



The Coalition To Protect America's National Parks

Voices of Experience

October 29, 2017

Paul W. Kelley, Project Lead
Bureau of Land Management
North Dakota Field Office
99 23rd Avenue West, Suite A
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Re: March 13, 2018 Oil and Gas Lease Sale; DOI-BLM-MT-C030-2017-0133-DNA

Project Lead Kelley,

Thank you for the opportunity to comment on Montana BLM's March 2018 Lease Sale. We are writing to ask that you defer parcel NDM 102757-T, which falls within the Little Missouri National Grassland and directly borders the North Unit of Theodore Roosevelt National Park. This lease is within the viewshed of the National Park, and its development would harm visitor enjoyment from the park, contribute to worsened air quality, degraded night skies, and lost natural sounds.

National Parks Conservation Association

The mission of the National Parks Conservation Association (NPCA) is to "protect and enhance America's National Park System for present and future generations." Founded in 1919, NPCA is the leading citizen voice for the national parks. We are a national non-profit with 24 regional and field offices across the country, including our Northern Rockies Office, with staff in Wyoming and Montana. NPCA represents over 1.3 million members and supporters who care about America's shared natural and cultural heritage preserved by the National Park System.

Coalition to Protect America's National Parks

With over 1,400 members, the Coalition to Protect America's National Parks (Coalition) is composed entirely of retired, former, or current employees of the National Park Service. The Coalition studies, educates, speaks, and acts for the preservation of America's National Park System. As a group, we collectively represent more than 35,000 years of experience managing and protecting America's most precious and important natural and historic places.

NPCA and the Coalition have significant concerns with the proposed lease sale, including BLM's failure to comply with the National Environmental Policy Act (NEPA) in analyzing the lease parcel proposed for sale and potential impacts on multiple public lands resources that the North Dakota Field Office is charged with stewarding. We therefore recommend BLM defer this lease sale until the agency completes adequate analysis to support leasing in the North Dakota Field Office.

I. Impacts to Theodore Roosevelt National Park and Theodore Roosevelt Wilderness

The EA violates NEPA because it fails to explore important and potentially significant environmental impacts of the proposed action on nearby protected lands. The purpose of an EA is to determine whether environmental impacts are significant enough to warrant preparation of an EIS. 40 C.F.R. § 1508.9. The EA must provide “sufficient evidence and analysis” to justify this determination, in part by taking a “hard look” at potential direct, indirect and cumulative impacts of the proposed action. See *Wilderness Soc. v. Forest Serv.*, 850 F. Supp. 2d 1144, 1155 (D. Idaho 2012). Specifically, the EA ignores direct and indirect impacts of noise, light pollution, visual intrusion, and water quality threats on Theodore Roosevelt National Park and Theodore Roosevelt Wilderness visitation and revenue. These are all important and potentially significant impacts the EA should have explored.

The North Dakota parcel in this March 2018 BLM lease sale is directly on the boundary of the North Unit of Theodore Roosevelt National Park and the Theodore Roosevelt Wilderness. While BLM may offer oil and gas leases in the vicinity of these protected lands, the agency is required by NEPA and other applicable laws and regulations to analyze impacts to National Park Service units and Wilderness Areas from the proposed action. Yet the EA fails to include an adequate analysis of the potential impacts to these two protected areas.

As detailed below, the EA lacks the necessary hard look at the impacts of leasing the proposed parcel on these protected lands, including their protected resources, recreation and tourism. 40 C.F.R. § 1502.16. At a minimum, BLM must consider the following direct, indirect and cumulative impacts in the EA, all of which have a critical impact on the visitation experience:

- Viewshed analysis;
- Water quality impacts to Squaw Creek and the Little Missouri River from a spill or runoff from the parcel;
- Air quality analysis that includes the impact to the visitor experience from dust caused by transportation and traffic from heavy vehicles and pollution caused by drilling activities;
- Impacts to dark skies;
- Impacts to natural soundscapes; and
- Impacts to visitation and revenue from the Park and Wilderness.

A. The EA fails to explore cumulative impacts of the proposed action on the viewshed and dark skies of Theodore Roosevelt National Park and Theodore Roosevelt Wilderness.

The EA mentions the impacts the leasing and development of the parcel may have on Theodore Roosevelt National Park, but does not take the required “hard look.” EA p. 65-66. The viewshed discussion in the EA admits that “Development may cause potential impacts to the National Park and visitors. Impacts could include reduction or alteration of current viewsheds and dark night skies.” However, the EA does not include any additional information about potential viewpoints from the National Park and Wilderness Area, or give any additional discussion to dark night skies. BLM routinely examines these types of impacts when oil and gas leases are proposed near national parks.

To comply with NEPA, BLM must both identify and explore relevant environmental impacts. See, e.g., *Grand Canyon Trust v. FAA*, 290 F.3d 339, 346 (D.C. Cir. 2002) (“First, the agency has accurately identified the relevant environmental concern. Second, once the agency has identified the problem it must have taken a ‘hard look’ at the problem in preparing the EA.”). In evaluating the environmental impacts of proposed leasing near national parks and monuments, BLM routinely analyzes the impacts of noise and light pollution. See, e.g., *New Mexico BLM*, January 2014 Competitive Oil and Gas Lease Sale EA at pp. 4-7.3. Courts have readily overturned agency actions that ignore these types of effects. See, e.g., *Grand Canyon Trust v. FAA*, 290 F.3d 339 (D.C. Cir. 2002) (EA failed to adequately analyze noise impacts from agency action on Zion National Park).

The EA fails to identify potential impacts on these protected lands from oil and gas leasing, and also fails to explore the likely impacts of the leasing decision to night skies, soundscape, scenic values and other resources of these protected areas. Yet the EA does not even identify this potential conflict, let alone attempt to measure, quantify or objectively define what these effects might look like, or evaluate whether they are “significant,” thus warranting preparation of an EIS. See *Klamath-Siskiyou v. BLM*, 387 F.3d 989, 994 (9th Cir. 2004) (“...[g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.”)(citations omitted). Nor does it identify and evaluate the extent to which lease stipulations may successfully mitigate visual, noise and sound impacts to the Park.

To satisfy the hard look requirement, BLM must do more than recognize that certain types of impacts might exist – it must actually explore those impacts. For example, in 2009, a federal district court enjoined BLM from issuing oil and gas leases in the vicinity of Dinosaur National Monument that were proposed in Utah BLM’s December 2008 oil and gas lease sale. The court ruled that prior to selling the leases, BLM had failed to “engage[] in quantitative ozone dispersion modeling” and thus was “unable to assess the concentration of pollution in the air. . . .” The court also found that BLM had failed to adequately evaluate and address potential impacts on cultural, scenic, scientific and other resources under the National Historic Preservation Act and Federal Land Policy and Management Act. *S. Utah Wilderness Alliance v. Allred*, No. 08-2187, 2009 U.S. Dist. LEXIS 30664, at *7-8 (D.D.C. Jan. 17, 2009).

The EA explains that impacts would be minimized if certain non-binding BMPs are implemented. The decision whether or not to apply those measures is, of course, at the discretion of the developer, leaving protection of Theodore Roosevelt National Park and Theodore Roosevelt Wilderness to the whims of a private company. What’s more, the BLM’s assurance that such BMPs, if applied, could help protect the viewshed of the park and Wilderness is speculative, as the BLM has not done an appropriate analysis of what the impacts are.

B. The EA fails to explore potential impacts to water quality in Squaw Creek and the Little Missouri River

The parcel at issue lies along Squaw Creek, which, during periods of flow, runs directly into Theodore Roosevelt National Park and Wilderness, past at least two prairie dog towns, past the Juniper Campground, and into the Little Missouri River. Oil, fracking chemicals, fracking wastewater, erosion, or any other substance from the lease site could spill into the Squaw Creek and contaminate park resources. Yet, the possible impacts of such a scenario are not considered in this EA.

The BLM skirts its responsibility to examine the possible water quality impacts from this sale by claiming that “No impacts to water resources would occur as a result of offering leases for sale.” EA at 56. However, courts have considered these issues and have found that “there is no bright line rule that site-specific analysis may wait until the APD stage.” In *New Mexico ex rel. Richardson v. Bureau of Land Management*, an “assessment of all ‘reasonably foreseeable’ impacts must occur at the earliest practicable point, and must take place before an ‘irretrievable commitment of resources’ is made.” The court concluded that issuing a lease without a No Surface Occupancy (NSO) stipulation constituted such a commitment. The Richardson court found that BLM’s failure to prepare a site-specific analysis prior to lease issuance was arbitrary and capricious.

While there is a NSO stipulation on this North Dakota lease (NSO 11-38 - Golden Eagle Nests), it is a conditional stipulation. There is no indication that there is or have been Golden Eagles nesting on the parcel, though such information would certainly be of use to the public to determine what development impacts might occur. BLM itself admits that “There is little potential [Golden Eagle] nesting habitat on the proposed tract.” EA at 24. The BLM is preparing to offer an irretrievable commitment of its resources in issuing this lease, but has not done proper environmental analysis before it reaches that point.

C. The EA fails to explore cumulative impacts of the proposed action on tourism and visitation to Theodore Roosevelt National Park and Theodore Roosevelt Wilderness.

The EA also ignores important cumulative social and economic impacts that leasing and development can have on visitation and tourism to the park and Wilderness. To be sure, social and economic impacts, such as impacts to visitation, tourism and revenue to a National Park, are environmental effects for purposes of NEPA analysis. See 40 CFR § 1508.8 (“Effects include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative”). More than 750,000 people visited Theodore Roosevelt National Park in 2016, spending more than \$47.7 million dollars in the area and supporting 653 jobs.¹ This economy and these jobs that are worth protecting, and deserve the respect of consideration.

NEPA’s implementing regulations define a cumulative impact as an “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.” 40 CFR § 1508.7. “A proper consideration of the cumulative impact of a project requires some quantified or detailed information...[g]eneral statements about possible effects and some risk do not constitute a hard look absent justification regarding why more definitive information could not be provided.” See *Klamath-Siskiyou v. BLM*, 387 F.3d 989, 994 (9th Cir. 2004) (citations omitted).

II. Range of Alternatives

The EA fails to consider a reasonable range of alternatives, in contravention of NEPA. NEPA requires that BLM analyze in detail “all reasonable alternatives.” 40 C.F.R. § 1502.14(a). 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

¹ National Park Service, 2016 National Park Visitor Spending Effects, Natural Resource Report NPS/NRSS/EQD/NRR—2017/1421.

ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded.” *New Mexico v. BLM*, 565 F.3d 683, 708 (10th Cir. 2009). That analysis must cover a reasonable range of alternatives, so that an agency can make an informed choice from the spectrum of reasonable options. The EA for the March lease sale fails to meet this requirement. It only analyzes two alternatives: 1) The No Action alternative, which would exclude the lease parcel from the sale; and 2) Leasing the nominated parcel. EA, p. 7-8.

An EA offering a choice between leasing every parcel nominated, and leasing nothing at all, does not present a reasonable range of alternatives. BLM must consider reasonable alternatives that fall between the two extremes. At a minimum, as detailed further later in these comments, BLM should analyze an alternative that considers strong stipulations, such as an unqualified NSO stipulation not tied to the presence of Golden Eagles.

Failing to analyze such middle-ground options would violate NEPA. 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. US 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”).

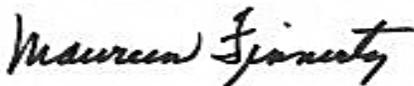
Conclusion

NPCA and the Coalition to Protect America’s National Parks thank you for considering our comments along with those of other stakeholders who support the goal of protecting Theodore Roosevelt National Park and Theodore Roosevelt Wilderness. Our goal is to ensure that this national park continues to inspire new generations of Americans in the same way that the badlands inspired a young Theodore Roosevelt. This goal is not at odds with responsible energy development, so long as care is taken to ensure that impacts are eliminated. We look forward to continuing to work with the BLM to ensure that national parks and their surrounding public landscapes are protected and remain the special places that draw visitors from across the country and around the world.

Respectfully,



Holly Sandbo
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Northern Rockies Office



Maureen Finnerty, Chair
Coalition to Protect America’s National Parks