



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Nevada State Office
1340 Financial Boulevard
Reno, Nevada 89502-7147
<http://www.blm.gov/nv>

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In Reply Refer To:
3100 (NV920)

CERTIFIED MAIL 9171 9690 0935 0013 4713 06

DECISION

WildEarth Guardians : Protest of Parcels in the
Jeremy Nichols, Climate & Energy Director : December 12, 2017
2590 Walnut Street : Competitive Oil and Gas Lease Sale
Denver, CO 80205 :

Protest Dismissed Parcels Offered For Sale

On November 13, 2017, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest from WildEarth Guardians (Guardians). Guardians is protesting all of the 208 parcels scheduled to be offered at the December 12, 2017 Competitive Oil and Gas Lease Sale (the Sale) and the Ely District Office's (EYDO) Oil and Gas Lease Sale Environmental Assessment (EA), DOI-BLM-NV-L030-2017-0021-EA.¹

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 adjudication² of the nominated parcels, the NVSO screened each parcel to determine compliance with national and state BLM policies, including BLM's efforts related to the management of Greater Sage Grouse on public lands.

On May 3, 2017, the NVSO sent a preliminary parcel list to the EYDO for review. This review included interdisciplinary team review by BLM specialists, field visits to nominated parcels (where appropriate), review of conformance with the Land Use Plans, and preparation of an EA documenting National Environmental Policy Act (NEPA) compliance.³ The EYDO's

¹ 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>

² 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 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.

³ 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

preliminary EA was made available for a period of public review from August 18, 2017, through September 18, 2017.

The EA tiered to the existing Land Use Plan (LUP)⁴, 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 BLM described its purpose and need for the December 12, 2017 Lease Sale in its 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.

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.

On October 13, 2017, the NVSO published a *Notice of Competitive Oil and Gas Lease Sale for December 12, 2017*⁵ (Notice), resulting in a total of 208 parcels offered for lease. This protest challenges the EA and all of the 208 parcels described in the Notice.

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.

⁴ The Ely RMP/Final Environmental Impact Statement FEIS, approved September 2008.

⁵ The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

ISSUES

Guardians' protest generally alleges that the BLM failed to comply with the NEPA 42 U.S.C. § 4321 *et seq.*, the Minerals Leasing Act of 1920, as amended (MLA), 30 U.S.C. § 181 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.* The following addresses the Guardians' protest related to the Sale.

The BLM has reviewed the Guardians' protest in its entirety; the substantive protests are numbered and provided in bold with BLM responses following.

I. The Proposed Leasing Violates the Mineral Leasing Act.

Guardians protests that the BLM violated its own statutory requirements for oil and gas leasing which only allows leasing where there is known or believed to be oil and 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). The BLM makes allocation decisions regarding opening or closing lands to fluid minerals leasing and creating and applying stipulations through the land use planning process and the Districts' RMPs. The proposed lease sale is in conformance with the Ely District RMP, and the EA tiers to the Ely District RMP FEIS.

In conclusion, the BLM did comply with the Mineral Leasing Act and conducted the required NEPA review, as stated above. Therefore, the above Guardians' protest has been considered, found to be without merit and is dismissed.

DECISION

To the extent that Guardians 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, Guardians' 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 (electronic):

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