

Wild Horse Education

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TO:
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Comments re: *DOI-BLM-NV-B000-2019-0004-EA*
March 2019 Competitive Oil and Gas Lease Sale

Laura Leigh as an individual and representing Wild Horse Education, it's volunteers and members, submit the following comments referencing the draft environmental assessment (EA) and proposed finding of no significant impact (FONSI) for competitive oil and gas sale lease bidding scheduled for March, 2019.

In March 2019, the Nevada State Office (NVS0) proposes to conduct a three day Competitive Oil and Gas Lease Sale. This proposed parcels are identified as 136 parcels that total approximately 259,941 acres and include 10 parcels that overlap the Battle Mountain and Ely District boundary in the Battle Mountain district; both Tonopah and Mt. Lewis Field Offices.

Wild Horses

We request the withdrawal of all parcels effecting HMAs until the Land Use Plan is revised, HMAPs created and approved and/or require that BLM Battle Mountain District create an EIS that addresses the underlying deficits prior to offering any parcel for oil and gas leasing that contain an HMA.

Throughout this EA for the lease sale, the BLM segments its analysis through NEPA by claiming that it will conduct site-specific NEPA analyses at the Application Permit to Drill stage.

From the EA: “At the time of this review it is not known whether the nominated parcels will receive bids, if leases would be issued, or what types of lease operations might be proposed in the future, if any. BLM would conduct additional site-specific, project-specific NEPA analysis whenever an exploration or development proposal is submitted.”

“NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment.” *U.S. Bureau of Land Mgmt. v. Kern*, 284 F.3d 1062, 1072 (9th Cir. 2002); *see also* 40 C.F.R. § 1500.1(b) (“NEPA procedures must insure that environmental information is available to public officials and citizens *before decisions are made* and before actions are taken.”). This is especially the case if postponing analysis results in a piecemeal look at the impacts. *See* 40 C.F.R. § 1508.27 (“Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.”).

EA, page 15: Over 95% of exploration wells in Nevada have been dry holes, that is, not producing oil or gas in commercially worthwhile amounts.

This entire EA could potentially be viewed as a waste of tax payer funding when the district has serious issues that have gone unaddressed.

Of particular concern is that funding is being used to push satisfaction of oil and gas development by a district that can not find funding to update archaic land use plans. that do not incorporate this proposed action. Segmenting NEPA is not an appropriate tool to propose an action that could be improperly approved through tiering to an inadequate framework. If NEPA is used in such a way then the analysis in the document must address all of the deficits in the underlying structure, this EA is inadequate.

EA page 14: An oil and gas lease sale does not involve a specific project proposal, but rather is a first step in making certain lands available for future oil and gas development. Therefore, a meaningful analysis of the differences between alternatives requires that the Proposed Action include assumptions based on current exploration and development trends and projections. ... and the assumption that current technologies, methods, and requirements will be applied in the foreseeable future.

The Land Use Plan Conformance relies on the Tonopah RMP (Tonopah Field Office), approved 1997, and Shoshone Eureka RMP (Mt. Lewis Field Office), approved 1986. These land use plans are over 20 and 30 years old, respectively.

The “assumptions of current technologies” used as a premise for this entire document were not included, analyzed or even imagined under any framework created in these archaic land use plans.

EA, page 37: The existing Shoshone Eureka and Tonopah RMPs do not include analysis of the impacts of oil and gas leasing to wild horses, or stipulations specific to those impacts. Refer to the Lease Notice – Wild Horse and Burro (#NV-B-05-A-LN) in Appendix B.

The land use plans must be updated before any oil and gas analysis, assumption, mitigation plan, stipulation, comment, can even be contemplated.

EA page 8:

Wild Free-Roaming Horse and Burro Act of 1971 (WFRHBA) directs the BLM’s responsibility for the protection, management and control of wild horses and burros “in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.” The BLM is mandated to manage wild horses and burros only within those areas on public lands where they were found in 1971 when the WFRHBA was passed. They cannot be relocated elsewhere in the District; new Herd Management Areas (HMAs) cannot be created; and BLM cannot expand the HMAs to replace habitat lost. Management guidance includes 43 CFR 4700 and the Wild Horses and Burros Management Handbook H-4700-1

Any impact, analysis, speculation involving wild horses should be carefully considered. Wild horses are managed on about 11% of public lands and have restricted occupancy to HMAs. Wild horses “have nowhere else to go.” As noted they can not be relocated and no new acreage can replace damaged habitat. The only way to change an HMA boundary that is based on flawed data is through a land use plan or amended land use plan. But no acreage simply damaged through the lack of a close look can ever be replaced.

One of the most frequently used justifications to limit wild horse population numbers and to trigger roundups and emergency removals is surface waters. The impacts to water in this EA have never been analyzed, contemplated or reviewed. Critical waters for wild horses have never even been identified. A reference to a “core use” can not simply be determined by a yearly flyover that presents a snapshot of a single day and fails to provide more specific and accurate data.

Any parcel that overlaps a wild horse HMA should be withdrawn until the land use plans are revised.

The “management” of wild horses in the district is based on old premise, information and assumption that simply relies on a stocking level and removals. These stocking levels have not had an adequate review in 20 years in Tonopah and over 30 years in the Mt Lewis field office.

EA page 35: ...64 proposed parcels overlap wild horse Herd Management Areas (HMAs). Parcels overlap four HMAs administered by the Battle Mountain District, and one Herd Area. Because the Herd Area contains no wild horses and is not administered for wild horses, it will not be considered further in this document. Three parcels extend over the District Boundary into the Ely District and wild horse HMAs administered by that office, indicated with an asterisk below.

In addition the Land Use Plans were approved prior to the National Academy of Sciences (NAS) determination the practices of the BLM Wild Horse and Burro program were data poor, methods inadequate and based on assertion, not hard facts. The land use plans do not incorporate any of the recommendations of the NAS. (National Academies Press; A way forward, 2013)

BLM is aware that the HMAs within this proposed action are a subject that needs serious consideration in the revision of the land use plan. BLM is aware that the land use plans need considerable changes to adequately incorporate both law and current technologies.

In 2010 Wild Horse Education members and staff began dialogue, at the invitation of the BLM, to begin to address the multiple grievances in this, and other, HMAs. This invitation coincided as “scoping” for the new land use plan was published in the federal registry.

Each and every year since the initial scoping conversations we have asked the district when the land use plan will be revised. The issues include, but are not limited to: inaccurate boundary lines, stocking levels, lack of identification and preservation strategies for critical habitat protections to preserve wild horse herds, lack of information and planning to address all of the deficits of data.

Through mitigation on litigation in a different district Wild Horse Education, through myself, began to create a framework for cooperative action. Changes in personnel, dramatic disputes with counties and livestock, interoffice politics and personnel dramas derailed those efforts.

The Land Use Plan revisions were abandoned with multiple, unacceptable, excuses. The Land Use Plans are inadequate for wild horses. The entire framework in the district is inadequate to adhere to current knowledge, technologies and protocol outlined in the Handbook (H-4700). These are unfortunate realities well understood at the national level, the state office and the district.

The HMAs listed in this EA are all among those that fail in a solid, justifiable, framework to propose the action(s) outlined in this EA.

40 C.F.R. § 1502.20. “A NEPA document that tiers to another broader NEPA document. . . must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid or address any exceptions.”

43 C.F.R. § 46.140(b). However, “[t]o the extent that any relevant analysis in the broader NEPA document is not sufficiently comprehensive or adequate to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis.”

In the instance of this EA the tiered NEPA is essentially limited to the Land Use Plans for wild horse management. The BLM admits that the proposed action is not addressed in any fashion for wild horses within the tiered Land Use Plans.

EA page 8: Management guidance includes 43 CFR 4700 and the Wild Horses and Burros Management Handbook H-4700-1

The BLM Wild Horses and Burros Handbook H-4700, referenced above from page 8 of the EA, outlines that land use planning is the appropriate venue to address deficits. BLM delaying the land use plan and continuing to propose and approve extraction, livestock projects, pinyon clearing, sage grouse plans, oil and gas prior to addressing known deficits in planning concerning wild horses continues to be an outrageous action that creates arbitrary and capricious actions and permanent damage to both the wild horses and the public interest.

The handbook noted above also outlines Herd Management Area Plans (HMAPs).

Herd Management Area Plans (HMAPs) identify and set objectives for WH&B herds and their habitat. HMAPs are prepared with public involvement through a site-specific environmental analysis and decision process (NEPA). During the NEPA process, the environmental impacts associated with a range of alternative management strategies for the WH&B herd and its habitat is analyzed.

The approved HMAP outlines the selected management actions, together with the management and monitoring objectives which, when implemented, would make progress toward achieving land health standards, LUP goals/objectives, and other relevant objectives.

It must be noted that not one of the HMAs listed in this proposed oil and gas sale lease have a single HMAP. It should be noted that this district has produced not one single HMAP for the HMAs in this EA or any other.

A lazy assertion of appropriate mitigation that an additional water source “could” be required fails to analyze the impacts and measures that would address habitat loss and habitat quality loss from fracking, disturbance, air quality etc that were never addressed in the ancient land use plans.

Conclusion

The archaic land use plan, and the lack of an HMAP for a single HMA in this EA, create the unfortunate reality that any proposal, speculation, assumption, mitigation, action contained in this document is based on nothing but completing a prioritized agenda item, an oil and gas lease sale.

This clearly demonstrates the lack of concern, priority and follow through of the district to create a management framework for “justified action.” Public interest, participation and protection of the public interest is thwarted through a continual shirking of the responsibilities of land managers to ensure that proposed actions are not arbitrary, capricious, an abuse of discretion. The land use plan must be a priority prior to any proposal of such an action as this EA proposes.

Discretion is broad when BLM creates a management plan for wild horses. In the instance of this EA there are no management plans, land use plans, that appropriately integrates into this EA. This EA simply tiers to land use plans that are decades old, do not include the technologies or damage envisioned, and in addition there is not a single HMAP to replace the deficits in the land use plan. This EA represents an abuse of discretion in the management, consideration and mandated responsibility to the resource and the public.

This is not an analysis document, it is “checking a box” sent from the NVSO.

Any and all parcels that overlap, occupy or impact an HMA should be pulled from the sale lease EA until HMAPs are created and the land use plan revised.

As a matter of course “[o]il and gas leasing follows a three-[phase] process.” N.M. ex rel. Richardson v. Bureau of Land Mgmt., 565 F.3d 683, 716 (10th Cir. 2009). In the first phase, BLM prepares a land use plan called a “resource management plan,” that determines which tracts or areas of public land will be open to leasing and under what conditions. Id.; 43 U.S.C. § 1712(a). In the second phase, BLM may grant leases for the development of specific sites within

areas that are open to leasing, subject to the requirements of the resource management plan. Richardson, 565 F.3d at 716; 43 U.S.C. § 1712(e).

In the instance of this EA the underlying Land Use Plans (term interchangeable with “Resource Management Plan”) are antiquated, contain no analysis or consideration, admittedly, on the impacts to wild horses of the proposed action.

All of the reasons above support the request to withdraw all parcels effecting HMAs until the Land Use Plan is revised or amended, HMAPs created and approved and/or require that BLM Battle Mountain District create an EIS that addresses the underlying deficits prior to offering any parcel for oil and gas leasing that contain an HMA.

Sincerely,



Laura Leigh

President, Wild Horse Education for herself as a member of the public, volunteers and members

An additional, site specific, addendum is available should the necessity arise to protest the leasing of the parcels containing HMAs. WHE has considerable knowledge, documentation and history in these areas and none of them are suited for this type of activity based on our knowledge of the areas and our knowledge of the depth, or lack of depth of knowledge, of the decades old deficits of information in the field offices. These parcels are not appropriate for the proposed action without the land use plan, land use plan revision and/or HMAP.