



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Utah State Office
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Salt Lake City, UT 84101-1345
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In Reply Refer To:
3100 (UT922000)

February 8, 2019

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DECISION

Aaron M. Sims :
Chestnut Law Offices : Protest to the Inclusion of 19
Attorneys at Law : Parcels in the December 11, 2018
Post Office Box 27190 : Competitive Oil and Gas Lease Sale
Albuquerque NM 87125-7190 :

Protest Dismissed

On October 25, 2018, the Bureau of Land Management (BLM) Utah State Office posted a Notice of Competitive Oil and Gas Lease Sale (NCLS) that identified 105 parcels the BLM intended to offer for oil and gas leasing at a competitive lease sale to be held on December 11, 2018 (December 2018 Lease Sale). The NCLS also provided formal notice of a 10-day public protest period for the December 2018 Lease Sale, which ended on November 5, 2018. By letter received on November 5, 2018, the Pueblo of Acoma submitted a timely protest to the inclusion in the December 2018 Lease Sale of the following 19 parcels located on public lands administered by the BLM’s Monticello Field Office:

UTU93721 (UT1218-300)	UTU93730 (UT1218-326)	UTU93743 (UT1218-361)
UTU93722 (UT1218-301)	UTU93731 (UT1218-327)	UTU93744 (UT1218-362)
UTT93723 (UT1218-302)	UTU93732 (UT1218-328)	UTU93745 (UT1218-363)
UTU93724 (UT1218-303)	UTU93733 (UT1218-329)	UTU93746 (UT1218-364)
UTU93727 (UT1218-323)	UTU93734 (UT1218-330)	UTU93747 (UT1218-365)
UTU93728 (UT1218-324)	UTU93735 (UT1218-333)	
UTU93729 (UT1218-325)	UTU93742 (UT1218-360)	

For the reasons set forth below, the protest is dismissed.

43 C.F.R. § 3120.1-3 allows for protests to the inclusion of specific parcels listed in a NCLS. The Pueblo of Acoma's protest lists 19 parcels included in the NCLS. However, the Pueblo of Acoma do not identify any specific parcels from the NCLS in the portions of their protest where they generally allege that the BLM has failed to comply with the National Historic Preservation Act (NHPA), failed to comply with the National Environmental Policy Act (NEPA), to account for the Bears Ears and Hovenweep National Monuments, and failed to comply with the Federal Land Policy and Management Act (FLPMA).

It is well established that the BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant's allegations are unsupported by facts in the record or competent evidence. *See, e.g., Southern Utah Wilderness Alliance*, 122 IBLA 17, 20-21 (1992); *John W. Childress*, 76 IBLA 42, 43 (1983); *Patricia C. Alker*, 70 IBLA 211, 212 (1983); *Geosearch, Inc.*, 48 IBLA 76 (1980). The BLM is under no obligation to sort through a protestant's list of alleged errors and attempt to discern which alleged errors the protestant intended to invoke for a particular parcel. Such an unduly burdensome and inefficient process would unreasonably divert the time and resources that the BLM otherwise needs to manage the public lands as mandated by Congress. The Pueblo of Acoma's protest suffers from the same fundamental flaws regarding its NHPA, NEPA, and FLPMA-based allegations. For instance, the Pueblo of Acoma's protest failed to identify which specific parcels they believe had deficient NHPA cultural resource identification and analysis, or development of which specific parcels might affect the Bears Ears and Hovenweep National Monuments.

For the BLM to have a reasonable basis to consider future protests on these issues, the Pueblo of Acoma must identify for each parcel it protests, the specific ground for protest and explain how it applies to the parcel. Any allegations of error based on fact must be supported by competent evidence, and a protest may not merely incorporate by reference arguments or factual information provided in a previous protest or court ruling. Further, the Pueblo of Acoma must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to its allegations, and explain how such stipulations or notices do not obviate the allegations. Failure to comply with any of the foregoing may result in the summary dismissal of the protest.

The remaining protest contention is discussed below.

Protest Contention 1: Added protections are needed for the five parcels within the Alkali Ridge Area of Critical Environmental Concern (ACEC). The Controlled Surface Use stipulation (UT-S-17) proposed for parcels within the ACEC does not guarantee protection for cultural resources within the Alkali Ridge National Historic Landmark (NHL) boundary. The relationship of the ACEC to the NHL should be considered in light of the BLM's elevated duty under Section 110 (f) of the NHPA. The BLM should extend the same protection, a No Surface Occupancy (NSO) stipulation, to the ACEC as the NHL.

Protest Response 1:

Five parcels, 302, 326, 327, 328, and 329, included in the December 2018 Lease Sale are within the Alkali Ridge ACEC but outside of the Alkali Ridge NHL boundary.

NHLs are required to be protected under both Section 110 and Section 106 of the NHPA. Both sections have very similar language, and the Section 106 language requires the BLM “to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking.” 36 C.F.R. § 800.10(a).

It is imperative to point out that the Alkali Ridge NHL is outside the Area of Potential Effect for this lease sale. The NHL is approximately 4.8 miles from parcel 302, 3 miles from parcel 326, 2 miles from parcel 327, 4.7 miles from parcel 328, and 7 miles from parcel 329. There is no potential for direct effects to the NHL as a result of leasing the protested parcels; thus, this undertaking cannot reach the “directly and adversely affected” threshold.

However, given consulting party concerns, the BLM included the NHL in its discussion of protections and in the appropriate parcel analyses in the Cultural Resources Report. The Monticello Resource Management Plan (RMP) designated the NHL area as No Surface Occupancy, thus protecting the landmark from direct surface disturbance. In addition, the BLM identified the Alkali Ridge ACEC encompassing the greater landscape around the NHL and designated it Controlled Surface Use, giving the BLM the authority to require that future oil and gas development plans be modified to avoid direct and indirect effects to historic properties, including historic properties within the NHL.

There are three relevant stipulations that have been added to above five parcels with the Alkali Ridge ACEC to avoid adverse effects to historic properties, including historic properties with the NHL, from the December 2018 Lease Sale. Upon issuance of a lease, any stipulations become a part of the lease. 43 C.F.R. § 3101.1-3. Lease stipulations are enforceable legal requirements that go above and beyond standard lease requirements. Meeting lease stipulation requirements is a critical component of having any future proposed development approved by the BLM. Because the lease stipulations become a condition of the lease, they are binding on the lessee and legally enforceable.

Per BLM Handbook H-3120-1 – Competitive Leases, all parcels included in the December 2018 Lease Sale, which includes the above five parcels, will have the protection offered by the BLM Cultural Resource Protection Stipulation. The stipulation reads as follows:

This lease may be found to contain historic properties and/or resources protected under the National Historic Preservation Act, American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, E.O. 13007, or other statutes and executive orders. The BLM *will not* approve any ground disturbing activities that may affect any such properties or resources until it completes its obligations under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration or development proposals to protect such properties, or *disapprove* any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated (emphasis added.)

This stipulation gives the BLM legal authority to require modification to or to disapprove any future activities related to development of these lease parcels if conflicts with historic properties cannot be resolved, regardless of whether those resources are *within or without* the lease boundaries. In other words, the BLM retains control over future development of the lease and has the discretion and authority to prevent adverse effects to historic properties, including historic properties within the NHL. There are no exceptions, modifications, or waivers for this stipulation.

The BLM also included the Controlled Surface Use Cultural stipulation (UT-S-170) on all five of the parcels within the Alkali Ridge ACEC. This stipulation requires eligible cultural resources (historic properties) to be surrounded by an avoidance area sufficient to avoid impacts, again regardless of whether or not those resources are within or without the lease boundaries.

One additional stipulation applies to parcels that are within or partially within the Alkali Ridge ACEC. The Controlled Surface Use – Alkali Ridge ACEC stipulation (UT-S-17) applies to the above five parcels because they are wholly or partially within the ACEC. This stipulation states: Cultural properties eligible for or listed on the National Register of Historic Places shall be surrounded by an avoidance area sufficient to avoid direct and indirect impacts. When siting oil and gas facilities, avoidance may require that a facility be moved farther than allowed under the standard lease terms and conditions.

Upon issuance of a lease, the stipulations would become a part of the lease, and thus are enforceable. 43 C.F.R. § 3101.1-3. The two Monticello-specific stipulations allow for specific exceptions. The BLM's leasing regulations state that a lease stipulation can be subject to an exception "only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts" 43 C.F.R. § 3101.1-4. Further, any exceptions to the stipulations can only be proposed at the *development* stage, not the leasing stage. A lessee/operator would have to request any exceptions to a stipulation at the development stage, at which point the BLM would consider the request based on the applicable requirements, including NHPA, planning requirements and criteria, and relevant regulations. Decisions to except stipulations are not made lightly, and the Monticello RMP requires justification for such a decision. "The documented environmental analysis for site specific proposals would need to address proposals to exempt, modify, or waive a surface stipulation." Monticello RMP, Appendix B, p. 2. Thus, the enforceable stipulations that would be part of the leases can be accepted at the development stage only if the authorized officer determines that factors have changed so much that the protections provided by the stipulations are no longer justified or if the proposed development would not cause unacceptable impacts.

In the Cultural Resources Report, the BLM conducted an intensive records review and robust consultation process to determine whether reasonably foreseeable development could occur within each of the five parcels above without adverse effect to historic properties. The parcel-by-parcel analysis of effects took into account parcel size, topography, and location, BLM and State Historic Preservation Office records, and additional data provided by and research suggested by consulting parties. The BLM also took into consideration existing land use planning decisions, leasing stipulations, and its thorough understanding of the potential effects of oil and gas

operations in the area. The above three stipulations protect the Alkali Ridge NHL, and the sites encompassed therein, as required by the NHPA and an additional No Surface Occupancy stipulation is not necessary for the five parcels within the ACEC.

For the reasons set forth above, I have determined that offering the 19 protested parcels at the December 2018 Lease Sale was in compliance with all applicable laws, regulations, and policies. Accordingly, the Pueblo of Acoma's protest to the inclusion of the 19 parcels in the December 2018 Lease Sale is dismissed.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay, pursuant to 43 C.F.R. § 4.21, 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 must show sufficient justification based on the standards listed below. 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 regulations, a petition for a stay of a decision pending appeal shall be evaluated 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.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to any other parties named in this decision and to the Office of the Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office.

If you have any further questions, please contact Sheri Wysong of this office at (801) 539-4067.

Sincerely,

/S/ Kent Hoffman

Kent Hoffman
Deputy State Director,
Division of Lands and Minerals

Enclosure

cc:

Office of the Solicitor, Intermountain Region,
BLM Moab Field Office (UTY01)
BLM Monticello Field Office (UTY02)