For the reasons set forth below, I have determined that BLM complied with the requirements of NEPA, FLPMA, EO 13443, and other applicable Federal laws and regulations prior to the inclusion of the subject parcels in the December 19, 2008 lease sale. Consequently, TRCP's protest as it pertains to the remaining 13 protested parcels is denied.

Protest Contentions and BLM Responses

Protest Contention: BLM has failed to analyze new information concerning the impact of oil and gas development on mule deer, elk, pronghorn and sage-grouse and relies on an arbitrary reasonable foreseeable development (RFD) scenario. In making this contention, TRCP relies on the results of certain research projects that have been published in certain articles and alleges that BLM has failed to consider these results in the applicable Field Office's Resource Management Plans (RMPs) and in the application of the relevant stipulations for big game and sage-grouse in lease parcels. TRCP also relies on previous parcel deferrals or sale cancellations made by the BLM related to lease sales in August 2007, November 2007 and February 2008, based in part on significant new information, and contends that BLM should have similarly recognized new information in its decision making process with respect to the December 19, 2008 lease sale.

BLM Response: In determining what parcels to include in the December 19, 2008 lease sale, BLM relied in part on the decisions made in the respective Field Offices' land use plans, which were completed in October 2008 and approved by the Department's Assistant Secretary for Lands and Minerals. In addition to relying on the planning decisions in these determinations, BLM consulted extensively with the United States Fish and Wildlife Service (USFWS) and the Utah Division of Wildlife Resources (UDWR), agencies with jurisdiction by law and recognized expertise, and identified protection measures in the form of stipulations and/or notices to be imposed on lease parcels. In its protest, TRCP does not attempt to establish why these protective measures would not achieve their goals. Further, in contending that BLM failed to consider the

results of certain studies and relied on an arbitrary RFD scenario in the NEPA analyses underlying the applicable RMPs, and in the development of protective measures in the planning processes, TRCP is raising issues about the adequacy of the RMPs. However, the BLM Director's Protest Resolution Report for the Vernal RMP and the Price RMP, respectively, considered and addressed such issues, and they will not be reconsidered here.¹

Moreover, as summarized in the respective Documentation of Land Use Plan Conformance and Determination of NEPA Adequacy (DNA) documents, an interdisciplinary team of BLM resource specialists carefully assessed the adequacy of the NEPA analyses in the Environmental Impact Statements (EISs) prepared in connection with the Vernal RMP and the Price RMP with respect to the relevant lease parcels. Based on this review, BLM determined that there was not significant new information requiring additional NEPA analyses before proceeding with the lease sale. There is nothing in the TRCP protest establishing otherwise.

Protest Contention: BLM must complete site-specific NEPA analyses before leasing or impose no surface occupancy (NSO) stipulations.

BLM Response: BLM is not required under NEPA or other applicable law to prepare site specific analyses prior to the inclusion of parcels in a lease sale if the potential impacts of such action(s) have been adequately assessed in previous analyses. And, when BLM has determined that the potential impacts of such action(s) have been adequately assessed in previous analyses such that additional NEPA analyses are not necessary, it is not required to impose NSO stipulations on the relevant lease parcels in the absence of additional analyses. As discussed above, an interdisciplinary team of BLM resource specialists carefully assessed the adequacy of the EISs prepared in connection with the Vernal RMP and the Price RMP concerning the relevant lease parcels, and as summarized in their respective DNAs, the specialists determined that such NEPA analyses were adequate. Consequently, there was no need for additional NEPA analyses.

BLM's procedures for managing oil and gas leasing and development activities are well established through land use planning, parcel nomination, competitive leasing, well permitting, development, operations, production, plugging and reclamation. It is not possible for BLM to determine the potential impacts of development on a lease parcel or parcels until BLM receives a complete application for an APD or other development scenario. At such time that BLM receives a complete application for an APD or other development scenario, BLM will complete a site-specific NEPA review based on the details contained within the application.

Protest Contention: BLM failed in its duty under FLPMA to incorporate the best available scientific data concerning the needs of big game, fish, and sage grouse and prevent the unnecessary or undue degradation of the public lands that will be caused by leasing the relevant parcels.

¹ The Director's Protest Resolution Reports are located online at: http://www.blm.gov/wo/st/en/prog/planning/protest_resolution/protestreports.html. (Scroll to the respective RMP).

BLM Response: TRCP correctly notes that in its management of the federal public lands under its jurisdiction, BLM has a duty under FLPMA to prevent unnecessary or undue degradation of such lands. However, TRCP's contention that BLM has violated FLPMA relies entirely on its unsupported assumption that leasing the relevant protested parcels will cause unnecessary or undue degradation to the lands underlying the subject parcels. Moreover, there is nothing in the pre-lease sale analyses BLM relied on in determining which parcels to include in the December 2008 lease sale that in any way supports TRCP's contentions, and its protest provides no evidence to support its contentions. The mere issuance of leases does not constitute unnecessary or undue degradation of the public lands. 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. Consequently, TRCP's mere assertion that leasing of the protested parcels will cause unnecessary or undue degradation and/or that BLM has violated FLPMA by reason of the inclusion of the relevant parcels in the lease sale is groundless.

Protest Contention: BLM has not addressed requirements of EO 13443 (Facilitation of Hunting Heritage and Wildlife Conservation) in connection with the December 2008 lease sale.

BLM Response: Implementation and compliance with Executive Order 13443 is important to BLM. The past and present cooperative relationship between BLM and the State of Utah 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 that work to enhance habitats move forward. The results of these efforts continue to improve the health of existing habitat and provide for expansion and improvement of habitats for important and sensitive species of wildlife.

Conclusion

As the party challenging BLM's offering of the remaining 13 protested parcels for leasing, TRCP bears the burden of establishing that the BLM's action was premised on a clear error of law, error of material fact, or failure to consider a substantial environmental question of material significance. TRCP has not met this burden.² Further, to the extent that TRCP has raised any allegations not discussed above, they have been considered and found to be without merit or determined to be irrelevant given the parcels that were deferred, deleted, withdrawn, or unsold. For these reasons, and for those previously discussed, the TRCP protest as to following 13 parcels is hereby denied: UTU86953 (UT1108-099), UTU87002 (UT1108-138), UTU87003 (UT1108-139), UTU87004 (UT1108-140), UTU87005 (UT1108-141), UTU87022 (UT1108-156), UTU87023 (UT1108-157), UTU87024 (UT1108-158), UTU87025 (UT1108-295), UTU86839 (UT1108-320), UTU86849 (UT1108-329), UTU86855 (UT1108-352), and UTU86863 (UT1108-356).

² For BLM to have a reasonable basis to consider future protests, TRCP must identify the specific ground for protest and explain how it applies to each protested 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, 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. The failure to comply with any of the foregoing may result in the summary dismissal of the protest.

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 instructions contained in Form 1842-1 (Enclosure 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 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 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 a list of those parties who purchased the subject parcels at the December 2008 lease sale and who therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons (Enclosure 3).

/s/ Juan Palma

Juan Palma
State Director

Attachments

1. Background Information
2. Form 1842-1
3. List of Purchasers

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

bcc: Lease Sale Book Dec08
Reading File UT-920
Central Files UT-950

UT922 pschuller:TRCP 1208 2-26-13

Enclosure 1
Background Information

In a letter received by the BLM on December 4, 2008, TRCP protested 123 parcels included within the notice as follows:

UT1108-002	UT1108-048	UT1108-143
UT1108-003	UT1108-049	UT1108-144
UT1108-004	UT1108-050	UT1108-145
UT1108-005	UT1108-052	UT1108-146
UT1108-006	UT1108-053	UT1108-147
UT1108-007	UT1108-054	UT1108-148
UT1108-008	UT1108-056	UT1108-149
UT1108-009	UT1108-057	UT1108-150
UT1108-010	UT1108-058	UT1108-151
UT1108-011	UT1108-080	UT1108-152
UT1108-012	UT1108-081	UT1108-153
UT1108-013	UT1108-081B	UT1108-154
UT1108-014	UT1108-083	UT1108-156
UT1108-015	UT1108-090	UT1108-157
UT1108-016	UT1108-091	UT1108-158
UT1108-017	UT1108-092	UT1108-295
UT1108-018	UT1108-093	UT1108-320
UT1108-019	UT1108-094	UT1108-321
UT1108-020	UT1108-096	UT1108-322
UT1108-022	UT1108-097	UT1108-323
UT1108-023	UT1108-098	UT1108-324
UT1108-024	UT1108-099	UT1108-325
UT1108-025	UT1108-101	UT1108-326
UT1108-026	UT1108-103	UT1108-328
UT1108-027	UT1108-106	UT1108-329
UT1108-028	UT1108-112	UT1108-331
UT1108-029	UT1108-112A	UT1108-332
UT1108-030	UT1108-115	UT1108-335
UT1108-031	UT1108-116	UT1108-337
UT1108-032	UT1108-117	UT1108-339
UT1108-033	UT1108-119	UT1108-340
UT1108-034	UT1108-130	UT1108-341
UT1108-035	UT1108-131	UT1108-342
UT1108-036	UT1108-132	UT1108-343
UT1108-037	UT1108-136	UT1108-345
UT1108-038	UT1108-137	UT1108-348
UT1108-039	UT1108-138	UT1108-349
UT1108-040	UT1108-139	UT1108-350
UT1108-041	UT1108-140	UT1108-352
UT1108-042	UT1108-141	UT1108-355
UT1108-047	UT1108-142	UT1108-356

By errata issued on December 2, 12, and 15, 2008, the following 77 parcels were deferred for additional review or deleted:

UT1108-002	UT1108-029	UT1108-112A
UT1108-003	UT1108-030	UT1108-117
UT1108-004	UT1108-031	UT1108-119
UT1108-005	UT1108-032	UT1108-130
UT1108-006	UT1108-033	UT1108-131
UT1108-007	UT1108-034	UT1108-132
UT1108-008	UT1108-035	UT1108-142
UT1108-009	UT1108-036	UT1108-143
UT1108-010	UT1108-037	UT1108-144
UT1108-011	UT1108-038	UT1108-145
UT1108-012	UT1108-039	UT1108-146
UT1108-013	UT1108-040	UT1108-147
UT1108-014	UT1108-041	UT1108-148
UT1108-015	UT1108-042	UT1108-149
UT1108-016	UT1108-047	UT1108-150
UT1108-017	UT1108-048	UT1108-151
UT1108-018	UT1108-049	UT1108-152
UT1108-019	UT1108-050	UT1108-153
UT1108-020	UT1108-052	UT1108-154
UT1108-022	UT1108-053	UT1108-321
UT1108-023	UT1108-054	UT1108-322
UT1108-024	UT1108-058	UT1108-323
UT1108-025	UT1108-080	UT1108-324
UT1108-026	UT1108-081	UT1108-325
UT1108-027	UT1108-081B	UT1108-326
UT1108-028	UT1108-103	

By erratum dated December 2, 2008, a portion of the following parcel was deferred: UT1108-329

By memorandum issued by the Secretary of the Interior on February 6, 2009, the following 30 parcels were withdrawn:

UT1108-083	UT1108-112	UT1108-339
UT1108-090	UT1108-115	UT1108-340
UT1108-091	UT1108-116	UT1108-341
UT1108-093	UT1108-136	UT1108-342
UT1108-094	UT1108-137	UT1108-343
UT1108-096	UT1108-328	UT1108-345
UT1108-097	UT1108-331	UT1108-348
UT1108-098	UT1108-332	UT1108-349
UT1108-101	UT1108-335	UT1108-350
UT1108-106	UT1108-337	UT1108-355

Bids were not received on 3 parcels during the oral auction or afterwards on a non-competitive basis. An unsold parcel is available on a first come, first-served basis for a two year period beginning the day of the sale. The length of time allotted to offering a lease on a noncompetitive basis has passed regarding these parcels: UT1108-056, UT1108-057, and UT1108-092.

Enclosure 2
Form 1842-1

Enclosure 3
List of Purchasers

<u>Lease (Parcel Number)</u>	<u>Purchaser</u>
UTU86953 (UT1108-099)	Robert L Bayless Prodr
UTU87003 (UT1108-139)	621 17 TH ST # 2300
UTU87004 (UT1108-140)	Denver, CO 80293
UTU87023 (UT1108-157)	
UTU87022 (UT1108-156)	Lane Lasrich
	2597 E Bridger Blvd
	Sandy, UT 84093
UTU87002 (UT1108-138)	Mcelvain Oil & Gas Properties
	1050 17 TH St # 1800
	Denver, CO 80265
UTU87005 (UT1108-141)	Liberty Petro Corp
	P.O. Box 1549
	New York, NY 10028
UTU87024 (UT1108-158)	JC Petroleum Holding, LLC
	3165 E Millrock Dr., #550
	Holladay, UT 84121
UTU86849 (UT1108-329)	Impact Energy Resources, LLC
	621 17 TH St., #1630
	Denver, CO 80293
UTU87025 (UT1108-295)	Summit Operating LLC
	1245 Brickyard RD Ste 210
	Salt Lake City, UT 84106
UTU86839 (UT1108-320)	Pioneer Natural Resources USA
	1401 17 TH St., STE 1200
	Denver, CO 80202
UTU86855 (UT1108-352)	Bill Barrett Corp
	1099 18 TH St # 2300
	Denver, CO 80202
UTU86863 (UT1108-356)	Twilight Resources LLC
	1411 E. 840 N.
	Orem, UT 84097