



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Nevada State Office
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Reno, Nevada 89502-7147
<http://www.blm.gov/nv>

FEB 02 2018

In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0013 4712 90

DECISION

The Wilderness Society : Protest of Parcels in the
Juli Slivka, Planning Specialist : December 12, 2017
11050 Pioneer Trail, Suite 202 : Competitive Oil and Gas Lease Sale
Truckee, CA 96161 :

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 Wilderness Society (TWS) and the National Parks Conservation Association (NPCA). TWS and NPCA protested 142 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 policies, 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 was revised October 20, 2017 to further address public comments and concerns and is located 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.

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.⁴ During preparation of the preliminary EA, EYDO notified the public of the proposed action by posting the project on eplanning⁵ 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)⁶, 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 the Proposed 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 gas on the public domain. The public, BLM, or other agencies may nominate parcels for leasing.

⁴ 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.

⁵ 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.

⁶ The Ely RMP/Final Environmental Impact Statement FEIS, approved September 2008.

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 Lease Sale for December 12, 2017*⁷ (Notice), resulting in a total of 208 parcels offered for lease. This protest challenges the EA and 142 of the 208 parcels described in the Notice.

ISSUES

TWS/NPCA’s protest generally alleges that the BLM failed to comply with NEPA, 42 U.S.C. § 4321 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.*

The following addresses TWS/NPCA’s protest related to the Sale. The BLM has reviewed TWS/NPCA’s protest in its entirety; the substantive protests are numbered and provided in bold with BLM responses following.

I. Lands with Wilderness Characteristics

a. BLM has failed to respond to significant new information submitted by the public regarding lands with wilderness characteristics.

BLM Response:

Section 201 of FLPMA requires the BLM to maintain on a continuing basis an inventory of all public lands and their resources and other values, which includes wilderness characteristics. It also provides that the preparation and maintenance of the inventory shall not, of itself, change or

⁷ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

prevent change of the management or use of public lands. The BLM Manual 6310 states “The BLM will determine when it is necessary to update its wilderness characteristics inventory.”

As stated in the EA and in revisions in response to comments:

As stated in Chapter 3.3.13, Table 3.10, BLM Ely District undertook its most recent comprehensive wilderness characteristics inventory as part of the process of updating the RMP. BLM used the FNW inventory to focus on areas they identified, while conducting the agency’s own inventory as required. BLM determined that while 15 units suggested by FNW did overlap wilderness characteristics, eight of the inventory units were found to possess wilderness characteristics on their own merits. The other seven units inherited the outstanding opportunities of adjacent wilderness areas.

Based on the BLM’s most recent comprehensive wilderness characteristics inventory, 2012-2013 inventory data, the BLM has determined that the proposed action and alternatives would not have a significant impact on lands with wilderness characteristics.

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

b. “BLM must defer leasing in lands with wilderness characteristics until management decisions are made for those areas.”

BLM Response:

Section 201 of FLPMA requires the BLM to maintain on a continuing basis an inventory of all public lands and their resources and other values, which includes wilderness characteristics. It also provides that the preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of public lands.

As stated in the EA and in revisions in response to comments:

As stated in Chapter 3.3.13, Table 3.10, BLM Ely District undertook its most recent comprehensive wilderness characteristics inventory as part of the process of updating the RMP. BLM used the FNW inventory to focus on areas they identified, while conducting the agency’s own inventory as required. BLM determined that while 15 units suggested by FNW did overlap wilderness characteristics, eight of the inventory units were found to possess wilderness characteristics on their own merits. The other seven units inherited the outstanding opportunities of adjacent wilderness areas.

Based on the BLM’s most recent comprehensive wilderness characteristics inventory, 2012-2013 inventory data, and the analysis in the EA with respect to the Reasonably Foreseeable Development scenario, the BLM has determined that the proposed action and alternatives would not have a significant impact on lands with wilderness characteristics.

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

c. “BLM has failed to consider alternatives for protecting wilderness resources in the Ely District, in violation of NEPA.”

BLM Response:

The BLM did take a hard look at the specific parcels offered for oil and gas leasing, and the reasonably foreseeable impacts to the resources on these parcels. EYDO did review and perform site-specific analysis on all 208 nominated parcels. After conducting onsite reviews for each parcel, by a team of resource specialists, and disclosing to the public any potential impacts to resources from leasing these lands, EYDO was able to recommend to the State Director, the leasing of 208 of the nominated parcels, in conformance with regulations. BLM does make several references throughout the EA stating that once an APD is submitted, that additional project and site-specific NEPA analysis would be performed in addition to the leasing EA. This should not be misconstrued that the leasing EA is not site-specific. Each parcel is reviewed, scrutinized, and evaluated for any potential impacts, and whether they may directly or indirectly affect resources. If there is scientific evidence that indicates that exploration and development of a particular parcel may have a substantial impact to a resource, it is not recommended for leasing, if no reasonable mitigation is available.

The EYDO considered potential impacts to lands with wilderness characteristics during scoping and preparation of the EA, and in revisions in response to comments on the draft EA.

As stated in the EA and in revisions in response to comments:

As stated in Chapter 3.3.13, Table 3.10, BLM Ely District undertook its most recent comprehensive wilderness characteristics inventory as part of the process of updating the RMP. BLM used the FNW inventory to focus on areas they identified, while conducting the agency's own inventory as required. BLM determined that while 15 units suggested by FNW did overlap wilderness characteristics, eight of the inventory units were found to possess wilderness characteristics on their own merits. The other seven units inherited the outstanding opportunities of adjacent wilderness areas.

Based on the BLM's most recent comprehensive wilderness characteristics inventory, 2012-2013 inventory data, and the analysis in the EA with respect to the Reasonably Foreseeable Development scenario, the BLM has determined that the proposed action and alternatives would not have a significant impact on lands with wilderness characteristics.

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

II. “Great Basin National Park and Basin and Range National Monument.”

BLM Response:

The BLM did analyze potential impacts of specific parcels offered for oil and gas leasing to Great Basin National Park and Basin and Range National Monument during preparation of the EA. As stated in Chapter 1.1 and Chapter 3.3.8 of the EA and in revisions in response to comments, the EYDO determined that none of the proposed lease parcels are located within the Basin and Range National Monument and Great Basin National Park.

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

- a. **“BLM did not take a “hard look” at the impacts of its proposed action on National Park Service and National Conservation Lands units.”**

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.

The BLM did take a hard look at the potential impacts of the proposed action and specific parcels offered for oil and gas leasing to Great Basin National Park and Basin and Range National Monument during preparation of the EA. As stated in the EA and in revisions in response to comments:

As stated in Chapter 1.1 and Chapter 3.3.8, EYDO the lease of oil and gas parcels does not entail ground disturbing activities as part of the undertaking.

TWS/NPCA 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 TWS/NPCA defines is not the federal action under consideration in the EA. TWS/NPCA alleges that the EA tiers to the Ely District Resource Management Plan, (RMP) and Sage-Grouse Amendment (2008, 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, TWS/NPCA alleges that BLM failed to take a hard look at impacts on National Park Service and National Conservation Lands including water resources, air quality, climate change, human health and safety, seismicity, and sensitive species of plants and wildlife.

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. 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.

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

b. “The EA fails to explore light, noise and visual impacts on Great Basin National Park and Basin and Range National Monument”

BLM Response:

The BLM did explore light, noise and visual impacts of the proposed action on Great Basin National Park and Basin and Range National Monument during preparation of the EA. As stated in the EA and in revisions in response to comments:

As stated in Chapter 1.1 and Chapter 3.3.8, EYDO The lease of oil and gas parcels does not entail ground disturbing activities as part of the undertaking and therefore, EYDO determined that none of the proposed lease parcels are located within the Basin and Range National Monument and Great Basin National Park.

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

c. “The EA fails to explore cumulative impacts of the proposed action on tourism and visitation on Great Basin National Park and Basin and Range National Monument”

BLM Response:

The BLM did review cumulative impacts of the proposed action on Great Basin National Park and Basin and Range National Monument during preparation of the EA, including analysis of the impacts (direct, indirect, and cumulative) from development as described in the reasonably foreseeable development scenario.

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).

As stated in the EA and in revisions in response to comments:

In addition, as stated in Chapter 4.3, for the purpose of this EA, only indirect impacts are discussed in this section. Direct incremental cumulative impacts from a potentially proposed oil well would be analyzed during the APD review process. There are no cumulative impacts from leasing. The following is a discussion of cumulative impacts resulting from potential future development.

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

III. “The EA is not consistent with the Nevada and NE California Greater Sage-Grouse Approved RMP Amendment, as required by FLPMA.”

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 defines 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 and leasing outside of habitat first before considering leasing within habitat in sage grouse habitat.

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

IV. "No Reasonable belief Lease Sale parcels will be developed."

- a. "The EA lacks "reasonable assurance" that the proposed parcels "are known or believed to contain oil or gas deposits."**

BLM Response:

The BLM is required by law under the Mineral Leasing Act of 1920, as amended, and under the regulations at 43 CFR 3100 to consider leasing areas that have been nominated for lease, if leasing is in conformance the BLM Land Use Plan (LUP). Each BLM state office is required by regulations to hold quarterly sales if lands are available for competitive leasing, 43 CFR 3120.1-2(a).

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

- b. "The proposed action conflicts with FLPMA's multiple-use and unnecessary and undue degradation mandates, while also improperly limiting the range of alternatives."**

BLM Response:

The BLM is directed by FLPMA to manage the public lands and resources to meet the goals of multiple use and sustained yield. The BLM is also mandated by the FLPMA to prevent unnecessary and undue degradation of the public lands and the Department of the Interior's regulations at 43 CFR §3160 defines a wide array of rules which govern the conduct of Onshore Oil and Gas operations. This lease sale and any future oil and gas exploration or development activities which result from it would be carried out in accordance with all applicable federal, state, and local laws including the Mineral Leasing Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Endangered Species Act, Hazardous Waste regulations, and OSHA regulations.

Next, the BLM analyzed the potential impacts from leasing and development within the district in preparing the Resource Management Plans for Ely planning areas and of the specific parcels nominated in this EA. Through that analysis and other programmatic and regional analyses the BLM has created and applied appropriate stipulations, and design features to manage development of the public lands without undue risk of environmental degradation. In addition,

the MLA requires that all leases require a lessee to use reasonable precaution to prevent waste. The terms and conditions contained in the BLM standard lease form, Form 3100-11, require that the lessee conduct operations to prevent waste of resources. Sections 4 and 6 of Form 3100-11 require that a lessee use “reasonable diligence in developing and producing, and must prevent unnecessary damage to, loss of, or waste of leased resources” and require that a lessee “operate in a manner that minimizes adverse impacts” to public land resources.⁸ Thus, the BLM satisfies the requirements in the MLA (30 U.S.C. § 225) at lease issuance within the terms and conditions contained in Form 3100-11:

Sec. 4. Diligence, rate of development, unitization, and drainage – Lessee must exercise reasonable diligence in developing, producing, and must prevent unnecessary damage to, loss of, or waste of leased resources.

Sec. 6. Conduct of operations – Lessee must conduct operations in a manner that minimizes adverse impacts to the land air, and water, to cultural, biological, visual, and other resources, and to other land use or users. Lessee must take reasonable measures deemed necessary by lessor to accomplish the intent of this section. To the extent consistent with lease rights granted, such measures may include, but not limited to, modification to siting design of facilities, timing of operations, and specification of interim and final reclamation measures. . . ”

In conclusion, the BLM permits responsible development of the public lands in accordance with Federal, State, and local laws and regulation. The BLM does not permit any activity that would cause unnecessary or undue degradation of public lands. Therefore, the above TWS/NPCA protest has been considered, found to be without merit and is dismissed.

DECISION

To the extent that TWS/NPCA 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, TWS/NPCA’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

⁸ See *Center for Biological Diversity v. Bureau of Land Management*, 937 F. Supp. 2d 1140 (N.D. Cal 2013).

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 (electronic):

WO310 (L. Trimble)
NVL0000 (P. McFadden)
NVL0300 (H. Konwin)
NVL0100 (M. Seal)
NV0920 (B. Amme)
NV0922 (A. Jensen, J. Menghini, F. Pitones)