



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7076



In Reply Refer To:
3120
CO-922

Decision

Rocky Mountain Wild
1536 Wynkoop, Ste. 303
Denver, CO 80202

November 8, 2012, Competitive Oil & Gas Lease Sale;
Protests of COC75567, COC75568, COC75569, COC75570, COC75574, COC75577, and
COC75578 are Dismissed

This office received a protest regarding above listed parcels to be offered in the November 8, 2012, Competitive Oil & Gas Lease Sale.

Response from Royal Gorge Field Office (RGFO)

COC 75567 and 75569

Protest 1: “BLM is proposing a .25 mile buffer around Prairie-Chicken leks. This buffer is inadequate to protect these production areas. These leks and birds that breed there will be lost without stronger protections. The Colorado Division of Wildlife’s “Actions to Minimize Adverse Impacts to Wildlife Resources” published in 2008 recommends a 0.6 mile buffer around any active or inactive lesser prairie-chicken lek. As outlined below, BLM has failed to analyze the effectiveness of these meager lesser prairie-chicken mitigation measures. BLM also failed to analyze cumulative effects of this action on the lesser prairie-chicken.”

Response: The Royal Gorge RMP/EIS analyzed the adequacy of protective stipulations to adequately address impacts to the lesser prairie chicken and the EA further analyzed these mitigation measures to address impacts. Exhibit RG-03 is a timing limitation stipulation preventing surface use from March 1 through July 31 to protect nesting habitat. Exhibit CO-02 is a no surface occupancy (NSO) stipulation to protect active leks. The analysis in the EA used a 0.6 mile radius buffer around active lesser prairie chicken leks when applying the NSO stipulation, and a 2.2 mile buffer around active lesser prairie chicken leks when applying the timing limitation. An error in Attachment D of the environmental assessment was made while defining Exhibit CO-02. The exhibit description should have read “To protect grouse dancing

grounds (including sage and mountain sharp-tailed grouse and lesser and greater prairie chickens) within a 0.6 mile radius from the site.” This correction has been made.

COC 75574, 75577, and 75578

Protest 2: “It is particularly important that prairie dogs be protected from habitat-degrading activities such as oil and gas exploration and extraction in addition to deleterious impacts on black-tailed prairie dogs, the BLM’s negligence in regard to the need to conserve and restore black-tailed prairie dogs will have broader ecosystemic repercussions. Prairie dogs are keystone species that create habitat and provide a prey base for a broad array of associated species. . . . Harms to prairie dogs and their towns also negatively impact prairie dog associated wildlife. Several of the species dependent on or associated with prairie dogs may be found in the Decision Area. These include the ferruginous hawk, black-footed ferret, burrowing owl, and swift fox, which have been identified as imperiled through a “wave of secondary extinctions” that is resulting from the continued decline of prairie dogs.”

Response: The environmental assessment discusses potential impacts to prairie dogs if proposed parcels are leased and developed. BLM has applied a lease notice to parcels known to have occupied prairie dog towns. Exhibit CO- 49 states, “the lessee is advised that prairie dogs occur on this lease and lessee funded surveys, avoidance of the town, or other restrictive mitigations may be required if an Application for Permit to Drill is submitted with a well location inside the town or within 200 meters of the current town boundary.” The mitigation measures available to be applied as conditions of approval will indirectly protect species dependent on or associated with prairie dogs. Mitigation to protect other sensitive species can be implemented prior to lease development if it is determined that the species is present in the area. BLM’s application of Exhibit CO-19 protects ferruginous hawk nesting and fledgling habitat by not allowing surface use February 1 through August 15.

Protest 3: “All or portion of Parcels 75568, 75569, 75570, 75574, 75577, and 75578 are located within CNHP High Priority Potential Conservation Areas (PCA). . . . the BLM should defer these parcels because leasing would result in unacceptable impact to specially designated areas (whether Federal or non-Federal) and would be incompatible with the purpose of the designation.”

Response: The BLM shares and appreciates your concerns for protection of resources. We believe the existing lease stipulations, lease terms, and applicable regulations provide BLM resource specialists the necessary tools to implement appropriate protective measures to mitigate impacts to wildlife habitat. Your protest identifies a number of Colorado Natural Heritage Program (CNHP) Potential Conservation Areas and the CNHP’s Network of Conservation Areas:

Big Sand Creek at Matheson: **COC 75574, 75577, and 75578.**
Central Shortgrass: **COC 75568, 75569, and 75570.**

We are aware of these designations by CNHP and consider them during this process. We also consider rare species habitat information from the Colorado Division of Parks and Wildlife and the CNHP database during this process.

In the past, the BLM has worked effectively with industry to address concerns about drilling in sensitive areas and during critical time periods and we believe this will continue in the future. In addition, the BLM can require that drilling operations be moved up to 660' (200 m) and that activities are delayed or postponed by 60 days. BLM will use these mitigation tools as appropriate.

Protest 4: “The Decision Fails to Adequately Analyze the Direct, Indirect, and Cumulative Effects of Leasing These Parcels.”

Response: The act of leasing parcels is an administrative action that has no direct effect on resource values. Should a parcel be leased and proposed for development at a future date, the direct, indirect and cumulative effects associated with that action will be fully analyzed based on the site-specific details of the development proposal. This EA analyzed the potential for on the ground impacts to sensitive species and PCAs at the development stage as indirect impacts of leasing the parcels, to the extent reasonably foreseeable. Such impacts would be further addressed at the APD or development stage as either direct or indirect impacts when additional site-specific development information is available. Cumulative impacts from oil and gas leasing and development were addressed in the 1996 Royal Gorge RMP/EIS. This EA is tiered to the EIS, but provides additional analysis based on information about the proposed lease parcels. Any additional cumulative impacts analysis will supplement the existing analyses based on site-specific information received at the development stage.

Protest 5: “The BLM has failed to adequately analyze the effectiveness on the lease stipulations and other mitigation measures in the Environmental Assessment, and the determination that lease stipulations and other mitigation measures will prevent significant impact to lesser prairie-chicken is arbitrary and capricious.”

Response: See response to protest item #1. The Royal Gorge RMP/EIS analyzed the adequacy of these lease stipulations to adequately address impacts to the lesser prairie chicken and the EA further analyzed these mitigation measures to address impacts.

Protest 6: “The BLM failed to Prevent Undue and Unnecessary Degradation to Lesser Prairie-Chicken Populations and Potential Conservation Areas and has Failed to Meet its Obligation Under BLM Manual 6840.”

Response: BLM Manual 6840 provides policy and guidance for conservation of BLM special status species. A primary objective of the manual is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species. The stipulations attached to the proposed lease parcels (see response to protest item #1) provide the necessary conservation measures to protect lesser prairie chickens and their habitat.

Regarding PCA's, see response to protest item #3.

The Federal Land Policy and Management Act (FLPMA) requires the BLM to prevent unnecessary or undue degradation of federal lands. Stipulations and COA's the BLM has

applied to the proposed parcels in the environmental analysis will apply to any future development to allow the BLM to conform to this policy.

Protest 7: “BLM Must Mitigate Adverse Effects.”

Response: The proposed action is to lease the proposed parcels for future oil and gas development. Protective lease stipulations have been applied to all lease parcels to mitigate potential adverse effects. At the development state, additional conditions of approval will be attached to further mitigate potential adverse effects.

Protest 8: “Consistency.” The BLM is violating FLPMA because it is not being consistent with the policies of state, tribal and other agencies in its conservation policies regarding lesser-prairie chicken, black tailed prairie dog and other species.

Response: The Royal Gorge RMP guides the BLM’s application of stipulations to parcels proposed for oil and gas leasing. New conditions identified by BLM, or cooperating agencies, are evaluated for the applicability of available stipulations. A parcel is deferred until additional protections or the impacts of leasing have been further analyzed when available stipulations or conditions of approval are inadequate to protect the resources present.

The BLM and CPW discussed and agreed on protective stipulations for lesser prairie chicken. Stipulations have been applied to parcels to protect leks, nesting, and overall habitat consistent with CPW policy. The BLM has the flexibility to mitigate potential impacts to black-tailed prairie dogs at the development stage. If impacts to prairie dog colonies are identified, conditions of approval will be attached to an application to drill allowing the BLM to move project areas away from active prairie dog colonies.

Protest 9: “Duty to conserve and Duty to Engage in Recovery Planning.”

Response: The BLM seeks to conserve federally listed species by implementing stipulations and requirements consistent with available recovery plans authored by the United States Fish and Wildlife Service (FWS). The BLM also assists the FWS in development of recovery plans for threatened and endangered species, typically as a cooperating agency.

Protest 10: “BLM has Discretion to Not Lease.”

Response: The BLM does have discretion to defer and/or not lease proposed parcels. The decisions about whether an area is available to lease and under which conditions is made at the RMP level and is further analyzed in the leasing EA. The BLM has met its legal obligation to conduct an adequate NEPA analysis. Based on that analysis, all of the protested parcels will be offered in the November 2012 lease sale.

The Secretary’s discretion in leasing is exercised through the BLM field offices and their respective Resource Management Plans, which must in turn, adhere to federal law. Those federal laws include the Mineral Leasing Act of 1920 and the Federal Onshore Oil and Gas Leasing Reform Act of 1987, among others. Lands in the public domain are subject to leasing under the Mineral leasing Act of 1920 with exceptions as described in 43CFR 3100.0-3. Those

lands not falling into one of the listed exceptions remain open to leasing with resource values being protected and preventing undue degradation through the use of special stipulations and post leasing conditions of approval. With each successive management plan, the BLM reevaluates the federal mineral estate available for lease to determine if changes in conditions would warrant a potential change in the availability of minerals at any location. Those parcels in the current lease sale were identified by the 1996 Royal Gorge Resource Area Management Plan as being available for lease.

The decision to offer the above named parcel was made in accordance with Bureau of Land Management policy and regulations. Your protest of the sale of these parcels is dismissed.

Within 30 days of receipt of this decision, you have the right to appeal to the Board of Land Appeals, in accordance with the regulations at 43 CFR Part 4. If an appeal is taken, the procedures outlined in the enclosed Form CSO 1842-1, Information on Taking Appeals to the Board of Land Appeals, must be strictly followed. The form also includes instructions for filing a petition for stay on any decision appealed from. The appellant has the burden of showing that the Decision appealed from is in error.

If you have any questions regarding this response, contact Karen Zurek, Chief, Fluid Minerals Adjudication at 303-239-3795.

Sincerely,

Lonny Bagley, Deputy State Director
Division of Energy, Lands and Minerals

Enclosure:
CSO Form 1842-1

cc:
Field Manager, Keith Berger, Royal Gorge Field Office