

Fax

TO: Bureau of Land Management

FROM: Mary Greene

COMPANY:

COMPANY: National Wildlife Federation

FAX: 7758616745

FAX:

SUBJECT: Protest of March 2020 Lease Sale

DATE: Friday, February 14, 2020

Please find attached a copy of the National Wildlife Federation's and the Nevada Wildlife Federation's protest of Nevada's March 2020 oil and gas lease sale.

February 14, 2020

Bureau of Land Management
Battle Mountain District, Tonopah Field Office
50 Bastian Rd.
Battle Mountain, NV 89820
(775) 482-7801

Re: Protest of Battle Mountain District Environmental Assessment for the March 2020 Oil and Gas Lease Sale DOI-BLM-NV-B000-2020-0001-EA

To whom it may concern:

Please accept this protest of the above oil and natural gas lease sale that is filed by the National Wildlife Federation (NWF) and the Nevada Wildlife Federation (NvWF). This protest is filed pursuant to the provisions at 43 C.F.R. § 3129.1-3. In this lease sale, the Bureau of Land Management is proposing to sell 45 parcels containing 73,591.117 acres in the State of Nevada. See Lease Sale Notice at 1. NWF and NvWF Federation commented on the draft Environmental Assessments for the Battle Mountain district.

The National Wildlife Federation, one of America's largest conservation organizations, has worked across the country to unite Americans from all walks of life in giving wildlife a voice for over eighty years. NWF has 51 state and territorial affiliates and more than 6 million members and supporters, including hunters, anglers, gardeners, birders, hikers, campers, paddlers, and other outdoor enthusiasts. NWF programs work to protect the 600 million acres of public lands owned by all Americans and has a longstanding interest in ensuring these lands are managed properly for fish, wildlife, and communities.

The Nevada Wildlife Federation is the oldest statewide conservation organization dedicated to sustaining Nevada's wildlife through conservation and education. Since 1951, the Nevada Wildlife Federation has fought to defend American public lands and the sagebrush steppe ecosystem, ensure responsible management of Nevada's water, and advocated for habitat restoration and collaboratively-developed conservation policy solutions.

I. Statement of Interest.

We have a number of concerns with the lease sale including leasing in low potential lands and in big-game migration corridors and critical habitat. In addition, the environmental analysis fails to satisfy the basic requirements of the National Environmental Policy Act (NEPA) by failing to take a hard look at the full range of direct, indirect and cumulative environmental impacts that will result from reasonably foreseeable development on the parcels.

II. Parcels Protested

We are protesting all 45 parcels offered in this lease sale
NVN 099509 NV-2020-03-6672 NVN 099510 NV-2020-03-5732

NVN 099511	NV-2020-03-5733	NVN 099533	NV-2020-03-5581
NVN 099512	NV-2020-03-5742	NVN 099534	NV-2020-03-5596
NVN 099513	NV-2020-03-5745	NVN 099535	NV-2020-03-5602
NVN 099514	NV-2020-03-5748	NVN 099536	NV-2020-03-5613
NVN 099515	NV-2020-03-5752	NVN 099537	NV-2020-03-5616
NVN 099516	NV-2020-03-5756	NVN 099538	NV-2020-03-5619
NVN 099517	NV-2020-03-5759	NVN 099539	NV-2020-03-5622
NVN 099518	NV-2020-03-5762	NVN 099540	NV-2020-03-5625
NVN 099519	NV-2020-03-5766	NVN 099541	NV-2020-03-5628
NVN 099520	NV-2020-03-5770	NVN 099542	NV-2020-03-5631
NVN 099521	NV-2020-03-5773	NVN 099543	NV-2020-03-5650
NVN 099522	NV-2020-03-5694	NVN 099544	NV-2020-03-5663
NVN 099523	NV-2020-03-5696	NVN 099545	NV-2020-03-5665
NVN 099524	NV-2020-03-5699	NVN 099546	NV-2020-03-5714
NVN 099525	NV-2020-03-5702	NVN 099547	NV-2020-03-5715
NVN 099526	NV-2020-03-5675	NVN 099548	NV-2020-03-5719
NVN 099527	NV-2020-03-5681	NVN 099549	NV-2020-03-5726
NVN 099528	NV-2020-03-5685	NVN 099550	NV-2020-03-5642
NVN 099529	NV-2020-03-5688	NVN 099551	NV-2020-03-5644
NVN 099530	NV-2020-03-5691	NVN 099552	NV-2020-03-5637
NVN 099531	NV-2020-03-5573	NVN 099553	NV-2020-03-5639
NVN 099532	NV-2020-03-5578		

III. By leasing in low potential lands, BLM is not complying with its multiple use mandate under the Federal Lands Management Act.

As we stated in our comments, BLM should not lease parcels in low potential lands. *See* NWF NvWF comments submitted on November 20, 2019 (Comments). Leasing in low potential areas leads to very low bid rates, allowing BLM to subsequently lease the vast majority of the acreage through a non-competitive process. This practice is unfair to taxpayers, and violates the multiple use mandate under the Federal Lands Policy Management Act (FLPMA) 43 U.S.C. § 1732 and the requirement to lease lands that “are known or believed to contain oil or gas deposits” 30 U.S.C. § 226(a). This practice locks up lands for oil and gas leasing, precluding active management for purposes that may more accurately reflect their value, such as conservation or recreation. BLM failed to provide any response to our comments regarding the problems with leasing in no to low potential lands. It is thereby failing to explain how it is meeting its multiple use mandate under FLPMA. Nor did it provide a justification as to why it believes it can continue to lease lands throughout Nevada that have little likelihood, if any, of having oil and gas lease deposits.

I. BLM has not complied with the National Environmental Policy Act.

In this lease sale, BLM is proposing to offer parcels in bighorn sheep and mule deer habitat. BLM has not conducted a sufficient analysis of the potential impacts of leasing on wildlife to justify leasing in corridors and habitat.

- a. BLM has failed to take the necessary “hard look” at potential environmental impacts on big-game.

As we stated in our comments, BLM has not taken the required “hard look” at potential environmental impacts. Under NEPA, BLM must evaluate the “reasonably foreseeable” site-specific impacts of oil and gas leasing, prior to making an “irretrievable commitment of resources.” *New Mexico ex rel. Richardson*, 565 F.3d at 718; *see also Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (agencies are to perform hard look NEPA analysis “before committing themselves irretrievably to a given course of action so that the action can be shaped to account for environmental values”); *Sierra Club v. Peterson*, 717 F.2d 1409, 1411 (D.C. Cir. 1983) ([o]n land leased without a No Surface Occupancy Stipulation the Department cannot deny the permit to drill; it can only impose ‘reasonable’ conditions which are designed to mitigate the environmental impacts of the drilling operations.). Courts have held that BLM makes such a commitment when it issues an oil and gas lease without reserving the right to later prohibit development. *New Mexico ex rel. Richardson*, 565 F.3d at 718. In this sale, BLM is in fact making an “irretrievable commitment of resources” by offering leases without reserving the right to prevent all future development.

In response to our comments, BLM stated, “Leasing does not preclude other uses, such as renewable energy, exploration for other minerals, wildlife habitat management, etc. Any future exploration or development activity is required to comply with all applicable Federal, State, and local laws and regulations. Potential resource conflicts are addressed by stipulations and lease notices and by additional project and site-specific NEPA analysis when a project is proposed.” *See* supplemental EA. This statement fails to acknowledge the argument that because leasing represents and “irretrievable commitment of resources” analysis must be conducted at the *lease sale* stage and *not* at the site-specific stage.

- II. Lease Notices and timing limitation stipulations do not sufficiently protect mule deer migratory corridors

As we stated in our comments, we are particularly concerned about the parcels in big-game habitat that contain no stipulations, but only lease sale notices. These notices are insufficiently protective, given that they explicitly have no legal consequences. According to BLM regulations, an information notice only exists to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations. *See* 43 C.F.R. § 3101.1-3.

In response to our comment BLM stated “The mule deer migration corridor lease notice (#NV-B-02-B-LN) notifies prospective lessees. *See* supplemental EA. This can quite simply not be seen as an adequate response as it entirely fails to respond to our comment that lease notices do not sufficiently protect migration corridors. Rather the response simply reiterates that a lease notice is in place. The BLM further states “If and when a project is proposed, BLM would invite and consult with NDOW and USFWS to identify specific conditions that would be incorporated

into the project to protect important migration corridors and key habitat.” *See* supplemental EA. This provides no clarification as to how migration corridors will be protected, especially given that appropriate stipulations will not be in place at the time of the lease sale.

I. Conclusion

Thank you for taking into consideration this protest filed by the Nevada Wildlife Federation and the National Wildlife Federation.

Sincerely,

Robert Gaudet

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