



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657



JUN 10 2015

In Reply Refer To:
3100 (931 KP)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

7005 0390 6064 6886 5768

DECISION

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
1536 Wynkoop, Suite, 310
Denver, Colorado 80202

PROTEST DENIED

On March 30, 2015, the Bureau of Land Management (BLM) received WildEarth Guardians' (WEG) protest of the May 28, 2015, competitive oil and gas lease sale of five parcels located within the Four Rivers Field Office (FO): Parcels A, B, C, D, and E, totaling 6474.62 acres of federally owned minerals (Enclosure 1). WEG requests that the five parcels be withdrawn from the BLM's May 28, 2015, competitive oil and gas lease sale, based on the belief that the BLM has inappropriately proposed to offer the parcels for lease based on a threat of drainage, and not on a determination of actual drainage.

BLM response: As an initial matter, WEG claims in its Statement of Reasons that the BLM cites 43 CFR § 3420.1-1(d) in support of its proposal to lease oil and gas resources. However, nowhere does the BLM cite those regulations, as they pertain to the leasing of coal resources, not oil and gas.

More importantly, protecting the United States (U.S.) Government (and thereby the U.S. taxpayer) from the loss of mineral royalties as a result of oil and gas drainage is a prime responsibility of the BLM (policy statement in the BLM Handbook H-3160-2- Drainage Protection Guidelines, attached to Washington Office Instruction Memorandum (WO IM) No. 99-051, January 27, 1999, "Bureauwide Interim Guidance on Oil and Gas Drainage Protection"). According to these guidelines, a potential drainage situation exists where there is production of oil or gas resources from a well on adjacent lands not owned by the United States. The guidelines instruct the BLM to protect unleased Federal lands identified as potential drainage by leasing them as soon as possible. By leasing the lands, the BLM can recoup compensation for drainage from the Federal mineral estate. The WO IM No. 2010-117, titled "Oil and Gas Leasing Reform- Land Use Planning and Lease Parcel Reviews," provides the BLM's process for reviewing proposed sale parcels to determine availability of parcels for lease. Under Section

III-C of the IM, the BLM instructs offices to consider several factors when determining parcel availability, including whether there is a risk of drainage to Federal mineral resources due to development of nearby non-Federal parcels if the parcel is not leased.

The BLM acknowledges that drainage of the Federal mineral resource is not yet occurring, since production has yet to commence from the fee wells that have been drilled in the Willow Field. However, the BLM finds that the threat of drainage is real. In Idaho, spacing for gas wells is one well per 640 acres, or one governmental section (IDAPA 20.07.02.330. *See also* Idaho Oil and Gas Conservation Commission's (IOGCC) Final Order, dated April 24, 2013, specifically establishing the spacing of wells in the Willow and Hamilton fields at 640 acres per unit). The Idaho Department of Land's Oil and Gas Program Manager notified the BLM on December 18, 2013, that Alta Mesa Services LP (Company) had filed an application with the IOGCC to modify the existing spacing unit for Section 3, T. 8 N., R. 4 W, Boise Meridian, by omitting the Federal lands, totaling 187.4 acres, from the drilling unit. Section 3 contains approximately 615 acres. By omitting the Federal minerals from the unit, the Federal minerals could effectively be drained.

The BLM intervened in the administrative case before the IOGCC, and attempted to negotiate a communitization agreement with the Company, consistent with 43 CFR 3162.2-2(c). However, the Company refused to accept the terms of the BLM's standard communitization agreement. Thus, leasing remained the BLM's only option if the agency wanted to protect its correlative rights and the United States Government (and thereby the U.S. taxpayer) from drainage. The IOGCC initially denied the omission of Federal lands in an Order dated September 12, 2014, however, upon reconsideration, vacated its initial Order. The matter is currently stayed, to allow the BLM time to conduct a lease sale. In a stipulation dated December 24, 2014, the BLM and the Company agreed that "If, as of June 1, 2015, the BLM has not conducted a lease sale, the stay of (the proceedings) will be lifted...", and the proceedings would continue before the IOGCC.

Another factor that justifies the BLM's decision to conduct a lease sale is the fact that the Idaho Legislature, during its 2015 session, amended Idaho Code § 47-321, to provide for the exclusion of Federal mineral acreage from unit operations upon application to the IOGCC, should the Federal government fail to lease. Clearly, both the acts of the Company and the Idaho Legislature demonstrate intent to drain and indicate there is a risk to the United States' correlative rights of a loss of royalties due to drainage if the BLM does not take the proactive step of leasing. Therefore, the BLM is protecting the public interest by leasing at this time, in accordance with 43 CFR 3120.1-1(d).

CONCLUSION AND APPEAL RIGHTS

The BLM has considered WEG's allegation that the agency has inappropriately proposed to offer the parcels for lease based on the threat of drainage and not on a determination of actual drainage, and has found it to be without merit. The BLM acted within its regulatory authority by protecting the U.S. Government (and thereby the U.S. taxpayer) from the loss of mineral royalties as a result of drainage. Your protest is therefore denied.

Appeal Rights

This decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed BLM Form 1842-1. If an appeal is taken, your 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 (pursuant to regulation 43 CFR § 4.21(a)) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay 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 this decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR § 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.

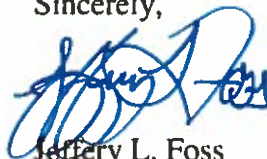
Standards for Obtaining a Stay

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.

If you have any questions, please call Karen Porter, Leasable Minerals Program Lead, at (208) 373-3884, or write to the address in our letterhead.

Sincerely,



Jeffery L. Foss
Acting State Director

2 Enclosures

- 1 - WEG Protest (4 pp)
- 2 - Form 1842-1 (2 pp)

FAX COVER SHEET

TO	BLM Idaho State Director
COMPANY	WildEarth Guardians
FAX NUMBER	12083733899
FROM	WildEarth Guardians
DATE	3/30/2015 4:26:11 PM MDT
RE	May 2015 Idaho Oil and Gas Lease Protest

COVER MESSAGE

Attached, please find WildEarth Guardians' protest of the BLM's May 2015 Oil and Gas Lease Sale. Thank you.

Jeremy Nichols
WildEarth Guardians
(303) 437-7663



March 30, 2015

Via Fax

Tim Murphy
State Director
U.S. Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, ID 83709
Fax: (208) 373-3899

Re: Protest of May 2015 Competitive Oil and Gas Lease Sale

Dear Mr. Murphy:

Pursuant to 43 C.F.R. § 3120.1-3, WildEarth Guardians hereby protests the Bureau of Land Management's ("BLM's") proposal to offer five publicly owned oil and gas lease parcels covering 6,474.62 acres of land in the Four Rivers Field Office of Idaho for competitive sale on May 28, 2015. These parcels are identified as A, B, C, D, and E in the BLM's February 27, 2015 Notice of Competitive Oil and Gas lease Sale.¹ In support of the BLM's proposal, the agency prepared an Environmental Assessment ("EA"), identified as EA Number DOI-BLM-ID-B010-2014-0036.²

¹ This notice is available on the BLM's website at https://www.blm.gov/epl-front-office/projects/nena/39064/55138/59927/Notice_of_Competitive_Oil_and_Gas_Lease_Sale-Idaho_02272015.pdf.

² According to the BLM's notice of competitive lease sale, protests are due "within 30 calendar days of the posting date of the sale," although where a deadline falls on a weekend, a protest is due the following day that the BLM office is open to the public. Here, the protest deadline would have been 30 days after February 27, or March 29. Because March 29 was a Sunday, this protest is thus timely filed on the next day the BLM Idaho State Office is open to the public. Further, although the BLM's notice of competitive lease sale does not state that protests must be filed before close of business, this protest is filed before 5:00 P.M.

STATEMENT OF INTEREST

WildEarth Guardians is a nonprofit environmental advocacy organization dedicated to protecting the wildlife, wild places, wild rivers, and health of the American West. WildEarth Guardians is headquartered in Santa Fe, New Mexico, but has offices and staff throughout the western United States. On behalf of our members, Guardians has an interest in ensuring the BLM fully protects public lands and resources as it conveys the right for the oil and gas industry to develop publicly owned minerals. Guardians submitted comments on the BLM's draft EA for its proposed leasing decision. The mailing address for WildEarth Guardians to which correspondence regarding this protest should be directed is as follows:

WildEarth Guardians
1536 Wynkoop, Suite 310
Denver, CO 80202

STATEMENT OF REASONS

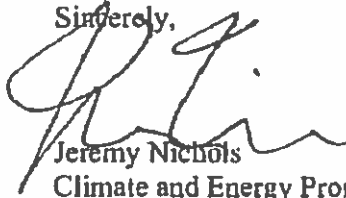
We protest the BLM's action on the basis that the agency has inappropriately proposed to lease the five parcels solely on the basis that it believes there is "potential" drainage of federal minerals occurring. In fact, the BLM states the entire purpose and need for leasing is to address this drainage concern. EA at 3-5. However, nothing in the agency's regulations allow the BLM to lease on the basis of perceived drainage of federal minerals or for the reasons proffered by the agency.

Indeed, there does not appear to have been any official determination by any authorized officer of the BLM that drainage is, in fact, occurring. The lease sale EA asserts that there is a "potential" for drainage from other leases (e.g., EA at 3, citing "potential drainage" as a threat to federal mineral estate), but does not establish that drainage is occurring. Thus, the BLM has no authority to offer the proposed leases under its rules, which requires that BLM first make a determination "that a well *is* draining Federal or Indian mineral resources" prior to taking action thereunder. 43 C.F.R. § 3162.2-2 (emphasis added). This is further bolstered by 43 C.F.R. § 3100.2-1, which states that a "determination by the authorized officer" must be made that drainage is occurring in order for lands to be offered for lease for this reason.

The BLM cites authority at 43 C.F.R. § 3420.1-1(d) in support of its proposal to lease. However, its own rules state that lands that are otherwise unavailable to leasing may be leased if they are "subject to drainage." 43 C.F.R. § 3420.1-1(d). Here, no drainage is occurring, thus the federal minerals are not subject to drainage. Although the BLM may believe that drainage is threatened or "soon will be" threatened (EA at 110), such a belief of a perceived threat does not provide the agency with authority to lease.

For the aforementioned reasons, the BLM cannot proceed with its May 2015 competitive oil and gas lease sale.

Sincerely,



Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
1536 Wynkoop, Suite 310
Denver, CO 80202
(303) 437-7663
jnichols@wildearthguardians.org

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL

WITH COPY TO SOLICITOR

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR

4. ADVERSE PARTIES

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). 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 this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 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 regulations, 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.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)