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The Coalition To Protect America's National Parks

Voices of Experience

ELECTRONIC SUBMISSION – NO HARD COPY TO FOLLOW

July 30, 2018

Bob Ballard
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Subject: Comments on “3120 (NM92200)”: Final Sale Notice for September 2018
Competitive Oil and Gas Internet-Based Lease Sale, issued July 23, 2018

Dear Mr. Ballard:

I am writing to you on behalf of over 1,500 members of the Coalition to Protect America's National Parks (Coalition). Our membership is composed entirely of retired, former, or current salaried employees of the National Park Service (NPS). As a group, we collectively represent more than 35,000 years of national park management experience. The Coalition studies, educates, speaks, and acts for the preservation of America's National Park System.

A number of Coalition members have worked during their careers at Carlsbad Caverns National Park (park). As a group, we are very concerned that the Bureau of Land Management's (BLM's) planned September 2018 Competitive Oil and Gas Lease Sale could have significant adverse impacts on the park's resources and values. We therefore submit comments on the Final Sale Notice.

BACKGROUND

As context for our comments, we provide the following information regarding the “significance” of Carlsbad Caverns National Park:

On October 25, 1923, President Calvin Coolidge signed a proclamation¹ creating Carlsbad Cave National Monument to protect Carlsbad Cavern, “a limestone cavern of extraordinary proportions and of unusual beauty and variety of natural decoration; ... beyond the spacious chambers that have been explored, other vast chambers of unknown character and dimensions exist.” In 1930, the monument was designated as Carlsbad Caverns National Park by act of Congress. Today, the park encompasses over 46,000 acres, with over 120 known caves, including Lechuguilla Cave, one of the longest caves in the world and one of the

¹ https://www.nps.gov/cave/learn/historyculture/leg_carlsbad_cave_nm.htm

deepest in North America. In addition to its many caves, the park contains one of the few protected portions of the northern Chihuahuan Desert ecosystem. Much of the park’s backcountry – over 33,000 rugged acres – was designated Wilderness in 1978 for its outstanding opportunities for solitude and primitive recreation.

In 1995, the park was designated by UNESCO as a World Heritage Site. As described in its World Heritage Nomination:

The large rooms in Carlsbad Cavern make this cave unique amongst other known and accessible caves throughout the world. Lechuguilla Cave contains the world's largest and most extensive accumulations of gypsum chandelier speleothems, many of which measure over 6m long and hang from the ceiling in large transparent selenite crystals. The cave also holds the world's largest accumulation of hydromagnesite balloons, subaqueous helictites, aragonite "Christmas Trees" and in-cave elemental sulphur and has an abundance of other calcite and gypsum formations.”

Although Carlsbad Caverns is famous for its caves, it also protects scattered woodlands and Chihuahuan Desert grassland and shrubland habitats. Freshwater riparian areas are the most threatened resource in the Chihuahuan Desert. Carlsbad Caverns NP includes Rattlesnake Springs, a rare desert wooded riparian area known for the diversity of plant and animal life found there, including migratory birds. The park is also home to 940 plant species from 95 families, 5 species of fish, 70 different species of reptiles and amphibians, 68 species of mammals (including 17 bat species) and 365 species of birds. Between 300,000 – 400,000 Brazilian free-tailed bats call Carlsbad Caverns home during the summertime, with populations recorded as high as over 1,000,000.²

INTRODUCTION

BLM has considered 173 parcels (totaling 75,248.89 acres) that were proposed for leasing in Chaves, Eddy, or Lea Counties. As described in the Final Sale Notice, BLM would offer leases, with associated stipulations, on 142 of those parcels (totaling 50,796.88 acres). The remaining 31 parcels (24,452.01 acres) would be deferred in order to complete additional analysis and coordination. A number of the deferred parcels are thought to be connected to City of Carlsbad’s primary drinking water supply, the Capitan Aquifer, by way of a permeable cave and karst system. The remaining parcels proposed for deferral are located on cave or karst features and or lie within a mile of Carlsbad Cavern National Park (CCNP).

The 31 parcels identified for deferral are as follows:

Parcel Number	Acreage	Parcel Number (continued)	Acreage (continued)
20	1,360.000	44	600.000
21	1,674.930	45	680.000
22	1,465.050	46	1,375.330
23	155.030	49	800.000
24	1,520.960	50	1,271.920
25	408.880	51	161.440
26	94.640	52	800.200
34	1,773.780	53	250.600
35	1,320.000	55	360.340
37	640.960	56	893.920
38	600.000	57	640.000

² <https://science.nature.nps.gov/im/units/chdn/parks/cave.cfm>

39	927.150	58	445.910
40	630.450	73	640.800
41	1,159.410	74	40.310 42
42	560.000	75	400.000
43	800.000		

COMMENTS

1) We strongly support the deferral of the 31 parcels listed above – These parcels should NOT be considered for leasing until BLM has conducted a more thorough analysis of potential impacts to national park resources and values and to the water supply for the City of Carlsbad, New Mexico. Such analysis should include the completion of the pending Carlsbad Resources Management Plan (RMP) revision and environmental impact statement (EIS), which is anticipated in 2019. However, depending upon to what extent the RMP/EIS actually considers potential impacts to those NPS and City resources, additional analysis may be needed.

2) The brevity or complete lack of public comment opportunities for the September 2018 lease sale documents is unreasonable and violates the intent and spirit of the National Environmental Policy Act (NEPA) – As described on the BLM *eplanning* website for the project³, BLM accepted public comments during a 10-day scoping period held April 9-20, 2018. However, the only information BLM provided to the public at that time was a simple list of parcels and their location coordinates. There was no information provided about possible development scenarios, production potential, or potential standard stipulations for those parcels – all information that was presumably available at the time of scoping. Now, the Final Sale Notice allows a 10-day public comment opportunity and protest period. However, in contrast, there is no public comment opportunity on the NEPA document, an environmental assessment (EA) that analyzes potential impacts associated with the Final Sale Notice.

The lack of comment opportunity on the EA is problematic, as the EA has a numerous shortcomings that would clearly benefit from the feedback received from public comment. Furthermore, the other limited public comment opportunities for this lease sale process are significantly inconsistent with the past precedent of 30-day public review for ALL previous lease sale proposal EAs issued by BLM in New Mexico during the past five years⁴, including the most recent lease sales in December 2017, March 2018, and June 2018. Furthermore, when Secretary of the Interior Ryan Zinke was questioned at a Senate Appropriations Subcommittee hearing by New Mexico Senator Tom Udall in May 2018 about the lack of public comment opportunity, the Secretary responded, “Public land deserves public input.”⁵ Despite the Secretary’s “commitment,” BLM has allowed NO public comment on the EA.

We understand that on January 31, 2018, the Administration issued BLM Instruction Memorandum (IM) No. 2018-034, titled “Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews.”⁶ Section B.5 of the IM states: “Public Participation: State and field offices may provide for public participation during the NEPA process (*emphasis added*) as part of the review of parcels identified for potential leasing.” It appears that BLM New Mexico has interpreted this guidance to mean that a 10-day scoping period, but no comment period on the EA, is sufficient public participation in its NEPA review of

³ <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=103545&dcmlId=0b0003e8810e55ef>

⁴ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/new-mexico>

⁵ <https://www.tomudall.senate.gov/news/press-releases/video-udall-secures-commitment-from-zinke-to-improve-public-input-process-for-leasing-public-land>

⁶ <https://www.blm.gov/policy/im-2018-034>

the proposed leasing. We strenuously object to this flawed interpretation and radical revision of longstanding NEPA practices. Limiting public comment to a list of 173 parcels, with no information whatsoever about potential resource impacts or use stipulations, is NOT REASONABLE or sufficient public participation. All future BLM lease sale EAs should include real opportunities for public comment.

Furthermore, the Council on Environmental Quality (CEQ) publication, “A Citizen’s Guide to the NEPA,”⁷ clearly stresses the importance of “having your voice heard.” The guide states, in part (*emphasis added to underlined sections*):

The environmental review process under NEPA provides an opportunity for you [*the citizen*] to be involved in the Federal agency decisionmaking process. It will help you understand what the Federal agency is proposing, to offer your thoughts on alternative ways for the agency to accomplish what it is proposing, and to offer your comments on the agency’s analysis of the environmental effects of the proposed action and possible mitigation of potential harmful effects of such actions. NEPA requires Federal agencies to consider environmental effects that include, among others, impacts on social, cultural, and economic resources, as well as natural resources. Citizens often have valuable information about places and resources that they value and the potential environmental, social, and economic effects that proposed federal actions may have on those places and resources. NEPA’s requirements provide you the means to work with the agencies so they can take your information into account.

In general, our experience has been that abbreviating the NEPA process often leads to errors and omissions that compromise the quality and validity of a NEPA document and increase the likelihood of legal challenge to the resulting management decision. We simply cannot imagine making a potentially controversial management decision, such as an oil and gas lease sale near a national park, without providing the public with a reasonable opportunity to comment on the environmental analysis of our proposed action. Yet that is exactly what BLM has done in this case. We request that BLM provide a written explanation for its decision to not allow public comment on the EA; and urge you to restore reasonable public comment opportunities during future planning processes.

3) There are numerous shortcomings in the environmental assessment (EA) for the Final Sale Notice, which we will summarize below:

- A. Section 1.4 of the EA fails to provide the full context of the Federal Land Policy and Management Act of 1976 (FLPMA) as the authority under which BLM manages and protects resources and values on public lands. Section 1701(a)(8) of the Act states: “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.” The limited description BLM provides of FLPMA in this section of the EA makes it sound as if the primary purpose of FLPMA is to authorize mineral extraction on public lands, which we know is not the case. FLPMA is clearly a “multiple use mandate” that stresses conservation of resources on public lands, while allowing mineral extraction as well as some other consumptive uses.
- B. The EA fails to consider the statutory requirements for the protection of resources and values within Carlsbad Caverns National Park under the NPS Organic Act’s “conservation mandate” (in contrast to BLM’s “multiple use mandate”). This Act established the fundamental purpose of units

⁷ https://ceq.doe.gov/docs/get-involved/Citizens_Guide_Dec07.pdf

of the National Park System, which is “to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations” (54 USC § 100101(a)). Furthermore, courts have consistently interpreted the Organic Act as giving conservation priority over use such that “when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant” (NPS Management Policies 2006 §1.4.3). Given the substantial statutory protections provided to park resources and values under the NPS Organic Act, we believe protection of park resources merits due consideration and potential impacts to them should be analyzed in the EA. Sadly, such is not the case.

C. The EA is tiered off of outdated Resource Management Plans (RMPs), specifically the 1988 Carlsbad RMP⁸ and a subsequent 1997 RMP Amendment⁹.

- These RMPs did not contemplate advances in oil and gas extraction technologies, including the widespread use of hydraulic fracking and directional drilling. Fracking, in particular, was a relatively uncommon technology in 1997, but is now commonly used and the adverse impacts are well documented.
- The RMPs did not consider the 1993 Report of the Carlsbad Caverns Geology Panel to the National Park Service¹⁰, which was prepared by a panel of geologists familiar with caves and karst geology in the Carlsbad region. While dated, the report documented that at least 61 wells drilled near the park penetrated voids or lost circulation zones in the Capitan Goat Seep formations suggesting that unexplored cave passages have been intersected during drilling. Because of probable interconnections with park caves, resources inside the park could be at risk of contamination from toxic and flammable gases and other substances associated with exploration or extraction of oil and gas. The panel’s principal conclusion is that there is no way to protect the cave resources of Carlsbad Cavern National Park without establishing a cave protection zone along the northern boundary.
- The RMPs did not consider the 1996 General Management Plan¹¹ (GMP) for Carlsbad Caverns National Park, which identifies NPS protection priorities and describes a variety of concerns about oil and gas development in the vicinity of the park.
- The RMPs did not consider the 2006 Carlsbad Caverns NP Cave and Karst Management Plan and FONSI¹² (“cave plan”), which provides guidance to protect, restore, and perpetuate natural cave and karst systems and processes; and prevent major impacts or impairment to park resources. NPS concerns about oil and gas development near the park are clearly stated in this cave plan.
- The RMPs did not anticipate the significant and ongoing increase(s) in the size of the surveyed portion(s) of Lechuguilla Cave that have occurred since the 1997 RMP Amendment. The known size of the cave has increased over 40% since the RMP Amendment was completed^{13, 14}. And the total extent of the cave is still “not fully discovered.”

⁸ [https://eplanning.blm.gov/epl-front-office/projects/lup/644444/97039/117201/PDO - CFO - 1988 - Carlsbad RMP.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/644444/97039/117201/PDO_-_CFO_-_1988_-_Carlsbad_RMP.pdf)

⁹ [https://eplanning.blm.gov/epl-front-office/projects/lup/644444/97041/117203/PDO - CFO - 1997 - Carlsbad RMP Amendment and ROD.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/644444/97041/117203/PDO_-_CFO_-_1997_-_Carlsbad_RMP_Amendment_and_ROD.pdf)

¹⁰ Report of the Guadalupe Caverns Geology Panel to the National Park Service (NPS 1993)

¹¹ https://books.google.com/books?id=HeM3AQAAMAAJ&pg=PA162&lpg=PA162&dq=1996+general+management+plan+for+carlsbad+caverns+national+park&source=bl&ots=CbZUeBel5X&sig=fYCctPo2W_sjlmaLcpUiToY7UMI&hl=en&sa=X&ved=0ahUKUkwj4m860kPnaAhXlmuAKHRUQBn4Q6AEITjAJ#v=onepage&q=1996%20general%20management%20plan%20for%20carlsbad%20caverns%20national%20park&f=false

¹² <https://parkplanning.nps.gov/document.cfm?parkID=39&projectID=12744&documentID=19677>

¹³ http://www.igme.es/boletin/2016/127_1/BG_127-1_Art-8.pdf

- Lastly, the outdated RMPs did not contemplate the significant growth in the economic value of recreation and tourism in southeastern New Mexico that has occurred since 1997. For example, in 2017 Carlsbad Cavern NP received 520,000 park visitors who spent an estimated \$32.7 million in local gateway regions while visiting the park. These expenditures supported a total of 458 jobs, \$11.5 million in labor income, \$19.6 million in value added, and \$36.2 million in total economic output in local gateway economies surrounding Carlsbad Caverns National Park (NPS data¹⁵). The lack of socioeconomic information and analysis in the outdated RMPs and in the current EA provides further evidence that the RMPs are an inadequate basis in 2018 for evaluating potential economic impacts of leasing parcels in close proximity to the park.
- D. Perhaps even more telling than the above shortcomings, which are considerable, the BLM has long recognized the need to replace the outdated RMPs, too. For example, in 2010 a formal land use plan evaluation for the Carlsbad planning area found that activities related to mineral extractive uses would continue to increase in the Permian Basin; an RMP revision is needed to examine and more fully develop new decisions and guidance for other resources in response to changing land use conditions, taking into account new technology, such as horizontal drilling methods; and subsequent changes in resource demands in the planning area have resulted in the need to update the existing RMP through a plan revision and associated EIS. The 2010 evaluation was followed by a 2014 Analysis of the Management Situation for the Carlsbad Field Office¹⁶ that also identified a number of key shortcomings in the outdated RMPs. As a result, BLM is in the process of preparing a new RMP revision and environmental impact statement (RMP/EIS) that will reportedly¹⁷ be released for public comment in May 2018.

5) BLM improperly “segments” the project – It appears to be common practice for BLM to evaluate the environmental impacts of “leasing” (i.e., issuing a piece of paper) in isolation of the much more significant impacts that would logically ensue once an Application for Permit to Drill (APD) has been filed and “development” and “operations” begin. This intentional separation of individual steps in an inter-connected sequential process is extremely problematic from a National Environmental Policy Act (NEPA) perspective. It appears to be “improper segmentation” of the “project” and fails to evaluate reasonably foreseeable “connected actions” (i.e., leasing, development, and operations) that are closely related, cannot or will not proceed unless other actions are taken previously or simultaneously, and are interdependent parts of a larger action. (40 CFR § 1508.25). When an agency intentionally attempts to circumvent NEPA by dividing a federal action into smaller components in order to allow those smaller components to avoid studying the overall impacts of the single project then “improper segmentation” has occurred. (*O’Reilly v. U.S. Army Corp. Engineers*, 950 F.2d 1129, 5th Cir. 2007)

Preparing an environmental impact analysis (e.g., an EA) for just leasing and then preparing a later analysis (e.g., another EA or an EIS) for development – by definition, segmenting the project – is a particular concern with regard to specially protected resource areas such as Carlsbad Caverns National Park. Once a lease is issued, a contractual expectation is established that the lessee will, in fact, be able to develop the site, subject to certain conditions. However, at that point, “avoidance” of impacts is no longer an option, leaving only a lesser range of measures to “reduce” impacts. For any future lease sales of parcels in the vicinity of the national park, we believe BLM should fully analyze the impacts of both leasing and development in the same NEPA document to determine if leasing is the highest and best use of the parcels.

¹⁴ <https://www.nps.gov/cave/learn/news/presskit.htm>

¹⁵ <https://www.nps.gov/subjects/socialscience/vse.htm>

¹⁶ https://eplanning.blm.gov/epl-front-office/projects/lup/64444/77501/86227/AMS_Compiled.pdf

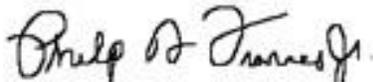
¹⁷ <https://www.blm.gov/programs/planning-and-nepa/plans-in-development/new-mexico/carlsbad-rmp>

CLOSING COMMENT

We fully support BLM's decision to defer leasing of the 31 parcels identified earlier in our comments. BLM should wait until it has completed the pending RMP revision and EIS before considering any further leasing near Carlsbad Caverns NP. We are also concerned about the brevity or lack of public comment opportunities during the current lease sale planning process and urge BLM to restore reasonable public participation opportunities during future lease sales.

In closing, we appreciate the opportunity to comment on this important issue.

Sincerely,



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