



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office

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In Reply Refer to:
3100 (921Bargsten)
Feb 2017 Protests

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Receipt No. 91 7199 9991 7036 1777 0761

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DECISION **PROTESTS DISMISSED OR DENIED**

On December 7 and 9, 2016, the Bureau of Land Management (BLM), Wyoming State Office (WSO), received timely protests from three parties to oil and gas lease sale parcels planned to be offered at the February 7, 2017 competitive oil and gas lease sale (Feb 2017 Sale). The three protesting parties are: (1) Davis Graham & Stubbs LLP (DGS), (2) Wild Earth Guardians (WEG), and (3) Powder River Basin Resource Council (PRBRC).

Background

The BLM received nominations for the Feb 2017 Sale from December 21, 2015 until March 25, 2016. The Feb 2017 Sale includes Federal fluid mineral estate located in the BLM Wyoming's High Plains District (HPD) and Wind River/Bighorn Basin District (WRBBD). After preliminary adjudication of the nominated parcels by the WSO, the parcels were reviewed by the Field Offices and District Offices, including interdisciplinary review, field visits to nominated parcels (where appropriate), review of conformance with the Resource Management Plan (RMP) decisions for each planning area, and preparation of an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.¹

¹ Links to the NEPA documents are available at:
<https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/wyoming>

During the BLM's review of the Feb 2017 parcels, the WSO screened each of the parcels, confirmed plan conformance,² coordinated with the State of Wyoming Governor's Office and Game and Fish Department, confirmed agreement with applicable National and State BLM policies, and considered recent revisions and amendments to RMPs for the planning areas subject to this sale.

The Feb 2017 Sale EAs (High Plains District EA No. DOI-BLM-WY-P000-2016-0001-EA, Wind River/Bighorn Basin District EA No. DOI-BLM-WY-R000-2016-0002-EA), along with draft, unsigned Findings of No Significant Impact (FONSI)s³ were released on July 26 and July 25, 2016 (respectively) for a 30-day public review period, ending August 24, 2016. The EAs tiered to the existing Field Office/Resource Area RMPs and their respective Environmental Impact Statements (EISs), in accordance with 40 CFR 1502.20:

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review... the subsequent ...environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.

The WEG submitted comments to the BLM for both EAs prepared by the BLM (see Attachment 2 to the WRBBD's EA at pages 21-81; see Appendix F of the HPD's EA at pages 15-42).⁴ The PRBRC submitted comments to the BLM for the HPD's EA (see Appendix F at pages 4-15), only. The DGS did not submit comments to the BLM for either EA, though the firm avers that it represents clients who remain unknown to the BLM (DGS protest at n.1).

The BLM described its purpose and need for the HPD's Feb 2017 Sale EA, (at page 7):

The purpose of the competitive oil and gas lease sale is to meet the growing energy demands of the United States public through the sale and issuance of oil and gas leases. Continued sale and issuance of leases is necessary to maintain economical production of oil and gas reserves owned by the United States.

The need for the competitive oil and gas lease sale is established by the FOOGLRA to respond to EOIs, the FLPMA, and the MLA. The BLM's responsibility under the MLA is to promote the development of oil and gas on the public domain, and to ensure that deposits of oil and gas owned by the United States are subject to disposition in the form

² See BLM's Land Use Planning Handbook at page 42: "After the RMP is approved, any authorizations and management actions approved... must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP." See also 43 CFR 1610.5-3.

³ See the BLM's NEPA Handbook H-1790-1 at page 76. Though the BLM has elected to release a draft, unsigned FONSI for public review in this instance, the BLM is not asserting that any of the criteria in 40 CFR 1501.4(e)(2) are met. Since the RMP EISs have already evaluated potentially significant impacts arising from the BLM's land use planning decisions, the BLM anticipates a "finding of no new significant impacts." See 43 CFR 46.140(c).

⁴ The HPD and WRBBD each prepared a single EA for the parcels in their respective jurisdictions. In this, and the remainder of our response, our citations from the EAs refer to "Version 2" of the EAs posted on the BLM's website, unless otherwise noted.

and manner provided by the MLA under the rules and regulations prescribed by the Secretary of the Interior, where applicable, through the land use planning process. Decision to be Made: The BLM will decide whether or not to offer and lease the nominated parcels of the HPD portion at the February 2017 Competitive Oil and Gas Lease Sale and if so, under what terms and conditions. ^[5]

The BLM described its purpose and need for the WRBBD's Feb 2017 Sale EA, (at page 1-7):

It is the policy of the BLM as derived from various laws, including the Mineral Leasing Act of 1920, as amended and the Federal Land Policy and Management Act of 1976 (FLPMA) to make mineral resources available for disposal and to encourage development of mineral resources to meet national, regional, and local needs. Continued sale and issuance of lease parcels would allow for continued production of oil and gas from public lands and reserves.

The need is established by the Federal Onshore Oil & Gas Leasing Reform Act of 1987 (FOOGLRA), the Federal Land Policy Management Act, and Mineral Leasing Act of 1920, as amended, to respond to Expressions of Interest.

The Feb 2017 Sale EAs each considered two alternatives in detail: a proposed action and a no action alternative.

The protesting parties each protest various parcels listed in the Feb 2017 Sale Notice.⁶

The remainder of our response will address each protest and arguments, as appropriate. The BLM has reviewed the protestors' arguments in their entirety; the substantive arguments to which we respond are numbered and provided in bold with BLM responses following.

Davis Graham & Stubbs (DGS)

The DGS's protests the BLM's offering of a single parcel listed in the Feb 2017 Sale Notice, parcel No. WY-1702-127 which is located in the High Plains District.

- 1. "We believe that a portion of the lands contained within the Subject Parcel are already held by production via existing wells and Wyoming Oil and Gas Conservation Commission (WOGCC) drilling and spacing units and, therefore, the lands should be offered as separate tracts subject to BLM approved communitization agreements (CAs)... DGS believes the parcel should be reconfigured to remove the lands that should be subject to CAs in order to ensure potential bidders are able to carefully evaluate the value of the producing versus the**

⁵ While a decision to be made includes what stipulations will be placed on the parcels offered for lease, this is intended as a means to ensure conformance with the decisions in the approved RMPs (see the BLM's Land Use Planning Handbook H-1601-1 at Appendix C, page 23). To the extent that the BLM may consider adding to, deleting, or modifying the constraints or stipulations identified in the approved RMP, the BLM may need to first amend the RMP in order to ensure conformance with the approved land use plan.

⁶ This Sale Notice, ("Notice of Competitive Oil and Gas Lease Sale – February 7, 2017") was posted on November 9, 2016. Available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/89747/107330/Sale_Notice.pdf

non-producing lands and to ensure the people of the United States receive the maximum potential value from the lands offered... ..The DGS believes the lands that should be included within the CAs be deferred from the lease sale or included in the February Lease Sale as separate tracts.” (DGS Protest at page 1).

BLM Response

While preparing the Sale Notice and associated sale documentation, the BLM received two CAs for lands located within parcel -127, and determined it was appropriate to reconfigure the parcel (with revised stipulations) in order to accommodate orderly development of the unleased lands.

These CAs were approved by the BLM’s Reservoir Management Group (RMG), and the parcel has been split/reconfigured and re-stipulated. In an information notice dated January 19, 2017, the WSO informed the public of these changes. On January 22, 2017, the DGS sent an e-mail to the WSO withdrawing its protest. The BLM has therefore determined that because this protest is moot and has been withdrawn, it will not be addressed further.

Wild Earth Guardians (WEG)

In the WEG’s protest to all 283 parcels listed in the Sale Notice, it principally argues that the BLM failed to (1) quantify greenhouse gas (GHG) emissions that could result from leasing the parcels in the Feb 2017 Sale and (2) analyze the “social cost of carbon” for GHG emissions.

We note that the WEG has *yet again* submitted substantially identical arguments to those submitted by WEG for previous lease sales, including the BLM Wyoming’s August 2015 Competitive Oil and Gas Lease Sale (Aug 2015 Sale) where these arguments were addressed fully by the WSO.⁷ After reviewing WEG’s Feb 2017 protest and the Feb 2017 Sale parcels, EAs, and administrative record, the WSO cannot find meaningful differences in the arguments, BLM analysis and disclosure (particularly given the BLM’s repeated treatment of this issue in past WRBBD and HPD lease sale EAs), or parcel-specific circumstances.

While the Council on Environmental Quality (CEQ) issued final guidance August 5, 2016, the BLM’s approach for this lease sale is consistent with that guidance.

Therefore, we incorporate our responses to WEG’s arguments from our Aug 2015 Sale protest decision (see also our response to WEG’s Feb 2016 Sale and Aug 2016 Sale protests); however, in the future the WEG is *yet again* encouraged by the BLM to present issues not previously resolved by the BLM, rather than just re-submitting previous arguments verbatim (The BLM decisions may be summarily affirmed if a challenge “merely reiterate[s] the arguments considered by the [decisionmaker below], as if there were no decision... addressing those points.” *Shell Offshore, Inc.*, 116 IBLA 246, 250 (1990). See also *Powder River Basin Resource Council*, 183 IBLA 83, 88-90 (2012)). Since WEG continues to repeat claims previously-addressed by the WSO, and given the pending litigation filed by the WEG on these issues, we

⁷ See the WSO’s Aug 2015 Protest Decision, available at: <http://www.blm.gov/style/medialib/blm/wy/programs/energy/og/leasing/protests/2015/aug.Par.26655.File.dat/ProtestDecision.pdf>

direct WEG to our responses to WEG's Aug 2015 Sale protest arguments and deny the group's protest of all parcels included in the February 2017 Sale Notice.

Powder River Basin Resource Council (PRBRC)

The PRBRC protests 12 lease sale parcels located "within the Fortification Creek Planning Area" (PRBRC Protest at page 1) located in the Buffalo Field Office (BFO), High Plains District. The protested parcels are largely undeveloped, though numerous leases and active oil and gas wells are located in the surrounding area (see Attachment 1).

1. **"...the EA is legally deficient because it does not disclose the significant impacts that will result to the Fortification Creek Area from increased oil and gas leasing, and subsequent reasonably foreseeable development, including deep oil development that was not analyzed or contemplated in the 2011 Fortification Creek Area Resource Management Plan Amendment []." (PRBRC Protest at Page 3).**

BLM Response

The HPD's Feb 2017 lease sale EA is tiered to the 2015 BFO approved RMP FEIS and ROD, and incorporates the analysis completed in the BFO's 2011 RMP amendment EA for the Fortification Creek Planning Area (FCPA). The Fortification Creek Planning Area is located in Campbell, Johnson, and Sheridan counties, Wyoming encompassing 100,655 acres.

The PRBRC protested the FCPA RMP amendment, and that protest was denied (see Director's Protest Resolution Report dated August 8, 2011). In 2012, PRBRC filed a lawsuit against the BLM challenging BLM decisions in the FCPA. On March 28, 2014, the federal District Court for the District of Wyoming rejected PRBRC's arguments and affirmed BLM's planning decisions for the FCPA. PRBRC also protested the BFO's 2015 RMP revision, in part, due to its concerns about management of the FCPA and that protest was denied (see Director's Protest Resolution Report dated September 15, 2015).

The 2011 FCPA RMP amendment EA, the BFO's approved RMP, and the Feb 2017 lease sale EA all contemplated oil and gas development, including what we believe PRBRC considers "deep oil" development. PRBRC has not provided evidence to the contrary.

The PRBRC's assertion that "[n]o NEPA document to date provides the public with environmental analysis and information about the reasonably foreseeable impacts of additional and new leasing in the [FCPA]" (PRBRC Protest at Page 3) is incorrect. We therefore deny this portion of the PRBRC's protest.

2. **"The EA identifies eleven parcels as being located within the Fortification Creek Planning Area. EA at 30. However, twelve leases are being offered for sale within the planning area...." (PRBRC Protest at Page 3).**

BLM Response

The HPD's EA states (at page 30):

Eleven parcels in the BFO are in the Fortification Creek Planning Area...

The EA also states (at page 44):

Parcels with Fortification Creek Planning Area CSU stipulations as referenced in Appendix A, Affected Environment Tables, Column K, Special Management Areas, can be located in Appendix C, HPD Parcel Lease Lists, for legal descriptions of parcels with exact wording of stipulation applied.

Both of the referenced appendices acknowledged that a total of 12 parcels intersected the FCPA; accordingly, these were described as such in Appendix A and the appropriate FCPA stipulations were added, as shown in Appendix C. The statement on page 30 of the EA stating only eleven parcels were in the FCPA was an error, and that error is hereby corrected. Because the EA's appendices disclosed that twelve parcels were in the FCPA, the statement on page 30 eleven parcels was a harmless error and therefore this portion of PRBRC's protest is denied.

3. **“The BLM also failed to disclose reasonably foreseeable impacts related to unplugged wellbores located on some of the lease parcels. The BLM's EA identifies 48 lease parcels (including two within the Fortification Creek Planning Area) that have single or multiple unplugged wellbores. EA at 29. However, the lease stipulation language is incredibly vague and the EA provides no information to the public about what the stipulation means. The EA does not disclose any impacts related to the unplugged wellbores and importantly does not disclose the consequences to the potential lessee (and alternatively the American taxpayer) regarding liability for the unplugged wellbores.” (PRBRC Protest at Page 3).**

BLM Response

First, the BLM did not add a lease stipulation describing unplugged wellbores to the parcels, but a lease notice, also known as an “information notice” in accordance with 43 CFR 3101.1-3. As this regulation states:

An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form.

The lease notice language states (e.g., for final parcel WY-1702-042):

Special Lease Notice: (1) There is a single (or multiple) unplugged wellbore(s) and/or other facilities located on this parcel. For more information, please contact a Petroleum Engineer at the Buffalo Field Office at (307) 684-1100.

The purpose of this lease notice is to provide for coordination between the lessee and the BLM (if a lease is issued) regarding the presence of unplugged wellbores on the lease. In many cases, the BLM has initiated enforcement actions to require previous Federal oil and gas operators or record title owners to plug and reclaim wells on terminated leases. Through coordination, the BLM can ensure that ongoing enforcement actions are not affected and new operations account for the presence of existing wells and facilities.

Plugging the wells and reclaiming previously-constructed facilities is not a part of the proposed action for the Feb 2017 lease sale EA.

We find that adding the lease notice serves the public interest and we believe adding the lease notices to the parcels, where applicable, does not require further analysis or disclosure in the EAs. Therefore we deny this portion of the PRBRC's protest.

4. **“In our comments on the EA, we raised the concern that the BLM had listed parcels as not having lands with wilderness characteristics merely because they were not part of citizen proposed wilderness when in fact they were... In response to comments, the BLM now says “the screen results were incorrectly reported” and “none of the parcels meet the first criteria and do not qualify.” However, in reversing its decision, the BLM does not provide any of the data and analysis it used to do so. The public is not given a chance to comment on this information nor is it able to understand the basis of the BLM’s decision.” (PRBRC Protest at Page 4).**

BLM Response

The BFO's RMP decisions have adequately addressed this issue, and we note that PRBRC's protest to the RMP's decisions regarding Lands with Wilderness Characteristics (LWCs) was denied.

The HPD's EA (at Appendix D) provides documentation of the BLM's review for each lease sale parcel and potential wilderness characteristics. PRBRC has not provided evidence to demonstrate that the HPD's conclusion that none of the protested parcels contain LWCs is incorrect. *See*, BLM Director's 2011 Protest Resolution Report at page 26. *See also*, BLM Director's 2015 Protest Resolution Report at page 68. For these reasons, we deny this portion of PRBRC's protest.

5. **“In spite of proposing twelve parcels for development in the Fortification Creek Planning area, remarkably, the EA does not discuss any impacts specific to the Fortification Creek Planning Area. Instead, BLM tiers to previous NEPA analyses. However, these previous NEPA analyses will not cure BLM's failure to take a hard look at the reasonably foreseeable impacts of leasing and developing these 12 parcels in the Fortification Creek Area.” (PRBRC Protest at Page 4).**

BLM Response

BLM's NEPA Handbook⁸ states:

The tiered EA for the individual action need not re-analyze the effects on resources fully analyzed in the broader EIS, but may instead focus on the effects of the individual action not analyzed in the broader EIS... An EIS would need to be prepared for the individual action only if there are significant effects that have not been analyzed in the broader EIS.

We find that the tiering of the HPD's Feb 2017 lease sale EA to the BFO RMP is appropriate (which, in turn, incorporates the management decisions from the FCPA RMP amendment; see BFO's approved RMP at page 8), and satisfies NEPA's procedural requirements. We therefore deny this portion of PRBRC's protest.

6. **“The BLM also failed to give a hard look to the environmental and public interest benefits of not leasing the Fortification Creek Area parcels by adequately considering the legally required No Action alternative.” (PRBRC Protest at Page 6).**

BLM Response

In the RMP FEIS, FCPA RMP Amendment EA, and the Feb 2017 lease sale EA, the BLM considered alternatives including a “No Action” alternative. Offering the 12 protested parcels is in conformance with the approved RMP. Although the PRBRC desired a different outcome, the approved RMP, as affirmed through protest resolution and litigation, designates the lands within the parcels as open to oil and gas leases, subject to the appropriate constraints identified in the RMP.

For these reasons, we deny this portion of the PRBRC's protest.

7. **“In its comments on the EA, the Resource Council asked the BLM to consider an alternative that would attach no surface occupancy (NSO) stipulations to the Fortification Creek Planning Area parcels... the BLM violated NEPA by failing to consider this citizen proposed alternative...” (PRBRC Protest at Pages 7-8).**

BLM Response

As we have described, offering the parcels with the stipulations identified in the Sale Notice is in conformance with the approved RMP, for which the PRBRC's protests and litigation were rejected.

Attaching an NSO stipulation to all lands offered in the FCPA is not in conformance with the approved RMP. If the intent of PRBRC's proposed NSO stipulations were to eventually prohibit surface occupancy within the FCPA for the purposes of oil and gas development, much of the 100,655-acre FCPA could not be developed for oil and gas given the long distances from the

⁸ BLM Handbook H-1790-1, National Environmental Policy Act Handbook, Pages 27-28

edge of the FCPA to leases near the interior. This would essentially close the area to oil and gas leasing, an alternative which the BLM considered but eliminated from detailed analysis (see the BFO RMP Revision FEIS at page 95).

During the RMP revision, the BFO also considered an alternative (Alternative B) that evaluated adding an NSO stipulation for various resources (see FEIS at Table 2.5, pages 104-109). In total, this alternative would have resulted in NSO stipulations being applied to 91 percent of the FCPA (see map, Attachment 2), and 88 percent of the lease sale parcels protested by PRBRC (see map, Attachment 3). In effect, then, the BLM has already considered an alternative applying NSO stipulations to these leases but, through the public RMP revision process, rejected that approach to managing public lands in the BFO planning area.

The PRBRC has not demonstrated that the stipulations under the approved RMP are insufficient to adequately protect the various resources of concern. For these reasons, we deny this portion of PRBRC's protest.

- 8. "It is very likely that, if offered, these lease parcels will not return fair market value to the BLM and the American public. Because of the lack of interest in developing the Fortification Creek Area, there will be a lack of competition in buying the leases and in all likelihood the leases will be sold for the minimum bid of \$2/acre, if they are sold at all. The BLM did not consider, under NEPA or the MLA, whether offering these lease parcels for sale will return a fair value to the public, especially as compared to the other values of the area..." (PRBRC Protest at Page 8).**

BLM Response

Offering the protested parcels is in the interest of the public, as described in the EA (see page 7), is consistent with the Mineral Leasing Act of 1920, and is in conformance with the RMP that was developed after thorough public participation. The PRBRC has not shown how offering these parcels is inconsistent with the public interest and in light of the potential bonus bids and rentals leasing these parcels may generate, even if the lands are never developed for oil and gas (as the PRBRC seems to now believe is likely).⁹ For these reasons, we deny this portion of the PRBRC's protest.

DECISION

After a careful review, the BLM has determined that the protests to the parcels in this sale will be denied or dismissed for the reasons described above. All of the protested parcels described in the February 7, 2017 Notice of Competitive Oil and Gas Lease Sale will be offered, as reconfigured (where applicable).

⁹ We note that PRBRC's position in its protest that there is a "lack of interest" in these lands for oil and gas development is inconsistent with the position that PRBRC has taken previously, and appears inconsistent even with its recent comments on this EA (e.g., "Now operators appear to be interested in developing the area..."). See PRBRC's comments to the Feb 2017 lease sale EA). In addition, were the BLM to accept PRBRC's premise that these parcels may be unlikely to receive the minimum bid; PRBRC might not be able to show harm and would therefore not be able to demonstrate standing.


This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (Attachment 6). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your receipt of this decision. The protestor 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 effectiveness of this decision 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 is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision, to the Interior Board of Land Appeals, 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 protestor'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.

 (Brenda V. Neuman)

for
Michael G. Valle
Acting Deputy State Director
Minerals and Lands

4 - Attachments

- 1 – Feb 2017 Lease Sale – PRBRC Protested Parcels
- 2 – Feb 2017 Lease Sale – RMP Revision Alternative B NSOs, FCPA
- 3 – Feb 2017 Lease Sale – RMP Revision Alternative B NSOs, Protested Parcels
- 4 – Form 1842-1

cc: (by e-mail unless otherwise noted)
District Manager, High Plains District
Field Manager, Buffalo Field Office
Field Manager, Casper Field Office
Field Manager, Newcastle Field Office
District Manager, Wind River/Bighorn Basin District
Field Manager, Cody Field Office
Field Manager, Lander Field Office
Field Manager, Worland Field Office
Deputy State Director, Division of Minerals and Lands (920)
Deputy State Director, Division of Resources (930)
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