



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>



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November 16, 2009

DECISION

Center for Native Ecosystems : Protest to the Inclusion of
Megan Mueller, Staff Biologist : Parcels in the November 17, 2009
1536 Wynkoop, Suite 303 : Competitive Oil and Gas Lease Sale
Denver, Colorado 80202 :

Protest Denied

On October 2, 2009, the Bureau of Land Management (BLM) provided notice (Notice of Competitive Lease Sale) that 20 parcels of land would be offered in a competitive oil and gas lease sale scheduled for November 17, 2009. In a letter received at the BLM on November 2, 2009, the Center for Native Ecosystems (CNE) protested the inclusion of 19 parcels in the sale. The protested parcels are on public lands administered by the BLM's Moab, Price and Vernal Field Offices, as follows:

Moab Field Office

UTU87659 (UT1109-029)

Price Field Office

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|-----------------------|-----------------------|
| UTU87640 (UT1109-001) | UTU87648 (UT1109-009) |
| UTU87641 (UT1109-002) | UTU87649 (UT1109-010) |
| UTU87642 (UT1109-003) | UTU87650 (UT1109-011) |
| UTU87643 (UT1109-004) | UTU87651 (UT1109-012) |
| UTU87644 (UT1109-005) | UTU87652 (UT1109-013) |
| UTU87645 (UT1109-006) | UTU87653 (UT1109-014) |
| UTU87646 (UT1109-007) | UTU87654 (UT1109-016) |
| UTU87647 (UT1109-008) | UTU87655 (UT1109-024) |

Vernal Field Office

| | |
|-----------------------|-----------------------|
| UTU87656 (UT1109-025) | UTU87657 (UT1109-027) |
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CNE Has Not Protested with Specificity

CNE makes only general allegations throughout its protest. After the list of parcels that are protested, there are general statements that “in some cases, the species *no longer occurs* within the protested parcel, but the parcel contains habitat which *may* be important to the recovery of the species,” which underscores that CNE’s protest is not specific concerning any particular parcel. CNE also makes general allegations regarding land use plan revisions, nominated Areas of Critical Environmental Concern, purported “new information” related to the white-tailed prairie dog, coordination with the U. S. Fish and Wildlife Service, and notices and stipulations. CNE also alleges violations of the National Environmental Policy Act (NEPA), the Endangered Species Act, and the Federal Land Policy and Management Act, but not in a manner that is specific to any protested parcels or field office. Other than a table attached as Exhibit 1, the protest makes no attempt to explain how the general allegations may apply to any of the protested parcels. The challenges concerning land use planning, NEPA adequacy, and protection of sensitive or listed species are addressed briefly below.

RMP Decisions are No Longer Protestable

The Resource Management Plans (RMP) and associated Environmental Impact Statements (EIS) provide the basis for land use allocations including oil and gas leasing decisions. Challenges to the planning process, including RMPs and associated EISs, will not be considered as part of protests for oil and gas leasing decisions. The public was afforded opportunities to protest the Proposed RMPs and Final EIS documents. Protests were resolved by the BLM Director in 2008. Copies of the Director’s Protest Resolution Reports are available on-line at (scroll down to Utah):

http://www.blm.gov/wo/st/en/prog/planning/protest_resolution/protestreports.html.

CNE’s protest was responded to by the BLM Director. This response is still available at this link.

Subsequent to protest resolution, the Record of Decision and Approved RMPs were signed by the Assistant Secretary for Lands and Minerals, Department of the Interior, which constituted the final decision for the Department of the Interior, and ended all administrative courses of action on those planning processes.

DNAs are Appropriate

Based on its review, the field offices determined that the existing analysis sufficiently assessed the environmental consequences of leasing and adequately covers the protested parcels. A Determination of NEPA Adequacy (DNA) is an appropriate means for the BLM to assess whether existing NEPA documents adequately analyze the anticipated impacts of an action so that the agency may proceed without performing further NEPA review. See Pennaco Energy v. U.S. Dep’t of the Interior, 377 F.3d 1147, 1162 (10th Cir. 2004); Colorado Env’tl. Coal. 173 IBLA 362, 372 (2008); Ctr. for Native Ecosystems, 170 IBLA 331, 345-46 (2006); S. Utah Wilderness Alliance, 166 IBLA 270, 282-83 (2005). As stated in the DNAs prepared by the field offices (at sections A-C), oil and gas leasing and development activity was thoroughly analyzed in the respective field offices’ Proposed RMPs and Final EISs.

DWR and USFWS Consultation is Complete and Thorough

The BLM coordinated extensively with and requested comments from experts in the U. S. Fish and Wildlife Service (USFWS) and the Utah Division of Wildlife Resources (DWR) on the November 2009 Oil and Gas Lease Sale list on a parcel-specific basis. The USFWS and DWR each provided comments on a parcel-specific basis and all recommendations were incorporated into the final parcel list. The review by the two agencies' field specialists, energy coordinators and NEPA specialists considered the effects of oil and gas leasing activity on aquatic and terrestrial species and habitats identified in CNE's protest. After receiving the CNE protest, the BLM has re-confirmed the location of species and their habitat for the wildlife and plant species specifically referenced in CNE's Exhibit 1. All of the species or habitat identified on or near the protested parcels have been considered and are addressed with applicable lease stipulations or notices. CNE's protest does not consider applicable lease stipulations or notices that may be relevant to its protest allegations. However, all of the species and habitat included in CNE's Exhibit 1 did not occur on or near the lease parcels. The USFWS and DWR also affirmed that adequate protection was afforded to all relevant species or habitat.

CNE also alleges that the BLM has failed to implement monitoring in the Colorado River drainage as part of the leasing stipulations. The BLM fulfilled this obligation by completing formal consultation on leasing stipulations or notices with the USFWS during the completion of the RMPs, resulting in a USFWS Biological Opinion. The application of the "Endangered Fish of the Upper Colorado River Drainage Basin" lease notice further completes the commitment required by the Biological Opinion. The BLM also conducted informal consultation with the USFWS for the November 2009 lease sale parcels and did not request monitoring in Vernal. Therefore, the BLM has fulfilled its obligation to protect the appropriate species and their habitat according to the relevant land use prescriptions outlined in the RMPs.

In conclusion, for the above-stated reasons, the CNE Protest 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 June 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

Enclosure
Form 1842-1 (2pp)

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