



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Montana State Office
5001 Southgate Drive
Billings, Montana 59101-4669
<http://www.blm.gov/mt>

In Reply To:

3100 (922.JB)

CERTIFIED-RETURN RECEIPT REQUESTED

September 7, 2007

Mr. William H. Geer
Policy Initiatives Manager
Theodore Roosevelt Conservation Partnership
P.O. Box 16868
Missoula, Montana 59808-6868

DECISION

Protest Dismissed

On July 15, 2007, we received your protest (Enclosure 1) affecting the following parcels on our July 31, 2007, Competitive Oil and Gas Lease Sale (July sale):

MT-07-07-05 through MT-07-07-15; MT-07-07-17; MT-07-07-18; MT-07-07-21 through MT-07-07-29; MT-07-07-31 through MT-07-07-34; MT-07-07-40 through MT-07-07-48; MT-07-07-50 through MT-07-07-63; MT-07-07-65; MT-07-07-66; MT-07-07-69 through MT-07-07-73; 07-07-75 through MT-07-07-78; MT-07-07-80 through MT-07-07-86; MT-07-07-90 through MT-07-07-104; MT-07-07-106 through MT-07-07-114; and 07-07-116 through MT-07-07-151.

You state that the underlying basis for this protest is the need to provide greater protection of habitat required to maintain current populations of elk, mule deer, pronghorn and Greater sage grouse, and to sustain existing public hunting opportunities.

Your protest involves two resource specific issues and issues relating to compliance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Mineral Leasing Act (MLA).

Resource Concerns:

1. Protested Parcels Important to Elk, Mule Deer, and Pronghorn Populations

Protest: The following parcels were specifically protested because of their importance to big game populations and the belief of the TRCP that stipulations were not adequate: MT-07-07-05 through MT-07-07-15; MT-07-07-17 and MT-07-07-18; MT-07-07-21 through MT-07-07-28; MT-07-07-32 through MT-07-07-34; MT-07-07-40 through MT-07-07-48; MT-07-07-50 through MT-07-07-63; MT-07-07-65 and MT-07-07-66; MT-07-07-69 through MT-07-07-73; MT-07-07-75 through MT-07-07-78; MT-07-07-80; MT-07-07-82; MT-07-07-84 through MT-07-07-86; MT-07-07-90 through MT-07-07-106; MT-07-07-109 through MT-07-07-113; MT-07-07-116; MT-07-07-119; MT-07-07-121; MT-07-07-126 and MT-07-07-127; and MT-07-07-129 through MT-07-07-151.

In your protest, you note that the BLM has identified these parcels as being seasonal, critical, or year around habitat for elk, mule deer, and pronghorn. You also noted that the BLM developed stipulations in the Big Dry RMP aimed at protecting winter range for elk, moose, bighorn sheep, white-tailed deer, mule deer and pronghorn, as well as elk calving. Stipulations developed in the RMP included seasonal timing restrictions from December 1 through March 31. The restrictions would apply to new surface disturbance such as drilling operations, road construction, or installation of new pipelines, but not to operations and maintenance of production facilities. These stipulations were attached by the BLM to nominated parcels where needed. As the protest notes, in your opinion these timing stipulations do not address the loss and degradation of habitat caused by oil and gas development.

You also stated you believe the protested parcels will have the same high density of wide, high-speed dirt roads and round-the-clock vehicle traffic that accompanies full field development in both the Jonah Field and Pinedale Anticline in Wyoming and have proven to be insurmountable hurdles to maintaining mule deer populations. The large vehicles that use oil and gas field access roads have also been responsible for instances of high pronghorn collision mortality.

Third, you list scientific literature that has addressed the impacts of roads and vehicle traffic on mule deer and elk populations in most of the Rocky Mountain States, including Montana. Appendix B of your protest lists 15 studies conducted by state fish and wildlife agencies, the Forest Service and universities in the western states in the last 30 years. In your opinion, the findings from these studies provide evidence that roads and vehicles in the density and intensity commonly occurring in oil and gas fields would likely lead to reduction or extirpation of mule deer and elk in development fields even in the first several years of drilling.

Finally, you indicated the nature of the nominated area should have signaled a need for the BLM to address migration needs and historic corridors for mule deer and pronghorn. You believe it is likely resident herds of both species spend their entire lives in the lease area, with corridors connecting seasonally critical habitats. There are no stipulations addressing migration needs in the list of applicable stipulations.

Response: As noted above, part of your protest alleges the BLM should assume that if leases are issued for the protested parcels, the level of development would be similar to that of the Jonah Field and Pinedale Anticline in Wyoming. The BLM disagrees with the argument. A reasonably foreseeable development (RFD) scenario for oil and gas was prepared for the Big Dry Resource Management Plan (RMP). Summaries are found in Chapter 3, beginning on page 79 and in the minerals appendix, beginning on page 328 of the final RMP/EIS. The nominated acreage under protest is identified as having moderate potential for shallow wildcat drilling with spacing on 40 or 160 acres. Based on present activity in the area and no bids for these protested parcels at the BLM July lease sale, the BLM expects very limited exploration for shallow natural gas in the area. As noted in the RMP, surface disturbance for a typical shallow gas well includes 0.5 acres for the well pad and no disturbance for an access trail. Producing wells in the planning area have an average life span of 25 years, which includes 20 years of production and 5 years for reclamation. Wells completed as dry holes have a 5-year reclamation life span. If the existing RFD scenario is reached or

comes close to being reached (number of wells drilled and/or acreage disturbed, by policy the BLM would review oil and gas activity in the planning area and make a determination as to what action would be taken including amending the governing land use plan would be considered.

The four wildcat gas wells currently being drilled in Garfield and McCone Counties should have similar impacts to the gas wells described above. Wildcat gas wells at this depth would be spaced at 160 acres. The infrastructure required to support reasonably foreseeable development would be significantly less when compared to the fields you reference in Wyoming. Wellsites would be smaller, roads constructed to a lower standard, and general activity levels much lower. Gas would be piped to a central facility and each well site might be visited one time per week.

The BLM would point out that oil and gas exploration and development activities authorized and managed by the BLM do consider habitat loss or degradation. In addition to the oil and gas lease stipulations applied to the leases protested, the BLM also has the authority under the terms of the oil and gas lease and 43 CFR 3101.1-2 to require other mitigation measures as conditions of approval or best management practices on applications for permit to drill. These conditions of approval can be used to mitigate seasonal impacts of operations or maintenance on producing wells where needed. Conditions of approval on surface-disturbing activities are monitored for effectiveness to ensure these conditions are truly mitigating the impacts. Where it is determined that changes are needed, the BLM does make appropriate changes to COAs and BMPs.

At your third point, you cite several studies that addressed the impacts of roads and vehicle traffic on mule deer and elk populations in most of the Rocky Mountain States, including Montana. The studies cited are not specific to energy development but are for the most part specific to the impacts of road building during logging in the Rocky Mountains. Obviously, impacts of logging and associated road building in that area differ in the types and quantities of habitat alterations from those associated with oil and gas activity in east-central Montana. In reviewing abstracts from the cited literature, the studies were in forested areas, where vegetative cover was higher than what would be expected in eastern or central Montana.

Finally, the BLM would note that based on the low level and type of activity forecast for the nominated area in Garfield and McCone Counties, we do not believe that big game migration corridors would be negatively impacted. Concerns raised in the protest are based on the level of impacts found at fields such as the Pinedale Anticline and Jonah Field which are the sites of intense oil and gas development and human population growth. Our development forecast for this area would be nowhere near that level of development.

Based on the above information the BLM believes that the mixture of protective stipulations, including timing restrictions, and other mitigation measures that the BLM can and will impose is adequate to protect big game populations in the protested area.

2. Protested Parcels Under or Adjacent to Sage Grouse Leaks

Protest: The following parcels were specifically protested because of their importance to sage grouse populations and the belief by the TRCP that

existing stipulation were not adequate: MT-07-07-12 through MT-07-07-15; MT-07-07-17 and MT-07-07-18; MT-07-07-21 through MT-07-07-29; MT-07-07-31 through MT-07-07-34; MT-07-07-40 through MT-07-07-48; MT-07-07-50 through MT-07-07-63; MT-07-07-65 and MT-07-07-66; MT-07-07-69; MT-07-07-71 through MT-07-07-73; MT-07-07-75 through MT-07-07-78; MT-07-07-80 through MT-07-07-83; MT-07-07-85 and MT-07-07-86; MT-07-07-90 through MT-07-07-101; MT-07-07-103 and MT-07-07-104; MT-07-07-106; MT-07-07-108 through MT-07-07-114; MT-07-07-116 through MT-07-07-142; and MT-07-07-144 through MT-07-07-151.

As you note, these parcels have been recognized by the BLM as seasonal or year-round critical habitat for Greater sage grouse as evidenced by the list of stipulations for buffers and timing aimed at protecting Greater sage grouse leks and nesting in the lease sale announcement. However, in the opinion of the Theodore Roosevelt Conservation Partnership (TRCP), the stipulations applied by the BLM have been shown in Wyoming and other Rocky Mountain states to be largely ineffective in protecting Greater sage grouse leks and negatively impacting nesting success.

Further, your protest indicates the BLM's present buffers for Greater sage grouse leks and nesting habitat are not supported by peer reviewed scientific studies. In addition, you believe application of the stipulations have not led to sustained use of leks or nesting areas in many parcels undergoing several years of continuous gas production activities. New peer reviewed scientific information on Greater sage grouse use and avoidance of parcels has been presented by Dr. David Naugle. As stated in the protest, Dr. Naugle's research found gas development within 1/2 mile of leks resulted in adverse impacts to Greater sage grouse, and current lease stipulations that prohibit development within 1/4 mile of sage-grouse leks on Federal lands are inadequate to ensure lek persistence. Naugle concluded seasonal restrictions on drilling and construction do not address impacts caused by loss of sagebrush and incursion of infrastructure that can affect populations over long periods of time.

New peer-reviewed scientific information on Greater sage grouse that does not appear to have been used by the BLM in the design of stipulations or other restrictions includes the following: Greater sage grouse winter habitat selection and energy development; Greater sage-grouse population response to energy development and habitat loss; and West Nile virus and greater sage-grouse; estimating infection rate in a wild bird population. The new information is peer-reviewed scientific research scheduled for publication in reputable journals available to and read by the BLM wildlife biologists. The TRCP supports Montana Fish, Wildlife and Parks recommendation of year-round No Surface Occupancy (NSO) within one mile of an active lek and no drilling or production activity within 4 miles of occupied nests during the period March 1 to June 30.

Response:

The protested parcels are within the boundaries of the planning area for the Big Dry RMP. This RMP was adopted in April 1996. The ROD for the RMP specifically adopted three stipulations, based on analysis in the amendment, as mitigation for the impacts of oil and gas on sage grouse. The first of these was a timing limitation stipulation meant to protect crucial winter range including sage grouse winter range. Surface use is prohibited from December 1 to March 31 within crucial winter range. The second stipulation

is an NSO stipulation to protect grouse leks. This stipulation prohibits activity within ¼-mile of leks. The third stipulation is a timing stipulation which restricts activity from March 1 through June 15 in nesting habitat within 2 miles of leks. A major objective of all three stipulations is ensuring the long-term maintenance of regional populations.

The stipulations discussed above were applied to all protested parcels where BLM analysis indicated there were areas of winter range, breeding habitat, or active leks. In addition to these stipulations, guidelines in the Montana Sage Grouse Conservation Strategy will be used as needed to develop site specific conditions of approval for drilling and development. No justification was provided by the TRCP to support a no drilling or production activity within 4 miles of occupied nests in the period March 1 to June 30.

However, the BLM made a decision prior to the sale to defer all or portions of 94 parcels in Garfield and McCone counties covering 72,404 acres on those areas within a 1 mile radius around all known leks, as well as high quality wintering habitat (Enclosure 2). The amended lease notice that noted these deferrals was posted for the public on July 18, 2007. These deferrals were made to give the BLM time to review new information on crucial sage grouse habitat and the potential impacts of oil and gas development on this habitat. These deferrals were based on a cooperative interchange of information by the BLM and Montana Fish, Wildlife and Parks.

None of the protested parcels in Garfield and McCone counties received a bid at the BLM July lease sale.

Legal Concerns:

National Environmental Policy Act (NEPA)

Protest: You state the BLM violated NEPA by failing to take the required "hard look" at significant new information that questions the general validity of its current RMP.

You further state:

"the BLM failed to take a hard look at existing and new information and new circumstances that have come to light since the BLM's original boundaries for mule deer and elk crucial winter range. Additionally, FWP has new information on requirements of active Greater sage grouse leks and associated habitat that should have been used by the BLM in designing stipulations that would be more effective in protecting leks and nesting habitat. For this reason, BLM's approval of the disputed lease parcels is arbitrary, capricious, contrary to law, and an abuse of discretion."

Response: You specifically note parcels MT-03-07-20, MT-03-07-21, MT-03-07-22, MT-03-07-23, MT-03-07-24, MT-03-07-25, and MT-03-07-48 in the USFS White Pine Ridge Area under these portions of the protest. We want to point out that these parcels were on our March 2007 sale and not the July sale.

However, we still want to describe the processes involved leading to listing of parcels on the July sale affected by your protest.

The BLM completed a Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) for parcels on the sale. The DNA serves to document the "hard look" the BLM took to determine whether new circumstances, new information, or environmental impacts not previously anticipated or analyzed warrant new analysis or supplementation of existing NEPA documents and whether the impact analysis supports the proposed action. Based on the analysis, the BLM made a decision that the Big Dry RMP still supported oil and gas leasing without the need for supplemental NEPA or planning analysis. Based on new information on sage grouse, the BLM made the decision to temporarily defer all or portions of 94 parcels on the July sale list, pending additional review of new information regarding crucial sage-grouse habitat and potential impacts of oil and gas development on the habitat as described in this decision.

Protest: You state the BLM violated NEPA by failing to conduct site-specific pre-leasing analysis of mineral development impacts on the public lands in the protested parcels.

You further state the BLM must analyze the impacts of subsequent development prior to leasing. You indicated you believe the BLM has not analyzed protesters' documentation of special surface values that will be permanently compromised by future development. Therefore, the BLM cannot defer all site-specific analysis to later stages such as submission of APDs or proposals for full-field development.

Finally, you state that in the present case, the BLM is attempting to defer environmental review without retaining the authority to preclude surface disturbances. You contend none of the environmental documents previously prepared by the BLM examine the site-specific or cumulative impacts of mineral leasing and development to the crucial mule deer winter ranges and migration routes. You allege the BLM has not analyzed the new information, nor has it assessed what stipulations, other than timing restrictions, might protect special surface values.

Response: The Miles City District/Big Dry Resource Area (now part of the Miles City Field Office) completed detailed analyses of oil and gas development impact on all lands in the Big Dry Planning Area, including lands in the protested parcels.

The RMP includes an unconstrained RFD scenario for oil and gas. An unconstrained RFD scenario for oil and gas is a long-term projection of oil and gas exploration, development, production, and reclamation activity. The RFD scenario covers oil and gas activity in a defined area for a specified period of time. The unconstrained RFD scenario projects a baseline scenario of activity, assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order. The baseline RFD scenario provides the mechanism to analyze the effects discretionary management decisions have on oil and gas activity. The RFD scenario also provides basic information analyzed in the NEPA document under various alternatives.

The Big Dry RMP meets the requirements of BLM Handbook H-1601-1 - Land Use Planning Handbook. The following specific decisions required by this handbook were made for the BLM administered oil and gas estate. The RMP identifies:

1. Areas open to leasing, subject to existing laws, regulations, and formal orders; and the terms and conditions of the standard lease form.
2. Areas open to leasing, subject to moderate constraints such as seasonal and controlled surface use restrictions.
3. Areas open to leasing, subject to major constraints such as no-surface-occupancy stipulations.
4. Areas closed to leasing. Identify whether such closures are discretionary or nondiscretionary; and if discretionary, the rationale.
5. Resource condition objectives and specific lease stipulations and general/typical conditions of approval and best management practices to be employed to accomplish these objectives in areas open to leasing.
6. For each lease stipulation, circumstances for granting an exception, waiver, or modification are identified. The RMP also identifies the general documentation requirements and any public notification associated with granting exceptions, waivers, or modifications.
7. The RMP identifies whether leasing and development decisions also apply to geophysical exploration.
8. Whether constraints identified in the land use plan for new leases also apply to areas currently under lease.
9. Long-term resource condition objectives for areas currently under development to guide reclamation activities prior to abandonment.

A plan-level decision to open the lands to leasing represents the BLM's determination, based on the information available, that it is appropriate to allow development of the specific parcels consistent with the terms of the lease, specific stipulations, laws, regulations, and orders, and subject to reasonable conditions of approval.

The Big Dry RMP meets our guidance for oil and gas leasing and development and includes a reasonably foreseeable development scenario for oil and gas, identification of oil and gas potential within the planning area, and the site-specific identification of lease stipulations to be used. It also identified a range of alternatives with varying levels of constraints. Further, the document also identifies a range of conditions of approval to be used to mitigate impacts from oil and gas leasing and development. It also reflects consideration of public, other agency, and interdisciplinary team input.

Further on-site mitigation will be identified and NEPA documentation is prepared when specific applications such as applications for permit to drill (APDs) are filed.

Protest: You state the BLM violated NEPA by failing to consider NSO and No-Leasing Alternatives.

Response: The Big Dry RMP analyzed four alternatives in detail. Alternative B was the most restrictive alternative. This alternative would have made crucial winter ranges, riparian/wetlands, several areas of critical environmental concern, steep slopes, potential black-footed ferret habitat, and special recreation management areas closed to leasing. This alternative would have affected 87,250 acres of lands classified as high development potential oil and gas, and 1,179,305 acres classified as moderate development potential oil and gas. The other alternatives considered in detail used a mixture of NSO and other stipulations to mitigate impacts from oil and gas leasing and development. In addition to alternatives considered in detail, the RMP also considered but did not analyze in detail 10 other alternatives that would have led to varying levels of restrictions on all activities on BLM lands in the planning area.

Federal Land Policy and Management Act (FLPMA)

Protest: You state the leasing decision violated FLPMA's requirement to prevent undue or unnecessary degradation of mule deer crucial winter ranges, known elk winter ranges, mule deer and elk migration routes, wild trout habitat characteristics in both Clark Canyon Reservoir and the Beaverhead River, and active sage grouse leks and associated habitat. You further state existing analysis has not been sufficient to satisfy the BLM's obligation to prevent undue and unnecessary degradation by showing future impacts from development will be mitigated and thus avoid undue or unnecessary degradation of mule deer crucial winter ranges, known elk winter range, mule deer and elk migration routes, wild trout habitat characteristics in both Clark Canyon Reservoir and the Beaverhead River, and active sage grouse leks and associated habitat.

Response: First, the BLM would note there are no parcels under protest on the July oil and gas lease sale in the vicinity of the Beaverhead River or Clark Canyon Reservoir. We had parcels in our March sale that are in the described area. We believe the protestor has made a mistake to include these references in this protest. However, we will answer these general comments.

The BLM believes we complied with FLPMA by completing the Big Dry RMP which is the governing RMP. This RMP documents the comprehensive environmental analyses used to develop mitigation measures for impacts from oil and gas to other resources and resource uses in the two counties. The Big Dry RMP meets the requirements of the BLM Land Use Planning Handbook (H-1601-1) and makes all decisions required for oil and gas leasing and development. The document meets our guidance for oil and gas and includes an RFD scenario for oil and gas, identification of oil and gas potential within the planning areas, and identification of leasing stipulations. This RMP also reflects consideration of public, other agency, and interdisciplinary team input. In addition to mitigation built into the RMP, the BLM has the regulatory authority to adopt reasonable measures at the application for permit to drill stage. We believe that by completing the RMP and the use of our regulatory authority at a later date, the BLM has complied with our mandate to ensure actions do not lead to undue and unnecessary degradation of resources such as crucial mule deer and elk winter ranges, mule deer and elk migration routes, and sage grouse leks and associated habitat.

The Mineral Leasing Act (MLA)

Protest: You state that:

"withdrawing the protested parcels from the lease sale until proper preleasing analysis is performed is a proper exercise of the BLM's discretion under the MLA. The BLM has no legal obligation to lease the disputed parcels and is required to withdraw them until the agencies have complied with the applicable law."

Response: The BLM understands our discretion under the MLA and has shown that by deferring all or parts of numerous parcels originally on the lease sale. We also believe we have completed the proper pre-leasing analysis as documented in the protest response.

Decision

For the reasons stated above, your protest on all parcels noted in your letter is dismissed. This decision to deny your protest may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and the enclosed Form 1842-1 (Enclosure 2). If an appeal is taken, Notice of Appeal must be filed in the Montana State Office at the above address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed is in error.

This Decision will become effective at the expiration of the time for filing a notice of appeal unless a petition for a stay of Decision is timely filed together with a notice of appeal, see 43 CFR 4.21(a) (Enclosure 3). The provisions of 43 CFR 4.21(b) define the standards and procedures for filing a petition to obtain a stay pending appeal.

We received no bids for the protested parcels and are issuing no leases at this time.

/s/ Gene R. Terland

Gene R. Terland
State Director

4 Enclosures:

- 1-Protest of July 16, 2007 (14 pp)
- 2-Notice of Lands Deleted From July 31, 2007 Competitive Oil and Gas Lease Sale (16 pp)
- 3-Form 1842-1 (1 p)
- 4-43 CFR 4.21 (a) (2 pp)

cc: (w/o enclosures)
Miles City Field Office

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