



United States Department of the Interior



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DECISION

Center for Biological Diversity : Protest to All Parcels in the
Michael Saul, Senior Attorney : December 12, 2017
1536 Wynkoop St, Suite 421 : Competitive Oil and Gas Lease Sale
Denver, CO 80202 :

Protest Dismissed Parcels Offered For Sale

On November 13, 2017, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest¹ from the Center for Biological Diversity, et al (CBD). CBD protested all of the 208 parcels offered in the December 12, 2017 Competitive Oil and Gas Lease Sale (the Sale) as analyzed in the Ely District Office's (EYDO) Oil and Gas Lease Sale Environmental Assessment (EA), DOI-BLM-NV-L030-2017-0021-EA.²

BACKGROUND

The BLM received nominated parcels for the Sale through March 17, 2017. The nominated parcels included land in Federal mineral estate located in the BLM Nevada's EYDO. After the NVSO completed preliminary adjudication³ of the nominated parcels, the NVSO reviewed each parcel to determine compliance with national and state BLM mineral policies⁴, including BLM's efforts related to the management of Greater Sage Grouse on public lands.

¹ The protest is posted on the BLM website, located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

² The EA available at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

³ Preliminary adjudication is the first stage of analysis of nominated lands conducted by the State Office to prepare preliminary sale parcels for Field Office review. During preliminary adjudication, the State Office reviews master title plats, use plats, mineral estate patents, wilderness and wilderness study areas that may be effected, as well as Sage Grouse GIS data and confirms availability of nominated lands for leasing pursuant to 40 U.S.C. § 181 *et seq.*, 43 CFR 3100 *et seq.*, and BLM policies. Once the State Office completes preliminary adjudication, it consolidates the nominated land available for leasing into a preliminary parcel list to send to the Field Office for NEPA analysis and leasing recommendations.

⁴ 40 U.S.C. § 181 *et seq.*, 43 CFR 3100 *et seq.*; Oil and Gas Adjudication Handbook H 3120-1-Competitive Leases; Oil and Gas Adjudication Handbook H-3100-1-Oil and Gas Leasing; WO IM 2016-143 Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development

On May 3, 2017, the NVSO sent a preliminary parcel list to the EYDO for analysis. This review included interdisciplinary team review by BLM specialists, field visits to nominated parcels (where appropriate), external outreach to the public, review of conformance with the current Land Use Plans, and preparation of an EA documenting National Environmental Policy Act (NEPA) compliance.⁵ During preparation of the preliminary EA, EYDO notified the public of the proposed action by posting the project on eplanning⁶ and publishing a press release announcing a public scoping period. Public scoping period allowed the public an opportunity to provide comments before the BLM develops the EA. Scoping comments are then analyzed and incorporated into the EA. Once the comment period ended (August 18, 2017 through September 18, 2017), the EYDO reviewed all comments and summarized them into a single document. Subsequently after that, the EYDO finalized the EA and reposted it on eplanning together with a lease sale comment summary.

The EA tiered to the existing Land Use Plan (LUP)⁷, in accordance with the Code of Federal Regulations (CFR) at 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.

The federal action is to conduct an oil and gas lease sale. BLM described its purpose and need for the action in the EA as follows:

1.2 Purpose and Need for Action

The purpose of the Federal Action is to provide opportunities for private individuals or companies to explore and develop oil and gas resources on specific public lands through a competitive leasing process.

The need for the proposed action is to respond to the nomination or Expressions of Interests (EOIs) for leasing, consistent with the BLM's responsibility under the Mineral Leasing Act (MLA), as amended, to promote the development of oil and

Sequential Prioritization; WO IM 2013-026 Oil and Gas Informal Expressions of Interest; WO IM 2010-117 Oil and Gas Leasing Reform Land Use Planning and Lease Parcel Reviews.

⁵ See BLM, H-1601-1, *Land Use Planning Handbook*, (Mar. 2005) (p. 42): "after the RMP is approved, any authorizations and management actions approved based on an activity-level or project-specific EIS (or EA) 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.

⁶ Eplanning is BLM national register for LUP and National Environmental Policy Act NEPA documents. The register allows you to review and comment online on BLM NEPA and planning projects.

⁷ The Ely RMP, approved on August 20, 2008, as amended, including the NV CA Greater Sage Grouse Land Use Plan Amendment, both available on ePlanning.

gas on the public domain. The public, BLM, or other agencies may nominate parcels for leasing.

The MLA established that deposits of oil and gas owned by the United States are subject to disposition in the form and manner provided by the MLA under rules and regulations prescribed by the Secretary of the Interior, where consistent with land use planning, FLPMA and other applicable laws, regulations, and policies.

The EA considered two (2) alternatives:

- The “Proposed Action” alternative, which included offering all 208 nominated parcels with stipulations from the existing RMP that were sent to the EYDO for review.
- The “No Action” alternative, which considered rejecting all parcels nominated for the lease sale in December 2017. This alternative is included as a baseline for assessing and comparing potential impacts.

2.3. Alternatives Considered, but Eliminated from Further Analysis

No other alternatives to the proposed action were apparent that would meet the purpose and need of the Proposed Action. No other alternatives were submitted or proposed during the public scoping period.

On October 13, 2017, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for December 12, 2017*⁸ (Notice), resulting in a total of 208 parcels offered for lease. This protest challenges the EA and all 208 parcels described in the Notice.

ISSUES

CBD participated in the EYDO’s public review of the EA, and provided comments to which the EYDO responded in edits of the EA, summarized in sections 1.7 and 1.8.

1.8 Summary of major changes in response to comments received

As a result of substantive comments received during the public comment period on the Preliminary EA, the assessment was revised to include further details and clarifications on potential impacts to resources.

Several of the CBD’s arguments in the protest are substantially identical to the comments they provided to the EYDO during their review of the EA.

CBD’s protest generally alleges that the BLM failed to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, the Minerals Leasing Act of 1920, as amended (MLA), 30 U.S.C. § 181 *et seq.*, the Federal Land Policy and Management Act of 1976

⁸ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

(FLPMA), 43 U.S.C. § 1701 *et seq.*, and the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. § 1531 *et seq.*

The following addresses the CBD's protest related to the December 12 Sale. The BLM has reviewed the CBD's protest in its entirety; the substantive protests are numbered and provided in bold with BLM responses following.

A. BLM's EA Violates the National Environmental Policy Act ("NEPA") By Failing to Take a Hard Look at Foreseeable Indirect and Cumulative Impacts of the Proposed Action.

BLM Response:

Per BLM's, H-1790-1, National Environmental Policy Act Handbook, (Jan. 2008) (p. 55), the "effects analysis must demonstrate that the BLM took a 'hard look' at the impacts of the action. Specifically, BLM defines "hard look," as follows:

A "hard look" is a reasoned analysis containing quantitative or detailed qualitative information.

CBD alleges BLM violated NEPA (42 U.S.C. § 4321 *et seq.*) because BLM failed to take a "hard look" at the effects of the action but the action that CBD defines is not the federal action under consideration in the EA. CBD alleges that the EA tiers to EYDO's current Resource Management Plan (RMP) (the Ely Resource Management Plan (2008), as amended including by the Sage-Grouse RMPA (2015)) which does not address the emergence of new and significant information, including that relating to extraction methods of fracking and horizontal drilling, or the increased seismic risks from such extraction methods. In particular, CBD alleges that BLM failed to take a hard look at potential impacts on water resources, air quality, climate change, human health and safety, seismicity, and sensitive species of plants and wildlife. Specifically CBD states that BLM provides no environmental review of the parcels, no site-specific analysis of the impacts from the proposed action, failed to take a hard look at the foreseeable impacts from the lease sale, oil and gas development, and the use of hydraulic fracking and other technologies.

The CEQ defines direct effects as those effects "which are caused by the action and occur at the same time and place" 40 CFR 1508.8(a); and see BLM NEPA Manual, p.56. The direct effects of a lease sale (see EA Chapter 3). Indirect effects are those effects "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 CFR 1508.8(b); and see BLM NEPA Manual, p. 56-57. The indirect effects of a lease sale may include those as analyzed in the RFD scenario (see EA Chapter 3). Cumulative effects are defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions" 40 CFR 1508.7; and see BLM NEPA Manual, p. 57. The cumulative effects of this lease sale include..... (see EA Chapter 4).

The RMP developed a conservative Reasonable Foreseeable Development (RFD) scenario for oil and gas exploration and development within the EYDO. CBD does not challenge the RFD nor

may it since the RMP ROD was approved in 2008 and is not the subject of this decision-making. In that document, the BLM designated certain public lands open or closed to oil and gas development. From these designated lands, BLM is required by law to hold quarterly lease sales for lands that are nominated for lease. If a parcel is included in a lease sale, and if a successful bid is received or the parcel is eventually sold, no construction is allowed anywhere on that lease until the holder submits an APD. Once an APD is received, BLM may deny it in full, or require modification of it. If BLM ultimately approves an APD, the specific drilling technique that the holder performs remains subject to regulation- federal and/or state.

In this case, the lands that were nominated for sale are lands designated for oil and gas development in the RMP. Upon review of these lands, as explained in the EA, none of the disturbance or impact thresholds identified in the RMP have been reached or surpassed, therefore, BLM considers the continuation of oil and gas leasing within the EYDO viable. EYDO further defined Reasonably Foreseeable Development scenarios as follows:

2.4. Reasonably Foreseeable Development Scenario

A Reasonably Foreseeable Future Development scenario (RFFD) for oil and gas is a long-term projection of oil and gas exploration, development, production, and reclamation activity. The RFFD covers oil and gas activity in a defined area for a specified period of time and provides the basis for the analysis of the environmental effects in Chapter 3 of this document. The RFFD scenario was developed based on past exploration activities and estimates of future exploration and development activity given the potential occurrence of resources (BLM 2007; page 4.18–3).

The RFFD projects a baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation, or executive order. The RFFD provides the mechanism to analyze the effect that discretionary management decisions have on oil and gas activity. The RFFD also provides the basic information that is analyzed in the NEPA document. The RFFD discloses indirect future or potential impacts that could occur once the lands are leased. Prior to any future development, the BLM would require a site-specific NEPA analysis at the exploration and development stages. Fluid mineral development potential in the analysis area is based on RFFD scenario for oil and gas developed in conformance with BLM Instruction Memorandum No. 2004–089 (BLM 2004). This analysis is based largely on the reasonably foreseeable development scenarios presented in detail in the fluid mineral report prepared for the RMP/FEIS (ENSR 2004), available at the Ely District Office. Various additional assumptions have been incorporated based on changes in the mineral markets in the recent past. It is impossible to predict with certainty how resource development would occur in the future. The interaction of prices, markets, technology, and environmental concerns all play a role.

The RFFD for the analysis area is based on the geology, oil and gas development history, oil and gas potential, BLM well data, and data from other EAs for oil and gas leases in eastern Nevada.

The RFFD scenario is made without respect to any existing or proposed leasing stipulations and conditions of approval in accordance with BLM guidance. The Proposed

Action does not include any surface disturbance, such as exploration, development, production, or final reclamation of oil and gas resources. However, the authorization of oil and gas leasing does convey a right to subsequent exploration and production activities subject to stipulations, restrictions from non-discretionary statutes, COAs, and other reasonable measures required to minimize adverse impacts (CFR 3101.1-2). Therefore, this EA would consider possible impacts from potential indirect effects under RFFD scenarios.

Therefore, the level of environmental analysis conducted by EYDO for the Sale is consistent with the NEPA handbook H-1790-1, the purpose and need for the lease sale action, and identifies the direct, indirect, and cumulative effects that are reasonably known to and reasonably foreseeable by the BLM.

CBD also complains that BLM failed to prepare an EIS. However, in accordance with the NEPA Handbook, "Proposed actions are analyzed in an EA if the actions are not categorically excluded, not covered in an existing environmental document, and not normally subject to an EIS." In this case BLM has not categorically excluded oil and gas lease sales from NEPA review, no prior NEPA document completely addresses this specific federal action, and BLM has determined that oil and gas lease sales are not normally subject to an EIS based, in part, on the three step process to oil and gas development that has been and remains BLM's historic approach. While an EA is used to determine if the action would have significant effects, an EIS is required if those identified significant effects cannot be mitigated. An EA may demonstrate that a proposed action would have effects that are significant but could be reduced or avoided through mitigation. *Id.* None of the potential indirect impacts discussed in the EA meets the "context" and "intensity" considerations for significance as defined in the CEQ regulations at 40 CFR 1508.27.

There are no direct impacts from the act of leasing, and CBD has not identified any. The EA does not support the claim that there would be significant impacts from leasing or development, thus automatically requiring an EIS. Based on the geographic location and resources, currently available lease stipulations and lease notices were applied to provide mitigation requirements to minimize potential impacts from leasing.

The BLM does not consider the proposed action to be highly controversial, as courts have consistently specified that disagreement must be with respect to the character of the effects on the quality of the human environment in order to be considered to be "controversial" within the meaning of NEPA, rather than a mere matter of the unpopularity of a proposal. See *Como-Falcon Coalition, Inc. v. U.S. Dept. of Labor*, 609 F.2d 342 (8th Cir. 1978), cert. denied, 446 U.S. 936 ("Mere opposition to federal project does not make project controversial so as to require environmental impact statement.") There is not substantive dispute as to the effects of oil and gas leasing and development in Nevada; within federal agencies, the State of Nevada government agencies, or the scientific community.

In conformance with federal regulation, reasonable mitigation is required to ensure that the proposed operations minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights. The operator "must" conduct operations to minimize adverse effects to

surface and subsurface resources, prevent unnecessary surface disturbance, and conform to currently available technology and best management practices. The operator is responsible for protecting cultural and historic resources, endangered species, and surface resources. The EA discusses the resources present on the parcels and analyzes the potential indirect and cumulative impacts from exploration and development as described in the RFD in Chapters 3 and 4. The EA also includes Appendix E which discusses potential impacts from the use of Hydraulic Fracturing technology as well as potential mitigations which could be implemented. A detailed analysis of the project and site specific impacts from the possible use of Hydraulic Fracturing on a lease which has not been issued and an APD has not been submitted or approved would amount to speculation at the lease stage.

As BLM explains in the EA, the right of the leaseholder to use leased lands is subject to compliance with federal and state statutes and regulations and lease stipulations. If BLM determines impacts are unacceptable once it understands the specific development proposal for a particular lease, appropriate mitigation is required and BLM has the authority to deny the proposal to prevent unnecessary or undue environmental degradation of resources. *See also BLM, Onshore Oil and Gas Order No. 1, Approval of Operations, 72 Fed. Reg. 10308, at 10334 (Mar. 7, 2007) (BLM will...3. Deny the permit if it cannot be approved and the BLM cannot identify any actions that the operator could take that would enable the BLM to issue the permit...).*

In conclusion, the BLM did not violate NEPA process; therefore, the above CBD allegation has been considered, found to be without merit and is dismissed.

1. BLM does not Consider Potential Impacts to Water Resources in Proposed Sale Area

BLM Response:

The EA addressed potential impacts to water resources in Sections 3.3.2 and 4.3.1. The EA analysis determined and CBD does not dispute that there were no significant direct impacts to water resources from the selected alternative for the federal action. The EA also acknowledged that there could be indirect impacts to water resources both surface and subsurface, including water quantity, quality and accessibility from development of these leases. To reduce potential conflicts with water resources from oil and gas leasing, in the EA the EYDO evaluated parcels for significant water resources and based on the analysis of indirect and cumulative impacts from exploration and development (as described in the RFD), applied stipulations and mitigation measures to future activities. Once specific lease development with project details and surface location is proposed, additional project and site-specific NEPA will be conducted to address any new water resource issues and potential impacts specific to the site not addressed at the leasing stage. Furthermore, these activities would be subject to Federal and State laws and regulations, Best Management Practices (BMPs), and Conditions of Approval (COAs).

Potential impacts to water quality and quantity from Hydraulic Fracturing are addressed in the EA and in the referenced Hydraulic Fracturing White Paper. Any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and

regulations including the Clean Water Act, Safe Drinking Water Act, Hazardous Waste regulations, and OSHA regulations.

Therefore, the above CBD protest has been considered, found to be without merit and is dismissed.

2. BLM Has Failed to Take a Hard Look at Impacts to Greater Sage-Grouse Populations and Habitat in the EA

a. BLM's Revised Environmental Assessment Does Not Adequately Consider and Mitigate Impacts to Greater Sage-Grouse

BLM Response:

The BLM conducted a thorough analysis on potential impacts to the greater sage grouse from oil and gas exploration and development in the September 2015 Sage-Grouse RMPA that amended the EYDO's RMP. This amendment defines mitigation and implementation strategies necessary to protect the bird's habitat. EYDO followed these instructions through the leasing process, by attaching stipulations to leases and leasing outside of habitat first before considering leasing within habitat.

Impacts to Greater Sage-Grouse were considered in the EA in sections 3.3.5 and 4.3.4 and in both Best Management Practices for all oil and gas operations and Stipulations applied to parcels within sage-grouse habitat. It is reasonable and sufficient for the BLM to state that the proposed action and alternatives are in conformance with the Sage-Grouse RMPA. Therefore, the above CBD protest has been considered, found to be without merit and is dismissed.

b. The Proposed Lease Sale Does not Comply with the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment (Sage-Grouse ARMPA)

BLM Response:

The BLM NVSO utilized the required prioritization process during the adjudication of the nominated parcels by following a specifically outlined guidance on prioritization implementation listed in the WO IM 2016-143, and adjudicating and parceling nominations outside of sage grouse habitat first before considering leasing within habitat. The BLM conducted a thorough analysis on potential impacts to the greater sage grouse from oil and gas exploration and development in the September 2015 Sage-Grouse RMPA that amended the EYDO's RMP. This amendment set forth maps of habitat types and made allocation decisions for leasable minerals including stipulations and mitigation and implementation strategies necessary to protect the bird's habitat. The BLM NVSO and EYDO followed these instructions through the leasing process, by analyzing the parcels in the EA and determining habitat types present and attaching the prescribed stipulations as set forth in Appendix G of the Sage-Grouse ARMPA to leases in sage grouse habitat.

In conclusion, the proposed action and alternatives are conformance with the Sage-Grouse RMPA, as stated above. Therefore, CBD allegation above is found to be an opinion, without merit, and is dismissed.

3. The Final EA fails to address impacts to springsnails.

BLM Response:

The EA addressed potential impacts to water resources, wildlife and T&E and BLM Sensitive Species, including wildlife dependent on water features in Chapter 3. The EA analysis and FONSI determined that there were no significant impacts to water resources or wildlife from the selected alternative for the federal action. However, there could be indirect impacts to water resources and wildlife from oil and gas development on these leases. To reduce potential conflicts with wildlife habitat and populations from oil and gas leasing, the EYDO evaluated the proposed parcels and analyzed potential exploration and development activities and impacts as described in the RFD and applied stipulations and mitigation measures.

Once specific development is proposed, additional project and site-specific NEPA will be conducted to address any specific wildlife issues and potential impacts specific to the site not addressed at the leasing stage. Furthermore, these activities would be subject to Federal and State laws and regulations, Best Management Practices (BMPs), and Conditions of Approval (COAs).

Therefore, the above CBD protest has been considered, found to be without merit and is dismissed.

4. The Final EA fails to address impacts to desert tortoise.

BLM Response:

The BLM did consider in the EA all of the Threatened and Endangered Species known to be present on the parcels, including Desert tortoise, as well as BLM special status species lists for plants and animals, which includes most if not all of the species referenced by CBD in their protest letter. The BLM engaged the Fish and Wildlife Service in formal Section 7 Consultation and received a Biological Opinion (BO) in the Ely District RMP and Final EIS. The BLM also reinitiated formal Section 7 Consultation in 2017, which resulted in the USFWS issuing a Programmatic Biological Opinion for additional threatened and endangered species not covered in the RMP BO and specifically addressing the impacts on all known T&E species present in the District from oil and gas leasing, exploration, and development including hydraulic fracking. The EA, which tiers to the RMP and Final EIS, states that the BLM can take actions to protect critical habitat for T&E species and BLM sensitive species up to and including not approving actions as submitted, if the action are determined to be detrimental to the continuance of populations (jeopardy). As the EA states a Lease Notice was attached to all 208 parcels to serve the lessee with notice that the lease and any future activities proposed on it is subject to the Endangered Species Act, and any attendant requirements for additional scrutiny, surveys, and potential mitigation to protect the specie(s) and or the specie's habitat. Stipulations and Lease

Notices, like this one, serve a vital role at the leasing stage by putting the BLM, lessee, and the public on notice that developing this lease may be difficult and may require additional mitigation and conformance, or may result in the denial of development as proposed on the lease.

Therefore, the above CBD protest has been considered, found to be without merit and is dismissed.

5. The Final EA fails to address impacts to air quality.

BLM Response:

The BLM took a "hard look" at the environmental consequences of leasing in the EYDO, including the potential indirect and cumulative impacts from exploration and development.

The BLM addressed the potential impacts and environmental consequences to air quality, climate change, and greenhouse gases (GHG) in the EA in section 3.3.1. This analysis included the potential indirect and cumulative impacts from future exploration and development including impacts from vehicle and equipment exhaust, increased particulate matter and dust from earthmoving activities, and potential fugitive gas and emissions from fossil fuel extraction, production, and combustion. The potential impacts to air quality from oil and gas operations in Nevada are extremely low, based on the low amount of current production. If production drastically increases in the future, it could increase the affects to air quality, and additional mitigation at the development stage, derived from analysis may be required.

Additional discussion of the potential impacts to air quality and climate change from Hydraulic Fracturing are addressed in the referenced Hydraulic Fracturing White Paper. Any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Air Act, Hazardous Waste regulations, and OSHA regulations.

Therefore, the above CBD protest has been considered, found to be without merit and is dismissed.

6. The Final EA fails to address impacts to human health and safety.

BLM Response:

The BLM took a "hard look" at the environmental consequences of leasing in the EYDO, including the potential impacts from exploration and development. Chapter 3 of the EA, Affected Environment and Environmental Consequences addresses the elements that must be reviewed in all environmental analyses, as well as other resources deemed appropriate for evaluation. All resources that may be present or affected by leasing were analyzed for potential indirect and cumulative impacts from leasing exploration and development and production. Additional analysis on the effects of Hydraulic Fracturing on Air Quality and Human Health and Safety is provided in Hydraulic Fracturing White Paper. Any subsequent oil and gas

development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Air Act, Hazardous Waste regulations, and OSHA regulations.

Therefore, the above CBD protest has been considered, found to be without merit and is dismissed.

7. The Final EA fails to address impacts to seismicity.

BLM Response:

The BLM took a "hard look" at the environmental consequences of leasing in the EYDO, including the potential impacts from exploration and development. Chapter 3 of the EA, Affected Environment and Environmental Consequences addresses the elements that must be reviewed in all environmental analyses, as well as other resources deemed appropriate for evaluation. All resources that may be present or affected by leasing were analyzed for potential indirect impacts from leasing exploration and development.

Potential impacts to seismicity from Hydraulic Fracturing are addressed in the EA and in the referenced Hydraulic Fracturing White Paper:

A study conducted by the National Academy of Sciences (Induced Seismicity Potential in Energy Technologies, National Academy of Sciences, 2012) studied the issue of induced seismic activity from energy development. As a result of the study, they found that:

- 1. The process of hydraulic fracturing a well as presently implemented for shale gas recovery does not pose a high risk for inducing felt seismic events; and*
- 2. Injection for disposal of waste water derived from energy technologies into the subsurface does pose some risk for induced seismicity, but very few events have been documented over the past several decades relative to the large number of disposal wells in operation.*

Due to the number of unknowns, the potential for induced seismicity cannot be made at the leasing stage. If a parcel is sold and development proposed, additional project and site-specific NEPA will be conducted to address any resource issues and potential impacts specific to the site not addressed at the leasing stage. Furthermore, these activities would be subject to Best Management Practices (BMPs), state and federal regulations, and Conditions of Approval (COAs). Any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Water Act, Safe Drinking Water Act, Hazardous Waste regulations, and OSHA regulations.

Therefore, the above CBD protest has been considered, found to be without merit and is dismissed.

B. BLM Will Violate Section 7 of the Endangered Species Act If It Fails to Consult with the U.S. Fish and Wildlife Service Regarding Impacts to Endangered Species and Critical Habitat.

BLM Response:

The BLM did consider in the EA all of the Threatened and Endangered Species known to be present on the parcels as well as BLM special status species lists for plants and animals. The BLM complied with Section 7 of the Endangered Species Act by engaging the U.S. Fish and Wildlife Service in formal consultation and receiving a Biological Opinion (BO) as part of the Ely District RMP and Final EIS. The BLM also reinitiated formal Section 7 Consultation in 2017, which resulted in the USFWS issuing a Programmatic Biological Opinion for additional threatened and endangered species not covered in the RMP BO and specifically addressing the impacts on all known T&E species present in the District from oil and gas leasing, exploration, and development including hydraulic fracking. The EA, which tiers to the RMP and Final EIS, states that the BLM can take actions to protect critical habitat for T&E species and BLM sensitive species up to and including not approving actions as submitted, if the action are determined to be detrimental to the continuance of populations (jeopardy). As the EA states a Lease Notice was attached to all 208 parcels to serve the lessee with notice that the lease and any future activities proposed on it is subject to the Endangered Species Act, and any attendant requirements for additional scrutiny, surveys, and potential mitigation to protect the specie(s) and or the specie's habitat. Stipulations and Lease Notices, like this one, serve a vital role at the leasing stage by putting the BLM, lessee, and the public on notice that developing this lease may be difficult and may require additional mitigation and conformance, or may result in the denial of development as proposed on the lease.

Therefore, the above CBD protest has been considered, found to be without merit and is dismissed. dismissed.

C. BLM Has Failed to Consider Climate Impacts or Analyze Reasonable Alternatives to Mitigate Those Impacts**BLM Response:**

The BLM addressed the potential impacts and environmental consequences to air quality, climate change, and greenhouse gases (GHG) in the EA in section 3.3.1. This analysis included the potential indirect and cumulative impacts from future exploration and development including impacts from vehicle and equipment exhaust, increased particulate matter and dust from earthmoving activities, and potential fugitive gas and emissions from fossil fuel extraction, production, and combustion. The potential impacts of GHG from oil and gas operations in Nevada are extremely low, based on the low amount of current production as compared to State, National, and Worldwide consumption. If production drastically increases in the future, it could increase the affects from GHG, and additional mitigation derived from project analysis may be required. Additional analysis on the effects of Hydraulic Fracturing on Air Quality and Human Health and Safety is provided in Hydraulic Fracturing White Paper. Any subsequent oil and gas development activities would be subject to all applicable Federal, State, and local laws and regulations including the Clean Air Act, Hazardous Waste regulations, and OSHA regulations.

The EA considered both the proposed action as modified by attached stipulations and mitigation measures, as well as a no leasing alternative to serve as both a baseline for analysis and an

alternative, which could be selected by the BLM if the analysis of the proposed action resulted in unacceptable environmental impacts. A nationwide programmatic review of all oil and gas or fossil fuel leasing actions is beyond the scope of this project.

Therefore, the above CBD protest has been considered, found to be without merit and is dismissed.

1. The Cumulative Effects of Federal Fossil Fuel Leasing and Production Contributes Significantly to Adverse Impacts of Climate Change

BLM Response:

The BLM appreciates CBD's comments and opinion on banning leasing and fracking until a programmatic review is conducted. This request is outside the scope of the proposed action. Therefore, the above CBD comment has been considered, found to be unreasonable and without merit, and is dismissed.

2. BLM Must Consider a Ban on New Oil and Gas Leasing and Fracking in a Programmatic Review and Halt All New Leasing and Fracking in the Meantime

BLM Response:

The BLM appreciates CBD's comments and opinion on banning leasing and fracking until a programmatic review is conducted. This request is outside the scope of the proposed action. Therefore, the above CBD comment has been considered, found to be unreasonable and without merit, and is dismissed.

DECISION

To the extent that CBD has raised any allegations not specifically discussed herein, they have been considered and are found to be without merit. For this reason, and for those previously discussed, CBD's protest of the Sale and the EA is dismissed and all 208 parcels will be offered for sale on December 12, 2017.

APPEAL INFORMATION

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 (enclosed). If an appeal is taken, a notice of appeal and/or request for stay must be filed in writing, on paper, in this office, either by mail or personal delivery within 30 days after the date of service. Notices of appeal and/or request for stay that are electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as timely filed. The notice of appeal is considered filed as of the date our office receives the hard copy and places our BLM date stamp on the document.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) 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 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 (*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 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.

If you have any questions regarding this decision, please contact Brian C. Amme, Deputy State Director, Minerals Division, at (775) 861-6585.



John F. Ruhs
State Director

Enclosure:

1- Form 1842-1

cc:

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