



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>



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February 15, 2013

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DECISION

University of Utah – Rio Mesa Center : Protest to the Inclusion of Certain
Thomas N. Parks, : Parcels in the February 19, 2013
Vice President for Research : Competitive Oil and Gas Lease Sale
201 S. Presidents Circle, Room 210
Salt Lake City, Utah 84112-9011

Protest Denied

On November 16, 2012, the Bureau of Land Management (BLM) issued its Notice of Competitive Lease Sale (NCLS) providing notice to the public that certain parcels of land would be offered in a competitive oil and gas lease sale scheduled for February 19, 2013. In a letter received by the BLM on December 17, 2012, the University of Utah's Rio Mesa Center (U of U) protested following 4 parcels listed in the NCLS:

UT0213-169, UT0213-170, UT0213-171, UT0213-174.

Parcels UT0213-169 and UT0213-170 were deferred by the BLM Moab Field Office, pending analysis of the Coyote Wash wilderness characteristics review submitted by the Southern Utah Wilderness Alliance. These two parcels were not included in the NCLS. The protest as to these two parcels is dismissed as moot. This decision addresses the remaining two protested parcels (UT0213-171 and UT0213-174).

The U of U establishes that it leases property located on the Delores River approximately 5 miles south of the parcels which it operates a research station. The U of U expresses concerns about the possible negative impacts of oil/gas exploration and production on the parcels and the intended purpose of the research station.

For the reasons set forth below, I have determined that BLM complied with the requirements of the National Environmental Policy Act (NEPA) and other applicable Federal laws and regulations prior to the inclusion of the subject parcels in the February 19, 2013, lease sale. Possible negative impacts to the research station can be addressed at the well permitting stage if an application for drilling is submitted on a lease if one is issued. Consequently, the U of U protest as it pertains to parcels UT0213-171 and UT0213-174 is denied.

The BLM held a conference call with representatives from the U of U on February 8, 2013, to discuss its protest to the February 2013 lease sale. As a result of this call, the U of U requested additional explanation of the BLM's NEPA procedures in relation to management of Federal oil and gas mineral estate.

The BLM maintains internet webpages at the Utah State Office and Washington Office, dedicated to providing the public with a variety of resources and information related to NEPA, land use planning and oil and gas leasing.¹ Leasing of onshore federal oil and gas resources is addressed by the BLM in five distinct phases:²

1. land use planning;
2. parcel nomination and lease sale;
3. well permitting and development;
4. operations and production; and
5. plugging and reclamation.

In November of 2008, the Moab Field Office Record of Decision and Approved Resource Management Plan (RMP) was adopted. This land use planning effort was initiated in June 2003. The decisions in the Approved RMP are based on the analysis contained in the Final Environmental Impact Statement (EIS) issued in 2008. Among other decisions in the Approved RMP, oil and gas leasing categories and the constraints necessary for protecting resources were imposed. This is the result of phase 1.

The February 2013 Lease Sale represents the 2nd phase in the BLM's management of oil and gas activity on the public lands. As outline in Leasing Reform (Washington Office Instruction Memorandum 2010-117),³ the BLM began reviewing tracts of land [submitted to the agency by member of the public as an expression of interest (parcel nomination)] to determine what conditions oil and gas leasing could be authorized as governed by the decisions in the Approved RMP. To facilitate this review, the BLM prepared the February 2013 Oil and Gas Lease Sale Environmental Assessment (EA). In preparing this EA, BLM conducted formal scoping, comment and protest periods to obtain information from the public and stakeholders. As warranted, parcels including the applicable stipulations and notices are recommended for lease by the local field office. These parcels and their constraints are then put up for auction. If a parcel is sold, the successful bidder is ultimately issued a lease to pursue the extraction of oil and gas reserves within the boundary of that lease.

¹ WO's webpage on oil and gas leasing can be accessed online at:
http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas.html

² WO's webpage for oil and gas phases can be access online at:
http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/leasing_of_onshore.html

³ WO's procedures for Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews can be accessed online at: http://www.blm.gov/style/medialib/blm/ut/lands_and_minerals/oil_and_gas/mlp_-_master_leasing.Par.82157.File.dat/IM%202010-117%20-%20Oil%20and%20Gas%20Leasing%20Reform.pdf

A leaseholder can file an application for permit to drill (APD) and surface use plan of operations (SUPO). This action triggers the 3rd phase in the BLM's procedures. The APD and SUPO are reviewed by the BLM field offices. Operations expected to have significant impacts are analyzed with an EIS. Activity not expected to have significant impact may be analyzed with an EA. The BLM utilizes the details contained in the complete APD/SUPO and information compiled from onsite inspections to begin its environmental review process as defined in NEPA. When a project is initiated, the stakeholders and public are notified of the action. The BLM's NEPA review procedures are outlined in the NEPA Handbook (H-1790-1).⁴

The operations and production phase, includes monitoring, inspection and enforcement. The last phase consists of reclamation and abandonment. This phase ensures that the effects of development on the land and other resources and uses are not permanent. An applicant's SUPO has to be approved before any construction can begin.

Protest Contentions and the BLM Responses

Protest Contention: The research station provides opportunities for field-based interdisciplinary research that emphasizes ecology and the environment in the broadest sense. It is a real-world laboratory for integrated thinking about humans and their place in the biologically complex, but fragile, systems. The research station promotes research, courses and professional training at the interface of biology, history, anthropology, art, and human sustainability.

The research station hosts research on a number of topics that would be forfeited by air or water pollution, flooding, noise, and other impacts associated with the oil/gas operations. Specific examples of ongoing research include: an NSF funded study evaluating dust provenance using isotopic composition of plant wax biomarkers; long term evaluation and monitoring of avian fauna and the timing of their migration patterns; and genetic variability of native plant species.

Some of the most critical aspects of a functional research station are stationary background conditions and controlled access/security. Changing any of the natural conditions at the site such as increased dust deposition via increased traffic in the area, altered river hydrology or sediment loads, excessive artificial noise or land disturbance that promotes invasive plant migration and establishment would affect the research outcomes at the station. Security and limited access to the station are also critical for assuring the integrity of research and educational activities at the center. Use of tracks and roads in or in close proximity to the research station in connection with oil/gas exploration and production operations would most certainly adversely impact the research center and the research being performed there. Access to the parcels should occur via tracks and roads that do not impact the research center and to the extent that any leases are granted on the parcels, the lease should at minimum contain a stipulation that the lessees will not access or seek access on or across the research station property.

Significant resources have been invested in Rio Mesa Center by the U of U and its research partners, including the BLM. The U of U does not currently have sufficient information to understand every possible impact that the development associated with these leases would have on the research center, but to the extent that the leases or associated development would have any impact on the research station property or operations of the research station, including research being performed there, the University strongly opposes the leases. Protest at pages 1-2.

⁴ The BLM's NEPA Handbook can be accessed online at:
http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1.pdf

The BLM Response: Under Federal Land Policy and Management Act, the BLM is required to prevent unnecessary or undue degradation in its management of the federal public lands. The U of U implies that the sale of the contested parcels will cause the loss of and damage to long term research or call in question the validity of its studies on property located near the parcels. The BLM notes that the U of U claims that the research station is a real-world laboratory. The U of U is assuming that oil and gas development would have a detrimental effect on its research. The U of U has not shown that leasing and any subsequent operations would be conducted in a manner that would harm ongoing research or would not comply with applicable law or regulations, prudent management and practice or reasonably available technology. The U of U has not provided evidence in its protest to support a BLM decision to withdraw the protested parcels from the lease sale.

The 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. Should a complete application for permit to drill (APD) be received, the BLM will again initiate the NEPA process based on the information in the APD. As stated by the U of U, attempting to determine the potential impacts of development would be unduly speculative and impractical without the submission of a complete APD.

Protest Contention: Although the Research Station is in close proximity to the parcels and the University of Utah, is the lessee of record, the U of U was not invited to participate in the scoping process or otherwise provide meaningful opportunity to participate in the BLM's decision making process, and the University of Utah was not provided sufficient notice of the sale. Protest at page 2.

The BLM Response: The BLM's procedures for public notification is established in the NEPA review process, which is initiated at various phases of oil and gas activity on the public lands (planning, parcel nomination and leasing, well permitting and development).

Public notification and opportunity for participation is established in Washington Office (WO) Instruction Memorandum (IM) 2010-117 (III C 6 & 7 and G). Field, district or state offices are required to post the NEPA compliance documentation on the appropriate website and make the document available in the public room(s). The state office posts the NCLS 90 days prior to the sale date, but errata to the NCLS may be issued up to one day prior to the sale. In cases of split estate, the BLM initially contacts surface owners of land within a defined parcel. The U of U is not a landowner of record for either of these parcels.

Public notification of the environmental assessment (EA) process was initiated by entering the lease sale information on the Environmental Notification Bulletin Board (ENBB)⁵, a BLM environmental information internet site, on July 23, 2012. Additional information for the public was maintained on the Utah BLM Oil and Gas Leasing Webpage⁶.

On July 25, 2012, the BLM also placed legal notices in the Moab *Times Independent* newspaper, the *Moab Sun News*, and Monticello's *San Juan Record* to notify the public of the scoping period for the EA. The public scoping period ended on August 13, 2012. The NCLS was posted on November 16, 2012.

⁵ Accessed online at: <https://www.blm.gov/ut/enbb/index.php>

⁶ Accessed online at: http://blm.gov/ut/st/en/prog/energy/oil_gas_lease.html

As established in WO IM 2010-117, the public's opportunity for involvement is initiated at the EA public comment period. The U of U did provide timely comments on the EA during this phase. BLM disagrees that the U of U was not provided sufficient notice of the sale or provided opportunity to participate in the BLM's decision making process.

Protest Contention: The EA dated September 2012 conducted by the BLM does not adequately examine the potential harm to the Rio Mesa Center. On October 19, 2012, the U of U wrote to the BLM commenting on the EA. Protest at page 4.

BLM Response: In the EA at appendix E (pages 99 – 100), the BLM shows how it responded to the points raised by the U of U. BLM acknowledges the U of U's research and its importance. The BLM enjoys a long standing partnership with the U of U's Rio Mesa Center.

In response to the information provided during the EA comment period, the BLM prepared and applied lease notice UT-LN-111 (University of Utah – Rio Mesa Center) to both parcels as follows:

This lease is located nearby the University of Utah's Rio Mesa Center. The Rio Mesa Center is engaged in a number of long term studies focusing on anthropological and natural systems. This Center is a vital component of the University infrastructure, coursework and training and is a major financial investment. Maintaining the integrity of its research is necessary to uphold the statistical validity of its current and future studies. The lessee is given notice that additional coordination with the Center will be necessary.

Overall, the U of U has not considered whether any lease stipulations or notices that apply to the subject parcels 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.

It is also important to note that issuance of a lease does neither grant nor guarantee access to the lease from outside a lease boundary. It is incumbent upon the lessee to secure access/right-of-way for any off lease access necessary to develop the leasehold.

Conclusion

As the party challenging the BLM's inclusion of certain parcels in the February 19, 2013 lease sale, the U of U bears the burden of establishing that the BLM's action was premised on a clear error of law or material fact, or that BLM failed to consider a substantial environmental question of material significance. The U of U has not met this burden. To the extent that U of U has raised any allegations not specifically discussed herein, they have been considered and are found to be without merit. For these reasons, and for those previously discussed, the U of U's protest as it pertains to parcels UT0213-171 and UT0213-174 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 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.

If you have any further questions, please contact Pam Schuller of this office at (801) 539-4050.

/s/ Jenna Whitlock
Juan Palma
State Director

Enclosure:

1. Form 1842-1

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

Enclosure 1
Form 1842-1

