



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 – 7006 0100 0001 7399 0322
Return Receipt Requested

May 25, 2010

DECISION

Center for Native Ecosystems : Protest to the Inclusion of
Josh Pollock, Conservation Director : Parcels in the May 25, 2010
1536 Wynkoop, Suite 303 : Competitive Oil and Gas Lease Sale
Denver, Colorado 80202 :

Protest Denied

Background

On April 9, 2010, the Bureau of Land Management (BLM) provided notice (Notice of Competitive Lease Sale) that six parcels of land would be offered in a competitive oil and gas lease sale scheduled for May 25, 2010. The notice also indicated that the protest period for the lease sale would end on May 10, 2010. In a letter received by the BLM on May 10, 2010, the Center for Native Ecosystems (CNE) protested the inclusion of five parcels in the sale. The protested parcels are on public lands administered by the BLM's Moab and Vernal Field Offices, as follows:

Vernal Field Office:

UT0510-034 UT0510-036
UT0510-035 UT0510-039

Moab Field Office:

UT0510-037

By errata notice dated May 14, 2010, the BLM deferred offering the following four parcels covered by the CNE protest: UT0510-034, UT0510-035, UT0510-036, and UT0510-039. Consequently, CNE's protest as to these four parcels is denied as moot. For the reasons set forth below, CNE's protest to Parcel UT0510-037 (Parcel 037) is denied.

Decision

CNE has not protested with specificity.

CNE makes only general allegations regarding land use plan revisions, nominated Areas of Critical Environmental Concern, purported “new information” related to the greater sage-grouse and other special status or sensitive species, coordination with the U. S. Fish and Wildlife Service, and notices and stipulations. CNE generally contends that leasing will violate the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Endangered Species Act (ESA). CNE provides the protested parcel as part of a list in the table attached as Exhibit 1 and refers to the parcel number a few times in its lengthy protest, but does not attempt to explain how its general contentions may apply to the protested parcel.¹ Moreover, CNE fails to set forth any specific facts or information to show how its general allegations might apply to Parcel 037.

On September 30, 2009, separate decisions were issued denying CNE’s protests to the BLM’s March 24, 2009 and June 23, 2009 lease sales on the grounds that those protests included only conclusory allegations unsupported by specific facts. The CNE protest to Parcel 037 suffers from the same fundamental flaws and is hereby denied as to its general allegations.²

As explained in the September 30, 2009 decisions, the BLM is under no obligation to sort through a protestant’s laundry list of alleged errors 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. It is noted in those decisions that CNE has frequently availed itself of BLM’s protest procedures as well as the administrative appeal process before the Interior Board of Land Appeals. Also, that its respective protests recited that CNE has a well-established history of participation in BLM planning and management activities, and its mission includes participating in “administrative processes” and “legal actions” and, consequently, CNE should be well aware of its responsibilities in submitting a protest to the inclusion of parcels in an oil and gas sale.

For the BLM to have a reasonable basis to consider future CNE protests, CNE 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, CNE 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 The general allegations in CNE’s May 10, 2010 protest letter appear to be largely boilerplate used in other protests CNE has made to the BLM.

² It is well established that the 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).

CNE's allegations involving climate change and air quality lack any supporting evidence.

The only allegations in the CNE protest as to Parcel 037 that may be read as not being mere conclusory allegations involve climate change and air quality. CNE contends that Parcel 037 should not be leased because of uncertainty as to how climate change and air quality standards might be affected by development of the parcel. In particular, CNE asserts that Parcel 037 should not be leased because the EIS prepared in connection with the Moab Field Office Resource Management Plan (which was approved by the Assistant Secretary for Lands and Minerals, Department of the Interior, in October 2008) did not give sufficient consideration to the issue of climate change, and did not include quantitative air quality modeling. Protest at 18-20, 35-37. However, as the party challenging the BLM's offering of Parcel 037 for leasing, CNE bears the burden of proof 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. CNE has not met this burden. Other than raising these issues, CNE has not provided any evidence to support its contention that leasing Parcel 037 would cause significant impacts involving climate change or the air quality.

Conclusion

For the above-stated reasons, the CNE Protest as to Parcel 037 is denied. If BLM receives an acceptable offer on Parcel 037, it will issue the relevant lease subsequent to issuance of this decision and any other necessary protest decision.

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 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.

A handwritten signature in black ink, appearing to read 'Selma Sierra', with a long horizontal stroke extending to the right.

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

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

-
- 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).
-
- 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
-
- 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
-
- 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).
-
- 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)).
-
- 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.

(Form 1842-1, September 2006)