



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

New Mexico State Office
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Santa Fe, New Mexico 87508
www.blm.gov/new-mexico



November 19, 2024

In Reply Refer To:
3120 (9220)

See attached list of recipients.

EXPLANATION IN SUPPORT OF DECISION

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Q4 2024, COMPETITIVE OIL AND GAS LEASE SALE PROTEST OF FOUR PARCELS, OKLAHOMA FIELD OFFICE

PROTEST DISMISSED

On September 11, 2024, the U.S. Department of the Interior, Bureau of Land Management (BLM) New Mexico State Office received a protest from the Western Energy Alliance (Protesting Party), protesting the offering of four parcels described in the Notice of Competitive Oil and Gas Internet-Based Lease Sale¹ (Sale Notice) for the fourth quarter of 2024 (Q4 2024) Competitive Oil and Gas Lease Sale (Lease Sale).

The four protested parcels (0033, 6114, 6115, and 6118) are unleased federal mineral estates administered by the BLM Oklahoma Field Office (OFO) located in Cheyenne County, Kansas. The protested parcels total 1,324.12 acres.

The following is the detailed Explanation in Support of Decision in response to the specific protest submitted by you as the Protesting Party.²

¹ Sale Notice can be found at the following URL: <https://eplanning.blm.gov/eplanning-ui/project/2030601/570>

² The instructions for appealing the BLM's Decision are also included at the end of this Explanation in Support of Decision, although, as the BLM's Decision states, the 30-day appeals period begins upon receipt of the BLM Decision and not this supporting Explanation in Support of Decision.

BACKGROUND

The BLM OFO produced an environmental assessment³ (EA) as part of the lease sale process. The EA documents the review of the four parcels nominated for the Q4 2024 Lease Sale within the jurisdiction of the OFO and takes a hard look at potential impacts from the Proposed Action and other alternatives (as applicable). The review by the OFO included interdisciplinary team analysis, geographic information system (GIS) screening, and/or field visits of nominated parcels; review for conformity with the current land use decisions for the planning areas; and preparation of an EA documenting National Environmental Policy Act of 1969 (NEPA) compliance. The New Mexico State Office also reviewed each of the parcels and confirmed the plan conformance as well as conformance with national and state BLM policies. As stated in the EA, the analysis conforms with the OFO Resource Management Plan and associated Environmental Impact Statement (EIS). The EA considers two alternatives: No Action Alternative (not offering any parcels for lease) and a Proposed Action (offering four parcels for lease).

In addition to the four protested OFO parcels, the BLM Carlsbad Field Office (CFO) received expressions of interest for two nominated lease sale parcels (6839 and 457) for the Q4 2024 Lease Sale, but ultimately deferred both parcels due to resource concerns identified during internal and external scoping.⁴ The BLM CFO did not produce an EA as part of the Q4 2024 Lease Sale.

The draft parcel list, GIS shape files, and exhibits showing the spatial location of the OFO and CFO parcels for the Q4 2024 Lease Sale were made publicly available online from February 5 to March 6, 2024, during a public scoping period. During this public scoping period, the BLM invited the public to provide comments identifying issues relevant to the Proposed Action or new technical or scientific information for the BLM to consider. The BLM did not receive a public scoping letter from the Protesting Party.

From May 6 to June 5, 2024, the draft EA was available online, and the BLM invited the public to review and provide substantive comments regarding the accuracy of information, methodology, or assumptions used; reasonable alternatives other than those analyzed; or new technical or scientific information not already considered. The BLM did not receive a comment letter from the Protesting Party.

The BLM considered all comments received and on August 12, 2024, publicly posted the Sale Notice and revised Q4 2024 Lease Sale EA for the protest period (protest EA), initiating a protest period from August 12 to September 11, 2024 (see footnote 3). The Sale Notice identified the four parcels that would be offered for competitive lease and described the procedures for filing a formal protest. The BLM received a protest from the Protesting Party on September 11, 2024. The Protesting Party's protest addressed all four OFO parcels listed in the Sale Notice.

On November 21, 2024, the BLM will offer for competitive lease four parcels located within the jurisdiction of the OFO totaling approximately 1,324.12 acres.

³ <https://eplanning.blm.gov/eplanning-ui/project/2030601/570>.

⁴ <https://eplanning.blm.gov/eplanning-ui/project/2030600/570>.

STATEMENT OF REASONS

The following responses by the BLM address the Protesting Party's statement of reasons⁵ related to the four parcels protested. The BLM has reviewed the Protesting Party's statement of reasons in its entirety. Each of the Protesting Party's protest issues is enumerated and summarized below. The BLM's response to each of the Protesting Party's issues follows.

1. Lease Preference Process

Protesting Party alleges that the draft EA "provides no explanation of its lease preference analyses" in violation of its statutory obligations, and additionally should include a "Modified Proposed Action Alternative" that offers more parcels.

BLM Response:

The BLM holds oil and gas lease sales consistent with the Mineral Leasing Act and Federal Land Policy and Management Act when eligible lands are available for leasing. Ultimately, the BLM has the discretion to offer or defer any parcel during any sale. The MLA allows discretion in that "[a]ll lands subject to disposition . . . which are known or believed to contain oil or gas deposits *may* be leased by the Secretary." 30 United States Code (U.S.C.) 226(a) (emphasis added).

As the BLM explained in Appendix C of the EA, the BLM evaluates nominated parcels for leasing in accordance with Instructional Memorandum (IM) 2023-007, *Evaluating Competitive Oil and Gas Lease Sale Parcels for Future Lease Sales* (BLM 2022b)⁶, which outlines five criteria to determine each parcel's leasing preference. Table C.1, "Leasing Preference Ratings for Nominated Lease Parcels," identifies and explains the five criteria and indicates how they apply to each of the four parcels. Therefore, contrary to Protesting Party's claim, the BLM provided a clear "explanation of its lease preference analyses."

In the BLM NEPA Handbook H-1790-1 (BLM 2008), and in Council on Environmental Quality guidance, the BLM is directed to evaluate the Proposed Action, the No Action Alternative as a baseline, and other "Reasonable Alternatives" that meet the BLM's Purpose and Need and are within the BLM's authority. The BLM is not required to evaluate alternatives that do not meet the BLM's Purpose and Need, are not within the BLM's discretion, or which are precluded by law.

Because Protesting Party did not raise the suggestion of additional alternatives during the public opportunities for input during the scoping phase or the 30-day public comment period, the BLM did not have the opportunity to consider Protesting Party's reasoning for this statement of reason. Indeed, Protesting Party does not provide any reasoning, even in its protest, to suggest, with any specificity, how the BLM's analysis would have benefitted from an additional alternative. Therefore, the BLM is unable to respond. See *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 (2004) at page 764 ("Persons challenging an agency's compliance with NEPA must 'structure their participation so that it ... alerts the agency to the [parties'] position and contentions,' in order to allow the agency to give the issue meaningful consideration.").

⁵ The protest letters can be found at the following URL: <https://eplanning.blm.gov/eplanning-ui/project/2025795/570>.

⁶ Full citations for the literature cited in this letter are in Chapter 6 of the EA (DOI-BLM-NM-0040-2024-0009-EA).

Accordingly, this protest issue has been considered, found to be without merit, and is denied.

2. Misapplication of Legal Precedent

Protesting Party argues that the BLM misinterprets *Wilderness Soc’y v. Dept. of the Interior*, No. 22-cv-1871, 2024 U.S. Dist. LEXIS 51011, at *91-92 (D.D.C. Mar. 22, 2024), in the Finding of No Significant Impact and that the BLM lacks discretion to alter its obligations to offer parcels based on its NEPA analysis of greenhouse gases (GHGs) and/or climate effects.

BLM Response:

A statement of reason is considered non-substantive if it does not allege an error or material omission in the analysis of the Proposed Action, and so, to the extent that this argument relies on interpretation of a legal authority that is the best evidence of its contents rather than an alleged flaw in the analysis, the BLM considers it non-substantive.

In the Finding of No Significant Impact reference to the *Wilderness Society* case, the BLM stated that it “must consider the effects of its onshore oil and gas lease sales on GHG emissions and climate change, and the Mineral Leasing Act provides the Secretary of the Interior with discretion to tailor those sales—including which parcels are offered for sale and the terms of leases—in light of climate effects.” Following this requisite consideration of climate effects, “the BLM [did] not exercise[] its discretion to tailor this lease sale to account for global climate change.” The BLM maintains its interpretation of *Wilderness Society*. See, e.g., *Wilderness Society*, 2024 WL 1241906, at *1 (“the Secretary has discretion to decide where, when, and under what terms and conditions oil and gas development should occur”); *id.* at *24 (“If, in fact, the [BLM] did not consider GHG emissions when rendering its decision on the challenged lease sale, it would appear to have overlooked what is widely regarded as the most pressing environmental threat facing the world today.”).

Regardless, Protesting Party fails to allege how the BLM’s interpretation, even if incorrect, caused any error in the leasing decision. Accordingly, this protest issue has been considered, found to be without merit, and is denied.

3. Socioeconomic Analysis

Protesting Party alleges that the BLM failed to analyze and disclose “the full suite of benefits of American oil and natural gas leasing and development” including “the benefits of oil and natural gas development that flow to Environmental Justice (EJ) communities in the form of jobs and local revenue.” Protesting Party additionally argues that the EA “misinforms the public through a one-sided analysis that focuses on the benefits of renewable energy for GHG emissions reductions, while largely skirting the benefits of natural gas for GHG emissions reductions.” Protesting Party cites recent U.S. Environmental Protection Agency (EPA) data indicating that “net total U.S. GHG emissions are 17% below 2005 levels, mostly due to a shift to natural gas and renewable energy in the electric power sector,” and states that the BLM’s analysis of GHGs is incomplete without accounting for these reductions in its cost-benefit analysis. In support of this statement of reason, Protesting Party cites a recent case out of the D.C. Circuit, *Interstate Nat. Gas Ass’n of Am. v. PHMSA*, No. 23-1173, 2024 U.S. App. LEXIS 20710 (D.C. Cir. Aug. 19, 2024), and points to NEPA regulatory cost-benefit analysis requirements in 40 Code of Federal Regulations (C.F.R.) § 1502.22.

Protesting Party additionally argues that the BLM was remiss in not analyzing “emissions reductions that will result from BLM’s new waste prevention rules and new Environmental Protection Agency (EPA) methane rules.”

Finally, Protesting Party argues that “the draft EA fails to analyze or even disclose the acreage of long-pending [Expressions of Interest (EOIs)] that have been continually deferred and how these continued deferrals impact federal oil and natural gas revenues, secondary revenue at the county and local levels, and jobs” and that the BLM “failed to disclose the aggregate number of EOIs that BLM terminated or did not carry forward for this lease sale and the associated aggregate acreage.”

BLM Response:

The protested decision “is whether to make available for lease the nominated parcels with or without constraints, in the form of lease stipulations, as provided for in the approved land use plan.” See EA Section 1.3. Unrelated federal actions such as the promulgation of BLM’s new waste prevention rules and the EPA’s new methane rules are outside the scope of the leasing decision, such that the BLM considers arguments related to those actions non-substantive.

Generally, the 2022 Air Resources Technical Report (BLM 2023a), which is incorporated by reference into the EA, provides additional information on the regulatory environment for emissions, including but not limited to the New Mexico Oil Conservation Division statewide waste prevention rule. The BLM has updated the EA analysis to include the EPA New Source Performance Standards rules (OOOO a-c), see EA Section 3.6.2. The Air Resources Technical Report and EA analysis explain how these regulations were considered in the development of BLM’s per-well emissions estimates.

EOIs that were not carried forward in this Q4 2024 Lease Sale are also outside the scope of the present decision to lease the four protested parcels in the OFO. Protesting Party does not allege that BLM erred in omitting any specific parcels from consideration but even if it did, the appropriate time to raise such arguments, so that the BLM could have reasonably considered them, would have been during the public participation periods. As noted above, Protesting Party did not submit comments either at the scoping stage or the draft EA stage. *See Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752 (2004) at page 764 (“Persons challenging an agency’s compliance with NEPA must ‘structure their participation so that it ... alerts the agency to the [parties’] position and contentions,’ in order to allow the agency to give the issue meaningful consideration.”).

Protesting Party’s cited legal authorities do not appear to support its position. *Interstate Natural Gas Association* considered a challenge to a pipeline rulemaking under statutory requirements of 49 U.S.C. § 60102(b)(5), which are specific to the transportation sector. Protesting Party also states that the BLM must adhere to the cost-benefit analysis parameters in BLM’s regulation at 40 C.F.R. § 1502.22 in its EA. However, that regulation specifically applies to EISs, which are necessarily more comprehensive, and even for EISs, “agencies need not display the weighing of the merits and drawbacks of the various alternatives in a monetary cost-benefit analysis and should not do so when there are important qualitative considerations.” 40 C.F.R. § 1502.22. Moreover, even in EISs, the BLM should focus on factors “that are likely to be relevant and important to a decision.” *Id.*

In drafting the EA, the BLM adhered instead to its regulation at 40 C.F.R. § 1501.5, which provides, in relevant part, that an EA “shall ... *[b]riefly* ... discuss the [purpose and need for the proposed agency action, alternatives as required by ... NEPA .., and the [e]nvironmental effects of the proposed action and alternatives” (emphasis added). This regulation does not contemplate a cost-benefit analysis at all. The BLM analyzes the impacts associated with the alternatives using the best available information, which is typically not monetized estimates of benefits or costs.

The BLM analyzed costs and benefits of the leasing decision in several contexts in the EA, with economic benefits primarily discussed in AIB-12, Socioeconomics, in which the BLM acknowledged that the oil and gas industry has been a “substantial contributor to the social setting and economic basis of the BLM OFO for decades.” The BLM stated that, while it would be premature to quantify job creation and other direct economic benefits of the development of the leases at the leasing stage, in general federal oil and gas development “provide[s] local and regional jobs and revenue on a sustained basis.” The BLM also pointed to indirect economic impacts of the development, including “demand for oil and gas industry-related goods and services, and continued demand for support goods and services.” Additional details on the economic contribution of Federal fluid minerals are discussed in the OFO Resource Management Plan and the associated EIS, which are referenced in the EA (BLM 2018c, 2020).

In its consideration of the No Action Alternative in Section 3.4 of the EA, the BLM pointed out that if the four OFO parcels are not leased, “[n]o natural gas or crude oil from the nominated lease parcels would be produced, and no royalties would accrue to federal or state treasuries” and additionally stated:

Reduction or elimination of total oil and gas development opportunities in the area is likely to incrementally reduce local and regional employment and revenue opportunities related to the oil and gas and service support industries over time. This is because the oil and gas sector of the economy relies on both ongoing operational activities (development of existing leases) and new development opportunities (acquisition and development of new leases) to continue to provide local and regional jobs and revenue on a sustained basis. In the OFO planning area, development of federal leases is approximately 0.3% of total oil and gas development activities.

Protesting Party, therefore, has made no defensible allegation that the BLM erred in its analysis or failed to meet applicable legal standards. Accordingly, this protest issue has been considered, found to be without merit, and is denied.

4. Parcel Deferrals, the Inflation Reduction Act, and Relative Benefits of Various Energy Sources

Protesting Party complains that the BLM, in the EA, “fails to identify how many EOIs have been terminated or deferred on a cumulative basis prior to 2024” and argues that the BLM “cannot piecemeal and segregate its analysis by only analyzing EOIs received for the fourth quarter 2024 lease sale.” Protesting Party states that the BLM “must inform the public of deferrals dating back at least six years (statute of limitations), or at a minimum since January 21, 2021, when BLM started issuing and implementing new policies to severely restrict leasing.” Protesting Party also argues that the BLM “failed to analyze and disclose whether the lease parcels being offered in

Kansas, when added cumulatively to other lease parcels being offered in other states, is sufficient for BLM to meet its annual statutory leasing obligations under [the Inflation Reduction Act (IRA)]” and states that without this information, “it is difficult to assess whether BLM will be able to meet its IRA statutory requirements in 2024.” Protesting Party argues that the BLM must disclose, in the EA, that “natural gas has reduced more electricity sector emissions than wind and solar combined” and discuss “significant constraints confronting renewable energy expansion such as intermittency and lack of electric transmission infrastructure.”

Finally, Protesting Party repeats its allegations that the BLM failed to adequately assess the emissions benefits of the country’s trend toward natural gas development, as well as its suggestions that the BLM’s EA failed to meet legal standards set forth in *Interstate Natural Gas Association* and 40 C.F.R. § 1502.22.

BLM Response: To the extent this statement of reason argues that the BLM should have considered emissions-reduction benefits of broader trends toward natural gas, or for the application of inapplicable legal standards from *Interstate Natural Gas Association* and 40 C.F.R. § 1502.22, the BLM directs Protesting Party to the response to its third statement of reason.

NEPA allows agencies to prepare an EA “on any action at any time in order to assist agency planning and decisionmaking.” 43 C.F.R. § 1501.3; see also 43 C.F.R. § 1508.9 (defining “environmental assessment”). Here, the BLM prepared an EA to analyze whether to offer for sale four parcels in the OFO. See EA Section 1.3 (decision “is whether to make available for lease the nominated parcels with or without constraints, in the form of lease stipulations, as provided for in the approved land use plan.”).

Several topics Protesting Party advances in this statement of reason—including BLM’s cumulative lease parcel deferrals, its nationwide compliance with the IRA, and the relative pros and cons of natural gas versus renewable energy sources—are outside the scope of the present decision.

Specifically with regard to the IRA, while the acres proposed for lease in this sale would count toward “the sum total of acres offered for lease in onshore lease sales,” this EA does not concern the issuance of a right-of-way for wind or solar energy development. As IM-2023-006 states, “The BLM will calculate” the acreage offered for lease for purposes of the IRA “and review the formula on the day the BLM plans to issue a wind or solar energy right-of-way.” Based upon the language of the IM, any calculation of the required acreage to issue rights-of-way pursuant to the IRA is outside the scope of this EA. It is also outside its scope because the calculation happens at the national level after the conclusion of the BLM’s leasing decisions, including this one.

Regarding parcel deferrals, the BLM generally has discretion to offer or defer any parcel during any sale. 30 U.S.C. 226(a) (“All lands subject to disposition . . . which are known or believed to contain oil or gas deposits *may* be leased by the Secretary.”) (emphasis added). For parcels deferred for inadequate or incomplete information (i.e., necessary tribal consultation), the BLM will consider the parcels at the next available sale if and when information is complete and supports a decision to lease.

Protesting Party has alleged no specific error or material omission in the BLM’s decision to lease the four subject OFO parcels in the lease sale. Accordingly, this protest issue has been considered, found to be without merit, and is denied.

EXPLANATION IN SUPPORT OF DECISION

After a careful review, the BLM denies the protest of the four parcels in the Q4 2024 Competitive Oil and Gas Lease Sale. This Explanation in Support of the Decision sets forth the reasons for the BLM's denial, in response to the issues raised by the Western Energy Alliance as the Protesting Party. The BLM will provide you with a courtesy printed copy of your protest response denial Explanation in Support of Decision by mail, upon written request, sent to Angelica Varela at the BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508, or upon email request, sent to avarela@blm.gov.

The BLM's 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. § 4 and summarized in Form 1842-1, *Information on Taking Appeals to the Interior Board of Land Appeals* (enclosed with the Decision letter).⁷ If an appeal is taken, your notice of appeal must be filed in this office (at the above address)⁸ within 30 days from your receipt of the BLM's Decision. A copy of the Notice of Appeal and any statements of reasons, written arguments, or briefs must also be served to the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statements of reasons, written arguments, or briefs be sent to this office. 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 of the BLM's Decision, pursuant to 43 C.F.R. § 4, the Petition 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 the Decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor, see 43 C.F.R. § 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.

Michael Gibson
Deputy State Director
Division of Minerals

⁷ As stated above and in the BLM's Decision sent to you separately, it is the receipt of the BLM's Decision that begins the 30-day appeals period and not this Explanation in Support of Decision.

⁸ BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508.

Enclosure 1:

Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals (1 page)

cc: without enclosures

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