



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Utah State Office

440 West 200 South, Suite 500

Salt Lake City, UT 84101-1345

<http://www.blm.gov/ut/st/en.html>

IN REPLY REFER TO:  
3100 / (UT-922000)

February 12, 2016

CERTIFIED MAIL – Return Receipt Requested

91 7199 9991 7035 9001 0755

91 7199 9991 7035 9001 0748

### DECISION

Wendy Park	:	
Staff Attorney	:	
Center for Biological Diversity	:	
1212 Broadway #800	:	
Oakland, California 94612	:	Protests of the February 16, 2016
	:	Competitive Oil and Gas Lease Sale
John Weisheit	:	
Conservation Director	:	
Living Rivers	:	
P.O. Box 466	:	
Moab, Utah 84532	:	

### **Protest Dismissed in Part / Protest Denied in Part**

On December 8, 2015, the Bureau of Land Management (BLM) Utah State Office posted a Notice of Competitive Oil and Gas Lease Sale (NCLS) that identified 46 parcels of land which the BLM proposed for oil and gas leasing at a competitive lease auction held on February 16 2016 (February 2016 Lease Sale). The NCLS also provided formal notice of a 30-day public protest period for the February 2016 Lease Sale which ended on January 11, 2016. By letter received on January 11, 2016, the Center for Biological Diversity and Living Rivers (CBD/LR) jointly submitted a timely protest to the inclusion in the sale of all 46 parcels located on public lands administered by the BLM’s Fillmore, Price, Vernal and Moab Field Offices, and U.S. Forest Service Lands administered by the Fish Lake National Forest, as follows:

UTU91266 (UT0815-001), UTU91267 (UT0815-002), UTU91268 (UT0815-003), UTU91269 (UT0815-004), UTU91270 (UT0815-005), UTU91271 (UT0815-006), UTU91272 (UT0815-007), UTU91273 (UT0815-008), UTU91274 (UT0815-009), UTU91302 (UT1115-002), UTU91303 (UT1115-003), UTU91304 (UT1115-006), UTT91305 (UT1115-014), UTU91306

(UT1115-015), UTU91307 (UT1115-016), UTU91308 (UT1115-021), UTU-91310 (UT1115-038), UTU91311 (UT1115-062), UTU91313 (UT1115-065), UTU91313 (UT1115-066), UTU91314 (UT1115-068), UTU91315 (UT1115-069), UTU91316 (UT1115-071), UTU91331 (UT1115-112), UTU91332 (UT1115-115), UTU91333 (UT1115-116), UTU91334 (UT1115-151), UTU91335 (UT1115-152), UTU91336 (UT1115-153), UTU91337 (UT1115-156), UTU91338 (UT1115-178), UTU91339 (UT1115-179), UTU91340 (UT1115-182), UTU91342 (UT1115-220), UTU91343 (UTU1115-222), UTU91344 (UT1115-224), UTU91345 (UT1115-225), UTU91346 (UT1115-226), UTU91347 (UT1115-227), UTU91478 (UT0216-001), UTU91479 (UT0216-002), UTU91480 (UT0216-003), UTU91481 (UT0216-004), UTU91482 (UT0216-005), UTU91483 (UT0216-063) and UTU91484 (UT0216-064).

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

### **Decision**

For the most part, CBD/LR makes only general allegations, unsupported by specific facts, in its protest. For example, CBD/LR expresses concern over potential impacts from hydraulic fracturing and oil and gas development activity to surface and groundwater, aquatic life and habitat and wetlands, air quality, sensitive species and wildlife, seismic risks, human health and safety, and land use. Overall, general allegations are made concerning significant impacts requiring preparation of an Environmental Impact Statement (EIS) as would be required by the National Environmental Policy Act (NEPA). CBD/LR also alleges that three BLM EAs, (Vernal Field Office - DOI-BLM-UT-G010-2015-089, Price Field Office - DOI-BLM-UT-G021-2015-0031 and Moab Field Office – DOI-BLM-UT-Y010-2015-0186) did not adequately analyze impacts to the Mexican Spotted Owl.

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 CBD/LR protest suffers from the same fundamental flaws and is hereby denied for the same reason.

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.

For the BLM to have a reasonable basis to consider future CBD/LR protests on these issues, CBD/LR 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, CBD/LR 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. Therefore, CBD's/LR's protest point contending that an EIS must be prepared prior to offering the parcels for lease is dismissed.

CBD/LR also contended that the BLM must fully analyze greenhouse gas emissions including end use emissions, and climate change impacts. The BLM EAs each disclosed “Estimated GHG emissions can be calculated using a generic emissions calculator available on the BLM Utah Air Quality webpage ([http://www.blm.gov/ut/st/en/prog/more/air\\_quality/airprojs.html](http://www.blm.gov/ut/st/en/prog/more/air_quality/airprojs.html)) which shows emissions of 1,192 tons per year CO<sub>2</sub>-e for a single operational well, and 2,305 tons per year CO<sub>2</sub>-e for a single drill rig. Based on this analysis a single exploratory well is unlikely to exceed the 25,000 ton per year reference point recommended by CEQ,” (Fillmore EA at 25, Vernal EA at 35, Price EA at 41, and Moab EA at 34). In light of the complete uncertainty as to the specific location, extent, methods and technologies that would be employed for the oil and gas development operations that may result from leasing the Protested Parcels, BLM had no choice but to leave more specific analysis regarding greenhouse emissions to such time when it considers specific APD and/or oil and gas field development proposals. While the EAs did generally discuss the potential for carbon emissions and impacts to air quality and climate change, an attempt to be more specific and quantitatively identify the potential impacts at the present stage was not employed because such an approach would be purely speculative and offer little value with respect to the informed decision making objectives of NEPA. NEPA requires that agencies consider reasonably foreseeable impacts, but it does not require extensive consideration of impacts the likelihood of which is speculative in nature. See e.g. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989).

CBD/LR asserts possible impacts to greater sage grouse habitat based on Rocky Mountain Wild’s delineations of generalized occurrence of greater sage grouse, parcels UTU91266 (UT0815-001), UTU91267 (UT0815-002), UTU91268 (UT0815-003), UTU91273 (UT0815-008), UTU91274 (UT0815-009), UTU91302 (UT1115-002), UTU91303 (UT1115-003), UTU91308 (UT1115-021), UTU91310 (UT1115-058), UTU91311 (UT1115-062), UTU91313 (UTU-066), UTU91314 (UT1115-068), UTU91316 (UT1115-071), UTU91332 (UT1115-115), UTU91333 (UT1115-116), UTU91338 (UT1115-178), UTU91342 (UT1115-220) and UTU91343 (UT1115-222) (protest at 49). However, this is an erroneous assertion. BLM Utah deferred all lease parcels within lands designated as Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) per the Utah Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement (SGEIS) and Record of Decision (ROD) (September 2015). The EAs have been updated to clarify that they tier to the recently approved SGEIS, and incorporate the analysis by reference, eliminating the need for additional analysis in the EAs

The ROD placed no requirements for Greater Sage-Grouse Stipulations or Notices to be added to most areas outside of PHMA or GHMA, however all of these leases have Lease Notice UT-LN-49, Utah Sensitive Species attached to the parcels informing them of the possibility that COA’s may be added to the permit to protect Greater Sage-Grouse or other sensitive species if circumstances change between the time of leasing and the time of development. However, two of the leases that CBD/LR specifically protested, UTU91315 (UT1115-069) and UTU91339 (UT1115-179) are within the designated Population Areas within four miles of an occupied Greater Sage-Grouse lek within PHMA, therefore the BLM Utah has attached controlled surface use stipulations for indirect impacts for noise (Lease Stipulations UT-S-356 and UT-S-357) and the Errata Notice for the February 2016 Lease Sale will reflect that addition. One other lease UTU91331 (UT1115-112) is within four miles of a lek that is within GHMA and does not require a stipulation or notice for Greater Sage-Grouse.

CBD/LR contends that the BLM should have prepared an EA for the FLNF parcels, referencing *Board of Commissioners of Pitkin County and Wilderness Workshop, et. al.* 173 IBLA 173, December 20, 2007, stating that the Interior Board of Land Appeals had found the BLM to not have been in compliance with NEPA because it hadn't performed an independent NEPA review. In the referenced IBLA decision, the Board stated:

“In exercising its discretionary authority to lease national forest lands and in complying with NEPA, BLM may adopt Forest Service environmental documents as its own or rely on those documents in BLM's evaluation of environmental impacts. See Colorado Environmental Coalition, 125 IBLA at 215-16. In this case, however, BLM neither adopted the Forest Service's environmental documents nor conducted any environmental review of its own when deciding whether to make these parcels available for leasing, apparently because BLM was then under the mistaken belief that it had no NEPA responsibility for conducting any environmental review.” (IBLA at 183)

The Fish Lake National Forest prepared an oil and gas leasing EIS and signed a record of decision on August 20, 2013. The BLM acted as a cooperating agency during the preparation of the EIS, and later adopted it, implementing Alternative C in a Record of Decision on February 10, 2015. The Board's findings in the above referenced case determined the BLM had not met its NEPA obligations because it had *not* adopted the Forest Service environmental documents.

Upon the BLM's adopting of the Forest Service's EIS, both the BLM and the Forest Service met their NEPA obligations, providing the analysis in the EIS remained adequate in light of changing conditions. The Forest Service prepared two administrative review documents to ascertain the adequacy of the EIS. As stated in Bureau of Land Management Washington Office Instructional Memorandum No. 2010-117, the BLM may have prepared a Determination of NEPA Adequacy (DNA) to confirm the Forest Service's finding, but as state by the board “that a DNA is not a NEPA document” (IBLA at 182) the fact that the BLM chose to rely on the Forest Service's findings of adequacy instead of making its own determination does not equate to the BLM's not meeting its obligations under the NEPA.

CBD/LR also generally alleges that obligations required by the Federal Land Policy and Management Act (FLPMA) have not been met because BLM has not demonstrated compliance with the unnecessary or undue degradation standard. CBD/LR attempts to combine the wording of the FLPMA and the Mineral Leasing Act (MLA) to distort a requirement of FLPMA. It has taken the requirement that lessees “use all reasonable precautions to prevent waste of oil and gas developed in the land” (MLA) and combined it with the BLM must “take any action necessary to prevent unnecessary or undue degradation of the Land” (FLPMA) to create the term “undue and unnecessary waste and degradation of public lands” (Protest at 63) and so contends that the waste of natural gas through venting or flaring is a violation of FLPMA. However, prior to venting or flaring natural gas for a period of longer than 24 hours, an operator must apply for and be granted permission from the BLM. At that time, the BLM assesses the feasibility of requiring the operator to capture the gas. The BLM policies guide the agency in determining feasibility, whether or not the operator is taking “reasonable precautions to prevent waste” and ensuring compliance with the MLA. MLA compliance is addressed through BLM regulation and policy, and so there would be no FLPMA violation even if the CBD/LR's interpretation of the Acts were to be upheld.

In conclusion, for the above-stated reasons, the portion of the CBD/LR protest that was not dismissed is denied in full.

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 (Attachment 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 the party named in this decision (Attachment 2) 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.

/s/ Kent Hoffman  
Deputy State Director,  
Division of Lands and Minerals

Enclosure:

1. Form 1842-1

cc: James Karkut, Office of the Solicitor, Intermountain Region,  
125 South State Street, Suite 6201, Salt Lake City, Utah 84138

BLM Vernal Field Office (UTG01)

bcc: Lease Sale Book Feb2016  
Reading File: UT-920  
SWysong Date: 02/12/2016