United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003-1828

In Reply Refer to:
3100 (923Hite)
August 2014 Protests

August 4, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard St. Gelais
84 North Monkey Road
Glenrock, Wyoming 82637

DECISION

PROTEST DENIED: PARCEL WILL BE OFFERED FOR SALE

On May 27, 2014, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received a protest of the inclusion of oil and gas lease sale parcel WY-1408-041 planned to be offered in the August 5, 2014, competitive oil and gas lease sale (August 2014 Sale) from Richard St. Gelais. Parcel WY-1408-041 is described in the WSO's Notice of Competitive Oil and Gas Lease Sale for August 5, 2014 (Sale Notice), that was published and released to the public on May 7, 2014.

The BLM received nominations for the August 2014 Sale until September 20, 2013. The August 2014 Sale includes Federal fluid mineral estate located in the BLM Wyoming's High Plains District (or HPD, which includes the Buffalo, Casper, and Newcastle Field Offices) and the Wind River/Bighorn Basin District (or WRBBD, which includes the Cody, Lander, and Worland Field Offices). After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the field offices and District Offices, including interdisciplinary review, field visits to nominated parcels (where appropriate), review of conformance with the Resource Management Plan (RMP) decisions for each planning area, and preparation of an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.[1]

During the BLM's review of the August 2014 parcels, the WSO also independently screened each of the parcels, confirmed plan conformance,[2] coordinated with the State of Wyoming Governor's Office and Game and Fish Department, confirmed compliance with national and state BLM policies, and considered on-going efforts by the BLM in Wyoming to revise or amend RMPs for planning areas subject to this sale, including the BLM's on-going planning efforts related to the management of greater sage-grouse habitat on public lands.

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[1] http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/2014/august.html

[2] See BLM's Land Use Planning Handbook at page 42: "After the RMP is approved, any authorizations and management actions approved... must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP." See also 43 CFR 1610.5-3.

The oil and gas lease sale EAs prepared by the HPD (WY-070-EA14-51) and WRBBD (DOI-BLM-WY-020-EA-14-7), along with draft, unsigned Findings of No Significant Impact (FONSIs)[3] were released on January 21, 2014, for a 30-day public review period, ending February 19, 2014. Mr. St. Gelais did not provide public comments to the BLM. The EA tiered to the existing RMPs and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR 1502.20:

> *"Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review... the subsequent ...environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action."*

ST. GELAISE PROTEST

In his protest, Mr. St. Gelais is protesting the offering of a single parcel, WY-1408-041 (239.780 acres), described in the WSO's Sale Notice (see Attachment 1).

STANDING

The Sale Notice describes the manner in which protests will be considered, and requires (at page viii):

> *A protest must state the interest of the protesting party in the matter.*

The BLM's regulations addressing protests of competitive oil and gas lease sales (at 43 CFR §3120.1-3) do not describe any limitations as to who may protest inclusion of lands in a sale notice.[4] Recently, the issue of standing for purposes of appealing a BLM decision to dismiss and deny lease sale protests was addressed by the Interior Board of Land Appeals (IBLA). In *Biodiversity Conservation Alliance et al.* (183 IBLA 97, decided January 8, 2013), the IBLA evaluated the standing of the appellants to challenge the BLM's decisions to dismiss and deny protests related to certain oil and gas lease sale parcels, and determined (183 IBLA 97, 108):

> *"...since the BLM decision at issue involves the leasing of several parcels of land for oil and gas purposes, each of the appellants must show an adverse effect as a result of the leasing of each parcel to which it objects, in order to be recognized as having standing to appeal the decision to lease that parcel."*

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[3] See the BLM's NEPA Handbook H-1790-1 at page 76. Though the BLM has elected to release draft, unsigned FONSIs for public review in this instance, the BLM is not asserting that any of the criteria in 40 CFR 1501.4(e)(2) are met. Since the RMP EISs have already evaluated potentially significant impacts arising from the BLM's land use planning decisions, the BLM anticipates a "finding of no new significant impacts" for each EA. See 43 CFR 46.140(c).

[4] Other BLM regulations pertaining to administrative reviews of agency decisions do, in some cases, provide an indication of who may bring a request for review of the BLM's decision. For example, the BLM's State Director Review (SDR) regulations for onshore oil and gas operations (at43 CFR §3165.3(b)) indicate that a requestor must be an •'adversely affected party."

Mr. St. Gelais's protest states that his residence is located at 84 North Monkey Road and that he is concerned about risk to his residence and private water supply well from potential oil and gas development on parcel WY-1408-041. The subject parcel was originally 679.780 acres in size. However, during the review process 440 acres were deleted from the preliminary parcel, where legal subdivisions were found to overlap the incorporated town limits of Rolling Hills. By regulation (43 CFR § 3100.0–3.a.2.iii) incorporated cities, towns and villages are excepted from oil and gas leasing. The Town of Rolling Hills is incorporated, and therefore excepted from leasing.

While the residence at the given address appears to be located on a lot partially located within the original parcel, Mr. St. Gelais's lot may have been within the deleted area. An online address search suggests that the lot with a residential address of 84 North Monkey Road is not located within parcel WY-1408-041, but it is located partially within NENE, Sec. 22, T. 34 N., R. 75 W., 6th PM, Wyoming – one of the legal subdivisions deleted from the parcel because it overlapped the incorporated town limits of Rolling Hills. However, Mr. St. Gelais's concern about potential risk to his water supply well remains relevant. Through his protest letter, Mr. St. Gelais has provided to the BLM "colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, sufficient to establish a causal relationship between the approved action and the injury alleged" (183 IBLA 97, 107).

The remainder of our response will answer the protestor's arguments related to parcel WY-1408-041. The protestor's substantive arguments are provided in bold, with BLM responses following.

ISSUES – RICHARD ST. GELAIS

1. **Private water supply wells are at risk from potential oil and gas development on parcel WY-1408-041.**

BLM Response

An oil and gas lease sold and issued for parcel WY-1408-041 would entitle the lessee(s) to exclusive rights to develop the Federal oil and gas resources within the lease boundaries. However, as stated in the BLM's standard lease document, those rights are subject to applicable laws, the terms, conditions and attached stipulations of the lease, the Secretary of the Interior's regulations and formal orders in effect as of lease issuance, and to regulations and formal orders promulgated after lease issuance when not inconsistent with lease rights granted or specific provisions of the lease. Any proposed lease operation (including well drilling and well completion procedures, such as hydraulic fracturing) will be reviewed by a multi-disciplinary team at the Casper Field Office, under the resource protection strategies described in the Casper RMP. As a Federal action, the authorization of any lease operation must also be supported by the required level of environmental analysis (including an analysis of potential impacts to groundwater resources) under the National Environmental Policy Act (NEPA).

The BLM is committed to the protection of groundwater resources. When an application to drill (APD) an oil and gas well is received, a BLM geologist checks the depth of all permitted water wells within 1 mile of the well location and, if a horizontal well is planned, within 1 mile of the lateral leg (top to bottom of hole). The Casper Field Office requires protective casing and cement on all oil and gas wells, in order to properly isolate all usable water formations, all the way through the bottom of

the Lance Formation. Typically this is about 2,000 feet below the surface, in the area of Monkey Road. A BLM Petroleum Engineering Technician will witness the cementing operations to verify the well was cemented as required. Pressure monitoring is also conducted during all hydraulic fracturing operations to ensure the integrity of the well casing. In the area of Monkey Road, the Casper Field Office notes that there is over 6,000 feet of geologic separation between the Lance formation (the minimum depth of well casing and cementing) and the target oil bearing zones. That separation distance helps to protect the relatively shallow groundwater resources which supply the water needs for Monkey Road residents. Additionally, an oil and gas lease sold and issued for parcel WY-1408-041 would include a lease stipulation restricting or prohibiting oil and gas surface occupancy or use within 500 feet of water wells, and a lease notice stating that the authorized officer may require a setback of ¼ mile between occupied dwellings and oil and gas operations (such as a well).

It should also be noted that the Monkey Road area encompassed by parcel WY-1408-041 has been leased, in the past. The portion closest to Mr. St. Gelais's lot – SENE, Sec. 22, T. 34 N., R. 75 W., 6th PM, Wyoming – was held in 4 Federal non-producing leases almost continuously during the period from January 1976 to March 2006. The other portion of WY-1408-041 in the Monkey Road area – SENW, Sec. 27, T. 34 N., R. 75 W., 6th PM, Wyoming – was held in 2 Federal non-producing leases almost continuously from August 1975 to March 1996. Both of these areas were also part of a Federal oil and gas exploratory unit, in 2011 and 2012. Although historically leased and unitized, these areas have not been developed to date, and it is possible that a similar situation would exist under a future lease.

Wyoming BLM shares Mr. St. Gelais's concerns for the groundwater resources which meet the water supply needs for all residents, both inside the incorporated town of Rolling Hills and adjacent land owners. We understand Mr. St. Gelais's concerns; however, it is our goal to encourage development of Federal oil and gas while maintaining or improving surface water and groundwater resources consistent with applicable Federal standards and regulations. Residents are encouraged to participate in future BLM planning efforts which affect the Monkey Road area, for the purpose of giving input into the decision-making process with regard to oil and gas leasing restrictions and management strategies.

Offering parcel WY-1408-041 is in conformance with the Casper RMP, complies with current BLM policy, and a rational basis exists for offering this parcel while an on-going sage-grouse RMP amendment is being considered. For the reasons described above, we deny Mr. St. Gelais's protest.

2. **BLM did not consult with the surface owners prior to leasing, as required.**

<u>BLM Response</u>

Parcel WY-1408-041 consists of split estate lands: subsurface Federal oil and gas mineral estate overlain by private surface ownership. In split estate lands, mineral rights are considered the dominant estate, meaning they take precedence over other rights associated with the property, including those associated with owning the surface. However, the mineral owner (in this case, the Federal Government) must show due regard for the interests of the surface estate owner and occupy only those portions of the surface that are reasonably necessary to develop the mineral estate.

In Wyoming, the BLM manages approximately 11.6-million acres of split estate lands, of which, approximately 2.8-million acres lie within the Casper planning area. The unincorporated, split estate areas adjacent to Rolling Hills, including Mr. St. Gelais's lot on Monkey Road, are not excepted from leasing by regulation, or by any site specific planning decisions contained in the 2007 Casper RMP. The Monkey Road area is a rural residential community, largely composed of lots that are typically 5 acres in size. Decision #6048 of the Casper RMP states: "Potential lease and permit areas may include, but are not limited to... (areas) in or adjacent to residential, agricultural, commercial, or industrial developments." Neither the Monkey Road area's residential surface use, nor the Monkey Road properties' split estate status, prevents BLM from leasing of the subsurface Federal oil and gas minerals.

Pursuant to BLM's Washington Office (WO) Instruction Memorandum (IM) 2007-165 and WO IM-2010-117 (Oil and Gas Leasing Reform policy), split estate surface owners of lands reviewed for offer in the August 2014 Sale were notified by mail, once by the Field Office and once by the WSO, and advised of their rights to provide comment on the posted Environment Assessments and to submit protests to the sale of particular parcels. Mr. St. Gelais has exercised his right to protest the sale of parcel WY-1408-041. Split estate surface owners were also directed to BLM policy regarding split estate rights, responsibilities, and opportunities. Additionally, BLM representatives from the Casper Field Office conducted a town meeting at Rolling Hills to discuss the proposed leasing of parcel WY-1408-041.

Mr. St. Gelais incorrectly claims that BLM policy requires pre-leasing consultation between BLM and affected split estate surface owners. BLM policy requires pre-leasing notification of split estate surface owners, and the split estate surface owners identified by the nominator for parcel WY-1408-041 were notified by mail on two separate occasions during the review process. In accordance with Onshore Oil and Gas Order No. 1 and BLM policy, the BLM will consider the views of the surface owner should development of the split estate portion of a lease be proposed (assuming a lease is issued and subsequent development activities are proposed), among other requirements provided by regulation and policy. We disagree with Mr. St. Gelais's argument that BLM did not consult with the surface owners prior to leasing, as required.

DECISION

After a careful review, it was determined that parcel WY-1408-041, as described in the Notice of Competitive Oil and Gas Lease Sale, will be offered at the August 5, 2014 sale. The protest to this parcel is denied for the reasons described, above.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (attached). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your receipt of this decision. The protestor has the burden of showing that the decision appealed from is in error.

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 Board, the petition for a stay must accompany your notice of appeal. 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 be submitted to each party named in this

decision, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 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 regulation, 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 protestor'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.

Larry Claypool
Deputy State Director,
Minerals and Lands

2 Attachments

1 – BLM-Wyoming August 5, 2014 Notice of Competitive Oil and Gas Lease, pg 8, parcel description for parcel WY-1408-041

2 – Appeal Form 1842-1

cc:
(email only, no hard copy)
District Manager, High Plains District
Field Manager, Buffalo Field Office
Field Manager, Casper Field Office
Field Manager, Newcastle Field Office
District Manager, Wind River/Bighorn Basin District
Field Manager, Cody Field Office
Field Manager, Lander Field Office
Field Manager, Worland Field Office
District Manager, High Desert District
Deputy State Director, Division of Minerals and Lands (920)
Deputy State Director, Division of Resources (930)
Chief, Branch of Fluid Minerals, Land, and Appraisal (921)
Chief, Branch of Leasing and Adjudication (923) e-mail & final copy on letterhead
Kelly Roberts (923) e-mail & final copy on letterhead