EOI_Nominations, BLM_NV <blm_nv_eoi_nominations@blm.gov>

[EXTERNAL] FW: BLM NV October Protest: The Wilderness Society and Friends of Nevada Wilderness

1 message

Bruce Pendery <bruce_pendery@tws.org> Fri, Sep 27, 2019 at 12:31 PM
To: "blm_nv_eoi_nominations@blm.gov" <blm_nv_eoi_nominations@blm.gov>

Dear Ms. Anderson,

Here is the protest of the October lease sale that we faxed to BLM on September 16.

Bruce Pendery

Litigation & Energy Policy Specialist

The Wilderness Society

The Wilderness Society Action Fund

435-760-6217

www.wilderness.org

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We protect wilderness and inspire Americans to care for our wild places

From: Mackenzie Bosher <Mackenzie_Bosher@tws.org>
Sent: Friday, September 27, 2019 1:07 PM
To: Bruce Pendery <bruce_pendery@tws.org>; Barbara Young <barbara_young@tws.org>
Subject: Fw: BLM NV October Protest: The Wilderness Society and Friends of Nevada Wilderness

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From: Mackenzie Bosher
Sent: Monday, September 16, 2019 1:08:12 PM
To: 17758616745@fax.com <17758616745@fax.com>
Subject: BLM NV October Protest: The Wilderness Society and Friends of Nevada Wilderness

To:

Bureau of Land Management

Nevada State Office

1340 Financial Boulevard

Reno, NV 89502-7147

Via Facsimile at 775-861-6745

Protest of the BLM's October, 2019 Oil and Gas Lease sale in Nevada

To whom it may concern:

Please accept this protest of the above oil and gas lease sale that is filed by The Wilderness Society and Friends of Nevada Wilderness. This protest is filed pursuant to the provisions at 43 C.F.R. § 3120.1-3. Both organizations submitted comments on the environmental assessment that was prepared for the initial proposal to sell these leases at the March, 2019 lease sale in the Battle Mountain District on December 19, 2018 (The Wilderness Society also submitted comments on the Determination of NEPA Adequacy that was prepared for this lease sale in the Elko District on December 20, 2018). The Bureau of Land Management (BLM) is proposing to sell 142 lease parcels affecting 271,404 acres of public land in the BLM Battle Mountain and Elko Districts.

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4 attachments

NV Oct Lease Sale Protest 09-12-19.pdf
356K

Exhibit 1.pdf
2622K

NV_Oct_DiamondMtnsLWC_intersect.xls
26K

NV_Oct_SulfurSpringsLWC_intersect.xls
24K

FRIENDS *of* NEVADA WILDERNESS

Bureau of Land Management
Nevada State Office
1340 Financial Boulevard
Reno, NV 89502-7147

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INTERESTS OF THE PARTIES

The Wilderness Society, has a long-standing interest in the management of BLM lands in Nevada and we engage frequently in the decision-making processes for land use planning and project proposals that could potentially affect our public lands and mineral estate, including the oil and natural gas leasing process and lease sales. Our members and staff enjoy a myriad of recreational, scientific and other opportunities on BLM-managed public lands, including hiking, biking, nature-viewing, photography, and quiet contemplation in the solitude offered by wild places. Our mission is to work for the protection and enjoyment of the public lands for and by our members and the public.

Friends of Nevada Wilderness (FNW) has taken an interest in the management of BLM lands in Nevada since the 1970s. FNW staff and members have engaged in decision-making

processes for land use planning and project proposals that could potentially affect wilderness-quality lands managed by the BLM in Nevada. FNW has invested significant resources and personnel to intensively field inventory public lands in Nevada for wilderness characteristics. FNW members and staff spend a substantial portion of their time recreating on BLM-managed public lands, including hiking, biking, nature-viewing, dark sky viewing, rock hounding, photography, and quiet contemplation in the solitude offered by wild places. FNW was organized in 1974 and received formal 501(c)(3) status in 1985. Our mission is to protect and advocate for all wilderness qualified lands within the state of Nevada.

AUTHORIZATION TO FILE THIS PROTEST

As an attorney working for The Wilderness Society Bruce Pendery is authorized to file this protest on behalf of The Wilderness Society and its members and supporters. He has been given like authority by the Executive Director of Friends of Nevada Wilderness.

LEASE PARCELS THAT ARE PROTESTED

We protest the sale of all 142 parcels that are proposed for sale. These parcels are shown in the parcel descriptions for this lease sale that are shown at https://www.blm.gov/sites/blm.gov/files/ NV_OG_20191001_Parcel_List.pdf. The parcels that are protested are also shown in the Attachment to this protest.

STATEMENT OF REASONS

I. BLM failed to take the "hard look" required by NEPA.

BLM has not taken the required "hard look" at potential environmental impacts in the environmental assessments (EA) or determination of NEPA Adequacy (DNA) prepared for this lease sale. Under the National Environmental Policy Act (NEPA), BLM must evaluate the "reasonably foreseeable" site-specific impacts of oil and gas leasing, prior to making an "irretrievable commitment of resources." *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009); *see also Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (agencies are to perform hard look NEPA analysis "before committing themselves irretrievably to a given course of action so that the action can be shaped to account for environmental values"); *Sierra Club v. Peterson*, 717 F.2d 1409, 1411 (D.C. Cir. 1983) ([o]n land leased without a No Surface Occupancy Stipulation the Department cannot deny the permit to drill; it can only impose 'reasonable' conditions which are designed to mitigate the environmental impacts of the drilling operations.). Courts have held that BLM makes such a commitment when it issues an oil and gas lease without reserving the right to later prohibit development. *New Mexico ex rel. Richardson*, 565 F.3d at 718.

Merely describing the "the *category* of impacts anticipated from oil and gas development" isn't sufficient when it is reasonable for BLM to do more. *See New Mexico ex rel. Richardson*, 565 F.3d at 683, 707 (emphasis in original). "NEPA does not permit an agency to remain oblivious to differing environmental impacts, or hide these from the public, simply because it understands the general type of impact likely to occur. Such a state of affairs would be

anathema to NEPA's 'twin aims' of informed agency decision-making and public access to information." *Id.* The impacts from development on lease parcels being sold are "reasonably foreseeable." An "effect is reasonably foreseeable if it is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision." *Colo. Env. Coal. v. Salazar*, 877 F. Supp. 2d 1233, 1251 (D. Colo. 2013) (quotation omitted). The fact that no applications for permit to drill (APD) have been filed yet does not excuse BLM from making reasonable predictions about where that development is likely to occur: "reasonable forecasting is implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.'" *Salazar*, 877 F. Supp. 2d at 1251 (quoting *Dubois v. U.S. Dept. of Agriculture,* 102 F.3d 1273, 1286 (1st Cir.1996)). The test is whether an impact can or "cannot be described at the time the EIS is drafted with sufficient specificity to make its consideration useful to a reasonable decision-maker." *DuBois*, 102 F.3d at 1286.

Before proceeding with the proposed lease sale, BLM must prepare a NEPA analysis that considers the environmental impacts of offering these parcels for sale. At a minimum, an EA is required. Even under Instruction Memorandum (IM) 2018-034, an EIS or EA is still required when existing NEPA analysis has not adequately analyzed the impacts of the lease sale and is not in conformance with the resource management plan (RMP), as is the case here. *See* IM 2018-034 at section III.D (stating "state/field office[s] will determine the appropriate form of NEPA compliance for all lease sale parcels" and "If the authorized officer deems additional analyses to be necessary, then BLM can prepare an Environmental Assessment"). And given the array of significant impacts that are reasonably foreseeable, it is clear that an environmental impact statement (EIS) must be prepared for this lease sale, not just an EA.

II. BLM has failed to consider an adequate range of alternatives.

NEPA generally requires the lead agency for a given project to conduct an alternatives analysis for "any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). The regulations further specify that the agency must "rigorously explore and objectively evaluation all reasonable alternatives" including those "reasonable alternatives not within the jurisdiction of the lead agency," so as to "provid[e] a clear basis for choice among the option." 40 C.F.R. § 1502.14. This requirement applies equally to EAs and EISs. *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988).

The range of alternatives is the heart of a NEPA document because "[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded." *New Mexico ex rel. Richardson*, 565 F.3d at 708. That analysis must cover a reasonable range of alternatives, so that an agency can make an informed choice from the spectrum of reasonable options.

Here, BLM is evaluating only two options: the proposed action (leasing all of the nominated parcels) and a no action alternative. An EA offering a choice between leasing every proposed parcel, and leasing nothing at all, does not present a reasonable range of alternatives.

See TWS v. Wisely, 524 F. Supp. 2d 1285, 1312 (D. Colo. 2007) (BLM violated NEPA by failing to consider "middle ground compromise between the absolutism of the outright leasing and no action alternatives"); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (NEPA analysis failed to consider reasonable range of alternatives where it "considered only a no action alternative along with two virtually identical alternatives").

In *Western Organization of Resource Councils (WORC) v. BLM* the court invalidated BLM EISs for the Buffalo, Wyoming and Miles City, Montana RMPs because the agency failed to consider a reasonable alternative that reduced the amount of coal made available under the plans. 2018 WL 1475470 at *9 (D. Mont., Mar. 26, 2018). The court found that "BLM's failure to consider any alternative that would decrease the amount of extractable coal available for leasing rendered inadequate the Buffalo EIS and Miles City EIS in violation of NEPA." *Id.* at *9. Similarly, in *Wilderness Workshop v. BLM,* the court found that BLM failed to consider reasonable alternatives by omitting any option that would meaningfully limit leasing and development within the planning area. 342 F. Supp. 3d 1145, 1167 (D. Colo. 2018).

Even if lands at issue here are open for leasing under the governing RMP, it would be entirely reasonable for BLM to consider deferring parcels that have important sage-grouse habitat and/or other resources such as lands with wilderness characteristics (LWC). Moreover, to the extent certain parcels have only low potential for development, the alternative of deferring them appears even more reasonable. These options have never been analyzed.

BLM should at a minimum evaluate the following alternatives in a NEPA document for this lease sale:

- An alternative that defers leasing in inventoried lands with wilderness characteristics for which BLM has not yet made management decisions through a land use planning process. The BLM is proposing three leases in the Sulphur Springs LWC and 22 parcels in the Diamond Mountains LWC. This issue is discussed more fully below.

- An alternative that defers leasing in Priority and/or General Habitat Management Areas (PHMA and GHMA) for sage-grouse, consistent with BLM's obligation under the Federal Land Policy and Management Act (FLPMA) and the binding land use plan to "prioritize" oil and gas leasing outside of those habitats. This obligation is explained more fully below.

- An alternative that defers leasing the proposed parcels until BLM demonstrates that these are "lands...which are known or believed to contain oil or gas deposits..." 30 U.S.C. § 226(a). As discussed later in this protest, BLM provides no evidence that the proposed parcels contain oil or gas deposits, as required by the Mineral Leasing Act (MLA). *Ibid.*; *see also Vessels Coal Gas, Inc.*, 175 IBLA 8, 25 (2008) ("It is well-settled under the MLA that competitive leasing is to be based upon reasonable assurance of an existing mineral deposit."). Consistent with the MLA and BLM's multiple use mandate, BLM should not issue leases

unless and until BLM has shown that the area is known to contain resources that have the potential to be developed.

- An alternative that defers leasing the proposed parcels until production in Nevada is on par with other western states. According to BLM data, at least 50% of federal oil and gas leases are in production in Colorado, New Mexico, Utah and Wyoming. Nevada, by contrast, has 6% of leases in production.[1] BLM should evaluate an alternative to not issue new leases until 50% of federal oil and gas leases are in production in the state to ensure "reasonable diligence" requirements are being met under the MLA. 30 U.S.C. § 187. This would also be a fiscally responsible alternative because leases in low potential areas generate minimal to no revenue but can carry significant cost in terms of resource use conflicts. Leases in low potential areas are most likely to be sold at or near the minimum bid of $2/acre, or non-competitively, and they are least likely to actually produce oil or gas and generate royalties.[2] This has proved to be true in Nevada, where federal oil and gas lease sales have generated just $0.31 per acre offered in bonus bids over the past 3 years, compared to other western states which generate hundreds or even thousands of dollars per acre offered.

Nevada Sale[3]	Acres Offered	**Bonus Bids**
Mar. 2015	25,882	$30,496
June 2015	256,875	0
Dec. 2015	3,641	0
Mar. 2016	50,416	0
June 2016	74,661	$24,740
Mar. 2017	115,970	$74,780
June 2017	195,614	$29,440
Sept. 2017	3,680	$33,120
Dec. 2017	388,697	$66,978
Mar. 2018	69,692	$152,061.50
June 2018	313,715	$139,896.00
Sept. 2018	295,174	0
Total	**1,794,017**	**$551,511.50 ($0.31/acre offered)**

[1] https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics.

[2] *Center for Western Priorities, "A Fair Share"* ("Oil Companies Can Obtain an Acre of Public Land for Less than the Price of a Big Mac. The minimum bid required to obtain public lands at oil and gas auctions stands at $2.00 per acre, an amount that has not been increased in decades. In 2014, oil companies obtained nearly 100,000 acres in Western states for only $2.00 per acre. . . .Oil companies are sitting on nearly 22 million acres of American lands without producing oil and gas from them. It only costs $1.50 per year to keep public lands idle, which provides little incentive to generate oil and gas or avoid land speculation.").

[3] All data obtained from BLM (https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada) and EnergyNet (https://www.energynet.com/govt_listing.pl).

Failing to consider alternatives that would protect other public lands resources from oil and gas development also violates FLPMA. Considering only one alternative in which BLM would offer all nominated oil and gas lease parcels for sale, regardless of other values present on these public lands that could be harmed by oil and gas development, would indicate a preference for oil and gas leasing and development over other multiple uses. Such an approach violates the agency's multiple use and sustained yield mandate. *See* 43 U.S.C. § 1732(a). This issue will be discussed in more detail below.

III. BLM has failed to consider the cumulative impacts of leasing.

BLM must evaluate the cumulative impacts of the Nevada October, 2019 oil and gas lease sale in its entirety. BLM Nevada is considering leasing nearly 300,000 acres across a broad reach of the state in the October lease sale. However, BLM is addressing these parcels in multiple NEPA documents—at least three EAs and a DNA. In addition to addressing direct, indirect and cumulative impacts of leasing the parcels in each district, BLM must analyze the cumulative impacts of leasing all of the parcels being considered for the October lease sale in Nevada.

In order to take the "hard look" required by NEPA, BLM is required to assess impacts and effects that include: "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, *whether direct, indirect, or cumulative*." 40 C.F.R. § 1508.8. (emphasis added). NEPA regulations define "cumulative impact" as:

> the impact on the environment which results from the *incremental impact of the action when added to other past, present, and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

40 C.F.R. § 1508.7 (emphasis added).

To satisfy NEPA's hard look requirement, the cumulative impacts assessment must do two things. First, BLM must catalogue the past, present, and reasonably foreseeable projects in the area that might impact the environment. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809–10 (9th Cir. 1999). Second, BLM must analyze these impacts in light of the proposed action. *Id.* If BLM determines that certain actions are not relevant to the cumulative impacts analysis, it must "demonstrat[e] the scientific basis for this assertion." *Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 983 (N.D. Ca. 2002). The analysis "must occur at the earliest practicable point, and must take place before an 'irretrievable commitment of resources' is made." *New Mexico ex rel Richardson,* 565 F.3d at 718. That point, "the point of no return", occurs "at the point of lease issuance." *Wild Earth Guardians v. Zinke,* 368 F. Supp. 3d 41, 65-66 (D.D.C. 2019).

Moreover, the Tenth Circuit Court of appeals recently held that the preparation of a reasonably foreseeable development scenario (RFDS) makes it reasonably foreseeable that the

number of wells identified therein will be drilled. The cumulative impacts of these wells must be considered. *Diné Citizens Against Ruining Our Env't v. Bernhardt,* 923 F.3d 831, 853-54, 856-59 (10th Cir. 2019). As the Tenth Circuit explained, once an RFDS has been issued, the wells predicted in that document were "reasonably foreseeable future actions." *Id.* at 853 (citing 40 C.F.R. § 1508.7). Thus, for purposes of NEPA, those reasonably foreseeable wells—and associated impacts—must be considered in the agency's cumulative impact analysis. *Id.* at 853-54. The EA for this lease sale references the RFDS that is likely in this area repeatedly.

Here, none of BLM Nevada's separate NEPA documents for the October lease sale performs a cumulative impact analysis that takes into account the combined impact of the lease sale. A failure to include a cumulative impact analysis of additional leasing that is already planned in the region renders NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (holding that an EA for a timber sale must analyze the reasonably foreseeable future timber sales within the area). This analysis should have also included an analysis of the extent of past oil and gas leasing in the area, how this past leasing may have contributed to significant environmental impacts such as impacts to sage-grouse habitat, and whether additional leasing may have an "additive and significant relationship to those effects." Council on Environmental Quality, Guidance on the Consideration of Past Actions in Cumulative Effects Analysis at p. 1 (June 24, 2005); *Lands Council v. Powell*, 395 F.3d 1019, 1028 (9th Cir. 2005).

Additionally, the EAs and the DNA, and the underlying NEPA analyses, fail to account for the hundreds of thousands of acres being offered at BLM oil and gas lease sales in Utah, Colorado, Wyoming, Montana, and other states. There has been a wave of this leasing in the last year that is not accounted for in the NEPA documents.

Furthermore, because all of the parcels in BLM Nevada's October lease sale have been consolidated in a single Notice of Competitive Lease Sale, and are being sold together in a single online auction, these lease parcel reviews are "connected" actions. BLM must describe connected actions in a single environmental review. 40 C.F.R. § 1508.25(a); *Klamath-Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 387 F.3d 999 (9th Cir. 2004). The purpose of this requirement "is to prevent an agency from dividing a project into multiple 'actions,' each of which individually has an insignificant environmental impact, but which collectively have a substantial impact." *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006) (internal quotation marks omitted). Where the proposed actions are "similar," the agency also should assess them in the same document when doing so provides "the best way to assess adequately the combined impacts of similar actions." *Klamath-Siskiyou*, 387 F.3d at 999. Again, it is clear that an EIS needs to be prepared for this lease sale to consider past, present, and reasonably foreseeable future actions that will undoubtedly have significant impacts on the human environment.

IV. BLM has failed to respond to significant new information submitted by the public regarding lands with wilderness characteristics.

The BLM's proposed lease sale overlaps with LWCs, both BLM inventoried and citizen-proposed. As shown on the **two Excel files included herewith and incorporated herein**, 22 of

the lease parcels overlap with the Diamond Mountains LWC and 3 of the lease parcels overlap with the Sulphur Springs LWC. We have previously submitted inventory, narrative, map, and photosheet documentation supporting the recognition of these LWCs in three exhibits submitted with our comments on the March 2019 DNA (Ely District—comments submitted December 12, 2018 for the Diamond Mountains LWC, see Exhibits 4 and 5) and the June 2018 and March 2019 EAs (Battle Mountain District—comments submitted December 19, 2018 for the Sulphur Springs LWC, see Exhibit 2). We incorporate those prior Exhibits by this reference and ask for their full consideration here.

That inventory information, which BLM possesses, meets the minimum standards for review of new information set forth in BLM Manual 6310:

> i. a map of sufficient detail to determine specific boundaries of the area in question;
>
> ii. a detailed narrative that describes the wilderness characteristics of the area and documents how that information substantially differs from the information in the BLM inventory of the area's wilderness characteristics; and
>
> iii. photographic documentation.

BLM Manual 6310 at .06(B)(1)(b). When BLM receives information that meets these minimum standards, the agency is directed to review the information "as soon as practicable," "make the findings available to the public," and "retain a record of the evaluation and the findings as evidence of the BLM's consideration." *Id.* at .06(B)(2). IM 2013-106 directs that BLM field offices should make finalized and signed wilderness characteristics inventory findings available to the public before the inventory data is used to inform decisions.

BLM has not responded to the citizen inventory information since it was submitted. The inventory information constitutes significant new information about the affected environment that BLM is required to consider in the EA and DNA for this lease sale. Again, we reincorporate the information we have previously submitted on these two LWCs by this reference and ask that the BLM fully consider it.

The decision to ignore public input on affected wilderness resources contravenes the "hard look" requirement of NEPA. *See* 42 U.S.C. § 4332(2)(C). Numerous courts have applied the hard look mandate to overturn agency decisions that ignored substantive, relevant wilderness information provided by the public, including citizen-submitted wilderness inventories. *See, e.g.*, *Or. Natural Desert Ass'n v. Rasmussen,* 451 F. Supp. 2d 1202, 1211-13 (D. Ore. 2006) (holding that BLM violated the hard-look requirement of NEPA when it dismissed a citizen-submitted inventory "[w]ith a broad brush"); *SUWA v. Norton*, 457 Supp. 2d 1253, 1263-65 (D. Utah 2006) ("...Utah BLM ignored significant new information...information provided by the Southern Utah Wilderness Alliance...presented a textbook example of significant new information about the affected environment (the wilderness attributes and characteristics...)"); *Biodiversity Conservation Alliance*, 183 IBLA 97, 2013 IBLA Lexis *1, *28-*29 (2013) (rejecting a claim that BLM violated the hard-look requirement where BLM "specifically evaluated citizens' wilderness proposals [so that the citizens' proposals had] become administratively final..."). By

completely ignoring the significant new information that has been submitted BLM is failing to take the requisite "hard look" at how the sale of the proposed parcels would affect wilderness resources in the Battle Mountain, Elko and Ely Districts as required by NEPA.

BLM must therefore defer leasing the parcels shown in the **two Excel files included herewith and incorporated herein** until the agency has updated its inventory for these areas in response to the significant new information submitted to the agency. Furthermore, BLM should defer all leases in inventoried lands with wilderness characteristics until the agency has the opportunity to make management decisions for those areas through a public planning process. It is well within BLM's authority to defer nominated parcels from lease sales. Neither the MLA, FLPMA nor any other statutory mandate requires that BLM must offer public lands and minerals for oil and gas leasing solely because they are nominated for such use, even if those lands are allocated as available to leasing in the governing land use plan. The 10th Circuit Court of Appeals confirmed this discretion in *New Mexico ex rel. Richardson,* when it stated, "[i]f the agency wishes to allow oil and gas leasing in the plan area it must undertake additional analysis...but it retains the option of ceasing such proceedings entirely". 565 F.3d at 698.

BLM regularly exercises this discretion to defer parcels in inventoried lands with wilderness characteristics for which the agency has not yet made management decisions. For example, the Grand Junction Field Office deferred lease parcels from its December 2017 lease sale in areas that BLM recently inventoried and found to have wilderness characteristics. BLM stated: "Portions of the following parcels were deferred due to having lands with wilderness characteristics that require further evaluation." DOI-BLM-CO-N050-2017-0051-DNA, p. 1. The Grand Junction Field Office completed its RMP revision in 2015 but still determined that it is inappropriate to lease areas that have been inventoried and found to possess wilderness characteristics since the RMP was completed in order to allow the agency to consider management options for those wilderness resources.

BLM Nevada should similarly defer leasing in inventoried LWC for which management decisions have not been made. This approach is consistent with agency policy and authority, and is critical to preserving BLM's ability to make management decisions for those wilderness resources through a public planning process.

V. The proposed lease sale violates FLPMA because it is inconsistent with the governing RMP regarding management of sage-grouse habitat.

A. BLM has not prioritized leasing outside of sage-grouse habitat.

BLM has not prioritized leasing outside of sage-grouse habitat, as required by the Record of Decision (ROD) and Approved Resource Management Plan Amendments for the Great Basin Region and Nevada and Northeastern California Approved Resource Management Plan Amendment (ARMPA). Under the Great Basin ROD, BLM must:

> prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs. This is to further limit future surface disturbance and encourage new development in areas that would not conflict with GRSG. This objective is

> intended to guide development to lower conflict areas and as such protect important habitat and reduce the time and cost associated with oil and gas leasing development by avoiding sensitive areas, reducing the complexity of environmental review and analysis of potential impacts on sensitive species, and decreasing the need for compensatory mitigation.

ROD at 1-23.

The Nevada and Northeastern California ARMPA echoes this directive, including the following objective:

> Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside PHMA and GHMA. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMA and GHMA, and subject to applicable stipulations for the conservation of GRSG, priority will be given to development in non-habitat areas first and then in the least suitable habitat for GRSG.

Nevada and Northeastern California ARMPA, p. 2-28 (emphasis added).

The 2019 Nevada and Northeastern California Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment did not change this requirement. *See* Nevada and Northeastern California Proposed RMP Amendment and Final EIS at ES-7 (including "Prioritization of fluid mineral leases outside of PHMA and GHMA" in a list of issues that "do not require additional analysis in this RMPA/EIS"); Nevada and Northeastern California Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment at 1-7 ("The decisions in this Approved RMPA do not modify all of the existing decisions in the 2015 plans. Only those decisions pertaining to the issues in Section 1.3.1 are affected.").

FLPMA requires that lease sale decisions comply with their governing land use plans. *See* FLPMA § 302(a), 43 U.S.C. § 1732(a) ("The Secretary shall manage public lands...in accordance with land use plans developed by him under section 1712 of this title..."); *see also* 43 C.F.R. § 1610.5-3(a) (48 Fed. Reg. 20,368 (May 5, 1983)) ("All future resource management authorizations and actions...shall conform to the approved plan."). Commenting on these provisions, the Supreme Court said,

> The statutory directive that BLM manage "in accordance with" land use plans, and the regulatory requirement that authorizations and actions "conform to" those plans, prevent BLM from taking actions inconsistent with the provisions of a land use plan.

Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 68 (2004). Thus, it is clear that BLM must abide by the ROD and ARMPA in this lease sale. BLM's leasing decisions, not just its development decisions, must comply with the ROD and ARMPA ("Priority will be given to leasing . . . of fluid mineral resources . . . outside of PHMA and GHMA.").

In the EA and DNA, BLM essentially does not recognize the prioritization requirement, mentioning it only in response to public comments that raised the issue. Yet the EA and DNA make it clear that there are large areas in these proposed leases that are in PHMA or GHMA where the prioritization requirement must be met, even under the new 2019 sage-grouse plan. BLM cannot purport to have prioritized leasing outside of PHMA and GHMA when so many parcels overlap with sage-grouse habitat.

We further note, again, that while this lease sale is governed by the 2015 Nevada and Northeastern California ARMPA, which contains a clear and binding requirement to "prioritize" leasing outside of important grouse habitat, the final amendment to the ARMPA released on Dec. 6, 2018 retained and in no way modified that requirement. *See* Nevada and Northeastern California Proposed RMP Amendment and Final EIS at ES-7 (including "Prioritization of fluid mineral leases outside of PHMA and GHMA" in a list of issues that "do not require additional analysis in this RMPA/EIS").

Further, the U.S. Fish & Wildlife Service (FWS) specifically identified the prioritization requirement as one of the new "regulatory mechanisms" that allowed it to determine that sage-grouse did not warrant an Endangered Species Act (ESA) listing. *See* Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Greater Sage-Grouse (Centrocercus urophasianus) as an Endangered or Threatened Species, 80 Fed. Reg. 59,858 59,981 (Oct. 2, 2015) ("The Federal Plans prioritize the future leasing and development of nonrenewable-energy resources outside of sage-grouse habitats."). By ignoring this requirement in the context of this and other oil and gas lease sales, BLM is undermining FWS's determination and moving sage-grouse closer to a listing.

Leasing constitutes an irreversible and irretrievable commitment of resources, and in addition a lease gives a lessee the right to develop oil and gas. Form 3100-11 and 43 C.F.R. § 3101.1-2. Thus, it is clear that leasing has tangible impacts that cannot be ignored if BLM is to meet the commitment to prioritize leasing outside of sage-grouse habitats. BLM clearly must apply the prioritization objective from the ROD and ARMPA to this lease sale when parcels are proposed in or near PHMA and GHMA, and explain how its leasing decision complies with that mandate. BLM has failed to do so.

B. **BLM must incorporate requirements for compensatory mitigation into the leases.**

One of the key requirements of the 2015 Sage-grouse Plans is that when BLM "authorize[s] third-party actions [that] result in habitat loss and degradation" of sage-grouse habitat, the agency must require "compensatory mitigation projects . . . to provide a net conservation gain to the species." Great Basin ROD at 1-25. The Plan expressly requires such mitigation when oil and gas development is authorized in PHMA and GHMA. *Id.* at 1-36; Nevada and Northeastern California ARMPA at 2-6, 2-29 (Objective SSS 4 and MD MR 1); *see also id.* Exhibits F, I.

BLM, however, has eliminated the 2015 ARMPA requirement to use compensatory mitigation in the 2019 Approved Resource Management Plan Amendment and Record of

Decision. *See* Nevada and Northeastern California Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment at 1-4 to 1-6 and 2-41 to 2-43. BLM states, "These plans reflect the BLM's determination that the Federal Land Policy and Management Act of 1976 (FLPMA) does not explicitly mandate or authorize the BLM to require public land users to implement compensatory mitigation as a condition of obtaining authorization for the use of BLM-administered lands." *Id.* at 1-2.

First, we would note that there is now a new Instruction Memorandum (IM) on Compensatory Mitigation, IM 2019-018, issued December 6, 2018, but that IM still concludes that BLM cannot require compensatory mitigation under FLPMA and relies on a Solicitor Memorandum M-37046, "Withdrawal of M-37039, "The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations Through Mitigation." (June 30, 2017). Solicitor Memorandum M-37046 withdraws a previous Solicitor Opinion that confirmed BLM's authority to address land use authorizations through mitigation but did not conclude BLM did not have the subject authority; rather, it "attempted to answer an abstract question." In actuality, the direction in both IM 2019-018 and the 2019 RMP Amendment are arbitrary and capricious, and in violation of law. Consequently, BLM must include requirements for compensatory mitigation in any leases issued in PHMA and GHMA.

FLPMA unquestionably provides BLM with ample support for requiring compensatory mitigation, including its direction to manage public lands in a manner to ensure the protection of ecological and environmental values, preservation and protection of certain public lands in their natural condition, and provision of food and habitat for wildlife;[4] and to "manage the public lands under principles of multiple use and sustained yield".[5] The principles of multiple use and sustained yield pervade and underpin each of BLM's authorities under FLPMA, including the policies governing the Act,[6] the development of land use plans,[7] the authorization of specific projects,[8] and the granting of rights of way.[9] While FLPMA does not elevate certain uses over others, it does delegate discretion to the BLM to determine whether and how to develop or conserve resources, including whether to require enhancement of resources and values through means such as compensatory mitigation.[10] In sum, these statutory policies encompass the protection of environmental and ecological values on the public lands and the provision of food and habitat for fish and wildlife and are furthered by the implementation of the mitigation hierarchy, including compensatory mitigation, to protect and preserve habitat for the sage grouse.

Additional authority also exists for the use of the mitigation hierarchy in issuing project-specific authorizations. For example, project-specific authorizations must be "in accordance with

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[4] 43 U.S.C. § 1701(a)(8). Among other things, public resources should be managed to "protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values" and "provide food and habitat for fish and wildlife".
[5] 43 U.S.C. § 1732(a).
[6] 43 U.S.C. § 1701(a)(7).
[7] 43 U.S.C. § 1712(c)(1).
[8] 43 U.S.C. § 1732(a).
[9] 43 U.S.C. § 1765(a)(i).
[10] P. L. 94-579 (Oct. 21, 1976) (stating an intent "[t]o establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, *and enhancement of the public lands;* and for other purposes." (emphasis added)).

the land use plans,"[11] so if the land use plans adopt the mitigation hierarchy or other mitigation principles for the sage grouse under the various authorities described above, the project authorization must follow those principles. Moreover, in issuing project-specific authorizations, BLM may attach "such terms and conditions" as are consistent with FLPMA and other applicable law.[12] This general authority also confers broad discretion on BLM to impose mitigation requirements on project applicants, including compensatory mitigation in appropriate circumstances.[13]

Finally, as a distinct authority, BLM also has the obligation to ensure that project-specific authorizations do not result in "undue or unnecessary degradation. FLPMA states that BLM "shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands."[14] A number of cases have found that BLM met its obligation to prevent unnecessary or undue degradation based, in part, on its imposition of compensatory mitigation. *See e.g., Theodore Roosevelt Conservation Partnership v. Salazar ("TRCP")*, 616 F.3d 497, 518 (D.C. Cir. 2010) (BLM decision to authorize up to 4,399 natural gas wells from 600 drilling pads did not result in "unnecessary or undue degradation" in light of substantial mitigation required from permittees, including prohibition of new development outside core area until comparable acreage in the core was restored to functional habitat, and a monitoring and mitigation fund of up to $36 million); *see also Gardner v. United States Bureau of Land Management*, 638 F.3d 1217, 1222 (9th Cir. 2011) (FLPMA provides BLM "with a great deal of discretion in deciding how to achieve the objectives" of preventing "unnecessary or undue degradation of public lands.")

BLM's implementation of a standard requiring compensatory mitigation was recently confirmed in *Western Exploration, LLC v. U.S. Department of the Interior*, 250 F.Supp.3d 718 (D.Nev. 2017). In considering the argument that a net conservation gain standard for compensatory mitigation violated FLPMA, the court stated:

> The FEIS states that if actions by third parties result in habitat loss and degradation, even after applying avoidance and minimization measures, then compensatory mitigation projects will be used to provide a net conservation gain to the sage-grouse. The Agencies' goals to enhance, conserve, and restore sage-grouse habitat and to increase the abundance and distribution of the species, they argue, is best met by the net conservation gain strategy because it permits disturbances so long as habitat loss is both mitigated and counteracted through

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[11] 43 U.S.C. 1732(a).

[12] 43 U.S.C. § 1732(b).

[13] BLM also has authority and/or obligations to ensure that all its operations protect natural resources and environmental quality, through statutes such as the Mineral Leasing Act of 1920, 30 U.S.C. 181 et seq.; *see also Independent Petroleum Assn. of America v. DeWitt*, 279 F.3d 1036 (D.C. Cir. 2002) (Act grants "rather sweeping authority" to BLM, or NEPA, 42 U.S.C. 4321; *see also* 40 C.F.R. § 1505.2(c), which requires consideration of mitigation alternatives where appropriate. In addition, BLM's authority under FLPMA is broader than that exercised by purely land use or regulatory agencies such as EPA or zoning boards, because BLM [has authority] to act as both a regulatory and as a proprietor. Accordingly, BLM can take action using all the tools provided by FLPMA for managing the public lands, including issuing regulations, developing land use plans, implementing land use plans or in permitting decisions. 43 U.S.C. §§ 1712(a), 1732(a), 1732(b).

[14] 43 U.S.C. § 1732(b).

> restorative projects. If anything, this strategy demonstrates that the Agencies allow some degradation to public land to occur for multiple use purposes, but that degradation caused to sage-grouse habitat on that land be counteracted. The Court fails to see how BLM's decision to implement this standard is arbitrary and capricious. Moreover, the Court cannot find that BLM did not consider all relevant factors in choosing this strategy...
>
> In sum, Plaintiffs fail to establish that BLM's challenged decisions under FLPMA are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.[15]

BLM's conclusions in its new sage-grouse plans, and in IM 2018-019, cannot be supported by applicable law, as reviewed in Solicitor's Opinion M-37039 (Dec. 21, 2016). As detailed in M-37039, FLPMA and other applicable laws allow BLM to require compensatory mitigation. Taking the opposite approach based on a misreading of the law is both arbitrary and capricious and contrary to law, and moreover may violate FLPMA's requirement to avoid unnecessary or undue degradation (UUD). Abandoning compensatory mitigation as a tool to prevent habitat degradation would violate this requirement. As noted above, the UUD standard prohibits degradation beyond that which is avoidable through appropriate mitigation and reasonably available techniques. *TRCP*, 661 F.3d at 76-77; *Colo. Env. Coal*, 165 IBLA at 229. Offsite compensatory mitigation is a well-established, reasonable, and appropriate tool that has long been used to limit damage to public lands. Refusing to use that tool fails to meet FLPMA's requirement that BLM avoid unnecessary or undue degradation.

Because many of the proposed lease parcels in the October, 2019 sale cover PHMA and GHMA, BLM must attach a stipulation to those leases imposing the net conservation gain/compensatory mitigation requirement. Applying these requirements as terms of the leases is necessary to prevent unnecessary or undue degradation of the PHMA and GHMA lands being leased.

VI. Facilitating speculative leasing is inconsistent with the Mineral Leasing Act and FLPMA.

The MLA is structured to facilitate actual production of federal minerals, and thus its faithful application should discourage leasing of low potential lands. The MLA directs BLM to hold periodic oil and gas lease sales for "lands...which are known or believed to contain oil or gas deposits..." 30 U.S.C. § 226(a). These sales are supposed to foster responsible oil and gas development, which lessees must carry out with "reasonable diligence." 30 U.S.C. § 187; *see also* BLM Form 3100-11 § 4 ("Lessee must exercise reasonable diligence in developing and producing...leased resources."). However, BLM's oil and gas leasing program facilitates, and perhaps even encourages, speculative leasing, leading to unproductive leasing of public lands which does not carry out the provisions or intention of the MLA or FLPMA.

Here, BLM has provided no evidence that the proposed parcels contain oil or gas deposits, as required by the MLA. 30 U.S.C. § 226(a); *see also Vessels Coal Gas, Inc.*, 175

[15] *Western Exploration, LLC v. U.S. Department of the Interior*, at 747.

IBLA 8, 25 (2008) ("It is well-settled under the MLA that competitive leasing is to be based upon reasonable assurance of an existing mineral deposit."). In fact, based on the pattern of lease sales in Nevada over the past three years there is evidence to the contrary – that the lands encompassed by the parcels are lacking in marketable oil and gas resources.

BLM Nevada is currently spending an excessive amount of time and resources evaluating oil and gas leases that industry is either not bidding on or will likely never develop. Over the past 3 years, BLM has sold less than 10% of the acres it has offered for sale in Nevada, compared with other western states which are generally selling 70% or more.[16] Multiple lease sales garnered zero competitive bids:

	OFFERED (PARCELS/ACRES)	**SOLD (PARCELS/ACRES)**
Mar. 2015	24 / 25,882	13 / 15,244
June 2015	124 / 256,875	0
Dec. 2015	3 / 3,641	0
Mar. 2016	39 / 50,416	0
June 2016	42 / 74,661	4 / 3,765
Mar. 2017	67 / 115,970	20 / 35,502
June 2017	106 / 195,614	3 / 5,760
Sept. 2017	3 / 3,680	3 /3,680
Dec. 2017	208 / 388,697	17 / 33,483
Mar. 2018	40 / 69,691	11 / 19,432
June 2018	166 / 313,715	22 / 38,579
Sept. 2018	144 / 295,174	0
Total	966 / 1,794,017	93 / 155,446 (8.7% of acres offered)

This underscores just how inefficient and wasteful the oil and gas program in Nevada has become, and also demonstrates that BLM Nevada's oil and gas leasing program is inconsistent with the direction set forth in the MLA.

BLM Nevada's oil and gas leasing program is also facilitating a surge in noncompetitive lease sales, which is fiscally irresponsible management of publicly-owned lands and minerals. Because companies pay no bonus bids to purchase noncompetitive leases, taxpayers lose out in the noncompetitive leasing process. In states like Nevada that lack competition during lease sales, speculators can easily abuse this process to scoop up federal leases for undervalued rates, as shown in a report from the New York Times. *See* Exhibit 1. The New York times article affirms that, "In states like Nevada, noncompetitive sales frequently make up a majority of leases given out by the federal government." It provides examples of speculators, including in Nevada, intentionally using this process to nominate parcels for sale, then sit on the sidelines during the

[16] All data obtained from BLM (https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada) and EnergyNet (https://www.energynet.com/govt_listing.pl).

competitive lease sales and instead purchase the leases cheaper after the sale at noncompetitive sales. These speculators are then often unable to muster the financial resources to develop the lands they have leased so they sit idle: "Two Grand Junction, Colo., business partners, for example — a geologist and a former Gulf Oil landman — now control 276,653 acres of federal parcels in northeastern Nevada. But they are still looking for the money they need to drill on the land, or even to pay for three-dimensional seismic surveys to determine whether there is enough oil there to try." By failing to appropriately implement the MLA and ensure that parcels offered for sale have a "reasonable assurance" of containing mineral deposits, BLM is encouraging speculative and noncompetitive leasing, which deprives the public of bonus bids and royalties.

Additionally, leasing lands with low potential for oil and gas development violates FLPMA's multiple use mandate. Leasing in low potential areas gives preference to oil and gas development at the expense of other uses because the presence of leases can limit BLM's ability to manage for other resources, in violation of FLPMA's multiple use mandate.

For example, in the recently finalized Colorado River Valley RMP, BLM decided against managing lands for protection of wilderness characteristics in the Grand Hogback LWC unit based specifically on the presence of oil and gas leases, even though the leases were non-producing:

> The Grand Hogback citizens' wilderness proposal unit contains 11,360 acres of BLM lands. All of the proposed area meets the overall criteria for wilderness character...There are six active oil and gas leases within the unit, totaling approximately 2,240 acres. None of these leases shows any active drilling or has previously drilled wells. The ability to manage for wilderness character would be difficult. If the current acres in the area continue to be leased and experience any development, protecting the unit's wilderness characteristics would be infeasible...

Proposed Colorado River Valley RMP (2015), p. 3-135.

Similarly, in the Grand Junction Resource Management Plan in Colorado, BLM expressly stated that undeveloped leases on low-potential lands had effectively prevented management to protect wilderness characteristics, stating:

> 133,900 acres of lands with wilderness characteristics have been classified as having low, very low, or no potential...While there is not potential for fluid mineral development in most of the lands with wilderness characteristics units, the majority of the areas, totaling 101,100 acres (59 percent), are already leased for oil and gas development.

Grand Junction Proposed RMP (2015), pp. 4-289 – 4-290. The presence of leases can also limit BLM's ability to manage for other important, non-wilderness values, like renewable energy projects. *See, e.g.,* Proposed White River Resource Management Plan, p. 4-498 ("Areas closed to leasing...indirectly limit the potential for oil and gas developments to preclude other land use

authorizations not related to oil and gas (e.g., renewable energy developments, transmission lines) in those areas.").

In offering the leases involved in this sale, BLM runs a similar risk of precluding management decisions for other resources and uses such as wilderness, recreation, and renewable energy development. The area covered by the proposed lease parcels also has almost no history of successful oil and gas exploration and development or potential for future successful development. In prioritizing leasing of low potential lands, BLM is violating FLPMA's multiple use mandate and improperly elevating oil and gas leasing above other multiple uses.

In the October lease sale, like most other federal lease sales in Nevada, BLM is willfully facilitating speculative leasing, an approach that is inconsistent with the MLA and FLPMA. BLM Nevada would be well-served by deferring these lease parcels and preparing a programmatic EIS that considers alternative approaches for managing the oil and gas program in Nevada.

VII. Prioritizing oil and gas leasing is inconsistent with FLPMA's multiple-use mandate.

Under FLPMA, BLM is subject to a multiple-use and sustained yield mandate, which prohibits the Department of the Interior (DOI) from managing public lands primarily for energy development or in a manner that unduly or unnecessarily degrades other uses. *See* 43 U.S.C. §§ 1732(a) and (b). Instead, the multiple-use mandate directs DOI to achieve "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations." 43 U.S.C. § 1702(c). Further, as co-equal, principal uses of public lands, outdoor recreation, fish and wildlife, grazing, and rights-of-way must receive the same consideration as energy development. 43 U.S.C. § 1702(l).

DOI appears to be pursuing an approach to oil and gas management that prioritizes this use above others in violation of the multiple use mandate established in FLPMA. For example, a March 28, 2017 Executive Order and ensuing March 29, 2017 Interior Secretarial Order #3349 seek to eliminate regulations and policies that ensure energy development is balanced with other multiple uses. None of the overarching legal mandates under which BLM operates – be it multiple-use or non-impairment – authorizes DOI to establish energy development as the dominant use of public lands. On our public lands, energy development is an allowable use that must be carefully balanced with other uses. Thus, any action that attempts to enshrine energy development as the dominant use of public lands is invalid on its face and inconsistent with the foundational statutes that govern the management of public lands.

Federal courts have consistently rejected efforts to affirmatively elevate energy development over other uses of public lands. In the seminal case, *New Mexico ex rel. Richardson. v. BLM,* the Tenth Circuit put to rest the notion that BLM can manage chiefly for energy development, declaring that "[i]t is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses." 565 F.3d at 710; *see also S. Utah Wilderness Alliance v. Norton*, 542 U.S. 52, 58 (2004) (defining "multiple use management" as "striking a balance among the many competing uses to which land can be put"). Other federal

courts have agreed. *See, e.g., Colo. Envtl. Coalition v. Salazar*, 875 F. Supp. 2d 1233, 1249 (D. Colo. 2012) (rejecting oil and gas leasing plan that failed to adequately consider other uses of public lands). Thus, any action by BLM that seeks to prioritize oil and gas leasing and development as the dominant use of public lands would violate FLPMA. BLM must therefore consider a reasonable range of alternatives for this lease sale that considers and balances the multiple uses of our public lands, consistent with NEPA and FLPMA.

CONCLUSION

We hope to see BLM complete needed analysis and fully comply with applicable law and guidance prior to moving forward with this lease sale.

Sincerely,

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ATTACHMENT
Lease Parcels that are Protested.

NV-19-10-002
NV-19-10-003
NV-19-10-004
NV-19-10-005
NV-19-10-006
NV-19-10-008
NV-19-10-009
NV-19-10-010
NV-19-10-014
NV-19-10-015
NV-19-10-018
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New Your Times Article

https://www.nytimes.com/2018/11/27/business/energy-speculators-public-land-leases.html

Energy Speculators Jump on Chance to Lease Public Land at Bargain Rates

The Trump administration's policy of encouraging more oil and gas drilling combined with a loophole in federal rules has been a boon for investors with a taste for gambling — and has drawn criticism that it is a bad deal for taxpayers.

By Eric Lipton and Hiroko Tabuchi

Nov. 27, 2018

MILES CITY, Mont. — Robert B. Price, the chief executive of a London-based oil and gas company, came up with a creative tactic to grab bargain drilling rights to a sprawling piece of federal land here in eastern Montana — each acre for less than the price of a cup of coffee.

He first asked the Interior Department to auction off rights to as much as 200,000 acres in Montana through a process that allows energy companies to identify the public land they would like to develop. But when the auction took place last December, Mr. Price sat on the sidelines and waited for the clock to run out — betting no one else would bid.

His gamble worked. With no other bidders showing interest, the government allowed him to secure drilling rights on nearly 67,000 acres east of Miles City in a special noncompetitive sale the very next day. His cost: just $1.50 an acre a year in rent, compared with the more than $100-an-acre average paid by bidders, on top of rent, in competitive auctions in Montana in the final four years of the Obama administration.

"We're still interested in much more," said Mr. Price, reached by phone before he was scheduled to fly to London to meet with his investors.

Robert B. Price's gamble that no one else would bid on the land he was eyeing in Montana paid off.

The maneuver is one of many loopholes that energy speculators like Mr. Price are using as the Trump administration undertakes a burst of lease sales on federal lands in the West.

Major oil and gas companies like Chevron and Chesapeake Energy are frequent buyers of the leases. But the Trump administration has put so much land up for lease that it has also created an opening for super-low-price buyers like Mr. Price.

The plots of land the speculators bid on typically sell for such dirt-cheap prices because there is little evidence that much oil or gas is easily accessible. The buyers are hoping that the land will increase in value nonetheless, because of higher energy prices, new technologies that could make exploration and drilling more economical or the emergence of markets for other resources hidden beneath the surface.

In some cases they hope to resell access to deep-pocketed oil companies at a premium. In others they are hoping to raise money to search for oil or gas on their own. Either way, they are the latest in a long line of speculators willing to take a shot — sometimes a very long shot — at a big payoff in America's oil fields.

The percentage of leases being given away through noncompetitive sales, like the one that Mr. Price engineered, surged in the first year of the Trump administration to the highest levels in over a decade,

according to an analysis of federal leasing data by Taxpayers for Common Sense, a nonpartisan group that highlights what it considers wasteful actions by federal government agencies.

In states like Nevada, noncompetitive sales frequently make up a majority of leases given out by the federal government, the group's database shows.

The growth of the amount of land put up for lease combined with the sharp increase in noncompetitive leasing has resulted in major drops in the price companies pay per acre in certain states, like Montana, where the average bid has fallen by 80 percent compared with the final years of the Obama administration.

Two Grand Junction, Colo., business partners, for example — a geologist and a former Gulf Oil landman — now control 276,653 acres of federal parcels in northeastern Nevada. But they are still looking for the money they need to drill on the land, or even to pay for three-dimensional seismic surveys to determine whether there is enough oil there to try.

The percentage of leases being given away through noncompetitive sales — like in this part of eastern Montana —surged in the first year of the Trump administration.

In the case of Mr. Price, whose investors include Haliburton, the oil-services industry giant, he is convinced that there is an unusually high level of helium mixed in with natural gas that could be drilled in eastern Montana. Because helium sells at a much higher price than even oil, he is selling investors on the potential for lucrative returns. But the prospect of him delivering remains in doubt.

Rajan David Ahuja, vice president at R&R Royalty, a Texas-based company that has leases on land roughly equivalent to the size of Rhode Island, said that building landholdings like this was a crapshoot.

"We don't make money on 90 percent of the things we do," Mr. Ahuja said. "It is a really risky game."

The surge in noncompetitive transactions has intensified debate over how well the federal government handles the task of auctioning off access to taxpayer-owned lands. Taxpayers get 12.5 percent of revenues produced from any oil or gas extracted from leased public land — or nothing but trivial rent payments if speculators fail to develop the land successfully.

More than 11 million acres of land leased by the federal government lies idle — or about half of all the land out on lease — property that may or may not ever be drilled for oil and gas.

The speculation, critics say, allows companies to lock up millions of acres of federal land in leases, complicating efforts to set it aside for other uses, such as wildlife conservation areas or hunting and recreation zones.

"People come to Montana and stay in Montana not because of the best weather or highest wages or the best beaches," said John Todd, the conservation director at the Montana Wilderness Association. "They come here because we have access to ample public land, most of it that is in the same shape as it was when Lewis and Clark came here or before that."

Because the speculators can resell the leases, they could also reap the gains from any increase in the value of their landholdings, gains that otherwise would go to American taxpayers, said Ryan Alexander, president of Taxpayers for Common Sense.

"We should not be flooding the market so it is easy for companies to sit back and wait to get to leases at fire-sale prices," Ms. Alexander said. "The acceleration of leasing is doing just that. The industry is getting a great deal and taxpayers are not."

Ryan Zinke, the interior secretary, said this month that overall taxpayer revenue from energy production on federal lands jumped in 2018 as a result of rising production in states like Wyoming and New Mexico.

"President Trump's energy dominance strategy is paying off, and local communities across America are the beneficiaries," Mr. Zinke said in a statement.

The Speculators' Walmart

Inside the George R. Brown Convention Center in downtown Houston, thousands of energy industry executives converged in August for an event known as Summer NAPE, a giant gathering of hundreds of owners of potential oil and gas drilling sites. Most of them were there to raise money to turn their speculative gambles into real drilling plans.

"STRIKE WHILE THE DEALS ARE HOT," the banner at the entrance to the meeting hall said.

At Booth 2315, in front of a poster boasting about the more than 261,000 acres of federal leases they had secured in Nevada, stood Larry R. Moyer, a Colorado-based oil geologist, and his business partner, Stephen Smith, a former Gulf Oil landman, pitching their land to any prospective investor who walked up.

"You want to get in our deal — get your checkbook out," Mr. Smith said to one visitor.

Northern Nevada, Mr. Smith admits upfront, is a risky place to look for oil. Nevada has one of the highest percentages in the country of leased land that is sitting idle: Just 3 percent of the 715,441 acres of federal land in the state leased for oil and gas were actually producing energy as of late last year.

"There are a lot of people who have spent a lot of money drilling dry holes in the past," Mr. Smith said.

"We are working to overcome the conventional wisdom," Mr. Moyer added.

Mr. Moyer took to a small stage at the Houston conference for a "Shark Tank"-like presentation.

"What we are looking for — or we would ask someone — is about $10 million," Mr. Moyer said, money they would use for a seismic survey and to drill test wells.

"If you find a billion barrels, your finding cost is going to be a penny a barrel," he said before wrapping up his presentation by saying, "Think about taking a swing."

Waiting on the Sidelines

Outside Miles City, Mont. Buyers in Montana and elsewhere are able to lease land for as little as $1.50 per acre each year in the noncompetitive leasing program.

The bidding process typically begins when an oil and gas company asks the Interior Department to open up a new chunk of taxpayer-owned land to drilling.

Once the department agrees, it schedules an internet-based auction for registered bidders. Hot competition for the most sought-after land, where there are proven energy reserves, can drive these so-called bonus bids up close to $100,000 per acre, as happened in New Mexico in September. But to ensure that there is at least some upfront payment, the Interior Department requires a minimum per-acre bid of $2.

But there is a loophole. If no one bids, the land is then transferred into a program that allows anyone to approach the department within two years of the auction, without an upfront bid payment.

The only money that needs to be put down is the $1.50-per-acre annual lease payment for the first year of a 10-year lease, and a $75 filing fee. This is how Mr. Price managed to secure access to land in Custer County, east of Miles City, part of the 116,000 acres of federal leases his company, Highlands Montana, says it holds.

"We're a small company. We didn't want to get in a bidding process," said Mr. Price, whose company has raised at least $6 million from investors since 2016.

Mr. Moyer and Mr. Smith also secured a large share of their holdings in Nevada through these noncompetitive purchases, after sitting and watching the auctions play out without bidding.

But Neil Kornze, the former head of the Bureau of Land Management, the branch of the Interior Department that runs the leasing process, said this was a flawed policy.

"Someone should have to bid in the auction to get the land," said Mr. Kornze, who served as director in the final three years of the Obama administration.

The Trump administration made three times as much land available to bid on in the last fiscal year as the average for the last four years of the Obama administration. But only about 11 percent of the land attracted any bidders in 2018 — a total of 1.35 million acres. The rest of that land is now available for noncompetitive leases.

Highlands Montana has drilled a few test wells on adjacent state land it has leased here. But for now, most of Mr. Price's leased land remains undeveloped.

Ms. Stevenson and her husband own a cattle ranch near the remote part of Montana where Mr. Price hopes to drill for natural gas and helium.

Large-scale development would be quite a shock in this part of Montana, where there is now very little oil and gas drilling.

From the back porch of the cattle ranch owned by Karen Aspevig Stevenson and her husband, the view stretches for miles, with ponderosa pines and juniper bushes swaying in a wind that blows so strong it sounds almost like ocean waves.

"This is our public lands. We all own this land," Ms. Stevenson said, as she walked through the rolling hills, her cattle-herding dog running ahead. "To come in here and just start drilling — that does not make sense."

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ParcelNo	s overlapping LWC unit
NV-19-10-009	1181.07315
NV-19-10-010	590.8061934
NV-19-10-018	703.7193552

ParcelNo	s overlapping LWC Unit
NV-19-10-088	0.125290103
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NV-19-10-105	685.1400841
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