



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Montana State Office
5001 Southgate Drive
Billings, Montana 59102
<http://www.mt.blm.gov/>



In Reply To:

3100 (922.JB)

CERTIFIED-RETURN RECEIPT REQUESTED

September 7, 2007

Michael Gibson
Conservation Director
Montana Trout Unlimited
PO Box 7186
Missoula, Montana 59807-7186

DECISION

Protest Dismissed in Part Affirmed in Part

On July 13, 2007, we received your protest filed on behalf of Montana Trout Unlimited (Enclosure 1). You protested the July 31, 2007, competitive oil and gas lease sale of the following parcels:

MT 07-07-154 through MT 07-07-159

General Protest Concerns

Montana Trout Unlimited raises the following two general concerns.

1.) Leases within the Draft Montana Statewide SEIS Planning Area

Protest: The protest raises two issues. In the first Montana Trout Unlimited notes that:

"All of these leases are located in the planning area for the Supplement to the Montana Statewide Oil and Gas Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plans (Draft SEIS), which has yet to be completed. Until a Record of Decision (ROD) is finalized for that planning document, and comments from organizations such as Trout Unlimited incorporated, offering a lease within the planning area would result in the BLM making an irretrievable commitment of resources without adequately identifying and evaluating environmental concerns and resource impacts, including the impacts to coldwater fisheries. The current Draft SEIS has produced significant new information including reasonable foreseeable development scenarios and cumulative impacts that have gone unanalyzed in any previous leasing decision by the BLM, therefore offering a lease in the planning area without supplementing the previous leasing decision or finalizing the SEIS."

Response: The Draft SEIS was prepared at the direction of the U.S. District Court to supplement portions of the original Montana Statewide Oil and Gas Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plans (Statewide EIS) that was approved with a ROD in 2003. As the 2003 ROD noted, the purpose of the Statewide EIS was to amend the Billings and Powder River RMPs and provide new management guidance for oil and gas exploration and development activities on Bureau of Land Management (BLM) administered oil and gas estate in the Powder River and Billings Resource Management Plan (RMP) areas. This was carried forward into the SEIS. Resource Management Plan Amendments approved through the SEIS will not change the leasing decisions and stipulations for leasing contained in the 1994 Record of Decision for the final Miles City Oil and Gas RMP/EIS Amendment adopted in 1992 (1994 Amendment) relative to the availability of lands for oil and gas development. Those decisions are still valid and will remain in effect. All other aspects of the 1994 Amendment concerning exploration and development of oil and gas and related activities will be replaced. New mitigation developed through the SEIS will be utilized when processing Applications for Permit to Drill.

Protest: The second issue raised concerns comments that Montana Trout Unlimited made on the Draft SEIS. The protest indicates that Montana Trout Unlimited feels that having commented on the Draft SEIS, the BLM would be circumventing the public process if leases were issued in the planning area even if coal bed natural gas was never produced from any of the leases. The comments in question specifically addressed Yellowstone Cutthroat Trout populations in the planning area. It was suggested in the comments that the SEIS adopt a stipulation such as the Dillon Field Office uses to protect Westslope Cutthroat Trout to protect conservation populations (90 to 100 percent genetically pure) of Yellowstone Cutthroat Trout.

Response: As noted above, the SEIS will not change leasing decisions found in the 1994 Amendment when it is adopted. However, it will change post lease management prescriptions for the planning area including the Billings Field Office (FO). We will apply existing stipulations for mitigating impacts from developments on slopes over 30 percent and a no surface occupancy stipulation for riparian areas, 100-year flood plains of major rivers, and on water bodies and streams. The BLM will also apply mitigation measures developed and listed in the final SEIS as appropriate to alleviate potential impacts to all coldwater fisheries when an application for permit to drill is submitted.

2.) Climate Change:

Protest: The Montana Trout Unlimited argues that

"Rivers throughout Montana, including the Clarks Fork of the Yellowstone have experienced deleterious impacts to the aquatic environment in recent drought years due to low stream flows, increased water temperatures, and inadequate over-wintering habitat. Before leasing, the cumulative effects of climate change and drought need to be analyzed by the BLM and the agency needs to conduct an assessment of

vulnerable species including aquatic, game species, and natural systems that will be adversely impacted by global climate change. The BLM should manage vulnerable systems like the Clarks Fork of the Yellowstone River and their tributaries to prevent them from experiencing regime shifts brought on by the impacts of climate change and remove other stressors from those systems by thoroughly analyzing cumulative impacts in the underlying land use plan and the leasing decisions that have authorized leasing. This analysis should culminate in appropriate stipulations, lease terms, and/or decisions not to lease in these vulnerable habitats."

Response: While the BLM did not directly analyze global climate change in the 1994 Amendment, it did analyze a wide array of alternatives in the document and the impacts, including cumulative impacts, of the proposed alternatives on resources and resource uses in the planning area. Resources and resource uses analyzed include but are not limited to climate and air quality, hydrology, soils, vegetation, and fish and wildlife. These analyses addressed the cumulative impacts to rivers such as the Clark's Fork of the Yellowstone. In our decisions for the 1994 Amendment, the BLM balanced uses that we can impact or manage. The analysis established the appropriate lease terms and conditions and identified areas not available for lease. Montana Trout Unlimited has not provided information to identify flaws in the BLM's analysis in their protest filed on the July lease sale.

Parcel Specific Protest Items

1.) Parcel MT 07-07-155

Protest: The protest makes two allegations about stipulations applied to this parcel. You suggested that the following No Surface Occupancy (NSO) stipulation applied to Parcel MT 07-07-156 should have been applied to parcel MT 07-07-155.

"Surface occupancy and use is prohibited within riparian areas, 100-year flood plains of major rivers, and on water bodies and streams."

Response: The NSO stipulation you suggested was added to this parcel and officially posted on July 13, 2007, in our public room.

For this reason the BLM affirms this portion of your protest.

Protest: Your other concern is that surface occupancy would be allowed on lands on the parcel with slopes greater than 35 percent. You state:

"... on slopes over 35% the only appropriate stipulation is an NSO. At that steepness, development would involve large cut and fill slopes that would greatly increase slope instability and would be difficult to reclaim. Also, a Controlled Surface Use (CSU) stipulation would not preclude development and therefore would not minimize sediment output or maintain slope stability as an NSO stipulation would."

Response: The BLM has applied a CSU stipulation for steep slopes to portions of parcel MT 07-07-155. The stipulation reads as follows:

"Surface occupancy or use is subject to the following special operating constraints.

Prior to surface disturbance on slopes over 30 percent, an engineering/reclamation plan must be approved by the authorized officer.

Such plan must demonstrate how the following will be accomplished:

- Site productivity will be restored.
- Surface runoff will be adequately controlled.
- Off-site areas will be protected from accelerated erosion, such as rilling, gullyng, piping, and mass wasting.
- Water quality and quantity will be in conformance with state and federal water quality laws.
- Surface-disturbing activities will not be conducted during extended wet periods.
- Construction will not be allowed when soils are frozen.

To maintain soil productivity, provide necessary protection to prevent excessive soil erosion on steep slopes, and to avoid areas subject to slope failure, mass wasting, piping, or having excessive reclamation problems."

The BLM analysis in the 1994 Amendment determined that steep slopes are adequately protected by the use of this stipulation. Your protest does not provide any new information to support alternatives to the stipulations mitigating impacts from operations on slopes above 30 percent in the 1994 Amendment. The BLM does not believe that further stipulations are needed. The requirements of the stipulation will ensure that an adequate engineering/reclamation plan will be in place before operations are approved.

2.) Parcels MT 07-07-155, MT 07-07-157, MT 07-07-158, and MT 07-07-159

Protest: In your protest you make the following comments:

"Under the lease terms that this lease is being offered, the only stipulation in place designed to protect watersheds and fisheries is a CSU 12-1 that would require prior to surface disturbance on slopes over 30 percent, an engineering/reclamation plan be approved by the authorized officer."

You further state:

"While this is appropriate as a lease-wide stipulation, on slopes over 35% the only appropriate stipulation is an NSO. At that steepness, development would involve large cut and fill slopes that would greatly increase slope instability

and would be difficult to reclaim. Also, a CSU stipulation would not preclude development and therefore would not minimize sediment output or maintain slope stability in the same capacity as an NSO stipulation."

Response: As noted in the protest, the BLM has applied a CSU stipulation for steep slopes to portions of the three parcels. The stipulation reads as follows:

"Surface occupancy or use is subject to the following special operating constraints.

Prior to surface disturbance on slopes over 30 percent, an engineering/reclamation plan must be approved by the authorized officer.

Such plan must demonstrate how the following will be accomplished:

- Site productivity will be restored.
- Surface runoff will be adequately controlled.
- Off-site areas will be protected from accelerated erosion, such as rilling, gullyng, piping, and mass wasting.
- Water quality and quantity will be in conformance with state and federal water quality laws.
- Surface-disturbing activities will not be conducted during extended wet periods.
- Construction will not be allowed when soils are frozen.

To maintain soil productivity, provide necessary protection to prevent excessive soil erosion on steep slopes, and to avoid areas subject to slope failure, mass wasting, piping, or having excessive reclamation problems."

The BLM analysis in the 1994 Amendment determined that steep slopes are adequately protected by the use of this stipulation. Your protest does not provide any new information to support alternatives to the stipulation mitigating impacts from operations on slopes above 30 percent in the ROD for the 1994 Amendment. The BLM does not believe that further stipulations are needed. The requirements of the stipulation applied in this case will ensure that an adequate engineering/reclamation plan will be in place before operations are approved.

3.) Parcels MT 07-07-155, MT 07-07-157 and MT 07-07-159

Protest: Your protest at this point states that the stipulations on parcels 07-07-155, 07-07-157 and 07-07-159 which lie in the Clarks Fork of the Yellowstone watershed are inadequate. You further state that:

"as mapped by Montana Fish, Wildlife & Parks, lease 07-07-155 contains Hollenbeck Draw, lease 07-07-157 encompasses Williams Draw, and lease 07-07-159 encompasses both Williams Draw and Hollenbeck Draw. Both of these streams

are tributaries to the Clarks Fork of the Yellowstone. Where as the Clarks Fork of the Yellowstone supports Coldwater fisheries, including a designated "Conservation Population" of Yellowstone cutthroat trout, it is especially important to apply stipulation NSO 11-2 to these leases prior to leasing, in order to ensure that the purpose of the stipulation, "To protect the unique biological and hydrological features associated with riparian areas; 100-year floodplains of major rivers, and water bodies and streams, and to maintain riparian/wetlands function and water quality." (Notice of Competitive Oil and Gas Lease Sale, pp. 68) is applied to these areas. The effects of unbridled development near these streams would have deleterious consequences for the riparian habitat and ecological integrity of these streams and downstream water quality of the Clarks Fork of the Yellowstone and the coldwater fisheries present."

Response: As noted earlier, parcel MT 07-07-155 has riparian area stipulation (NSO 11-2) added. We affirm your protest on this specific parcel.

We agree that the Clarks Fork of the Yellowstone supports coldwater fish, including brown, rainbow, and Yellowstone Cutthroat trout. The BLM will apply mitigation measures developed and listed in the final SEIS as appropriate to alleviate potential impacts to all coldwater fisheries when an application for permit to drill is submitted. Using such measures and the application of applicable stipulations will insure protection of the fishery.

We have also determined that the other two parcels in question do not warrant the riparian stipulation. This stipulation is meant to protect the unique biological and hydrological features associated with riparian areas, 100-year flood plains of major rivers, and water bodies and streams, and to maintain riparian/wetland function and water quality. Neither parcel meets these requirements. Instead, the BLM will consider the need for site specific mitigation measures to alleviate potential impacts to coldwater fish and Yellowstone Cutthroat trout when an application for permit to drill is submitted and reviewed on either of these two parcels.

Decision: For the reasons stated above, your protest is dismissed in part and affirmed in part. As noted above, the BLM added the requested riparian stipulation to those areas of Parcel MT 07-07-155 where it is required before the sale. All parcels addressed will be issued concurrent with this letter. This decision to deny this 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 from 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 are issuing a lease for the lands included in parcels MT 07-07-154 through MT 07-07-159 to the successful bidder.

In case of an appeal, the adverse party to be served is:

Turner O&G Properties, Inc., 3140 W. Britton Rd., #204, Oklahoma City, OK
73120

s/s/ Gene R. Terland

Gene R. Terland
State Director

3 Enclosures

- 1-Protest Received June 13, 2007 (5 pp)
- 2-Form 1842-1 (1 p)
- 3-43 CFR 4.21(a) (2 pp)

cc: (w/enclosures)

Billings Field Office

Turner O&G Properties, Inc., 3140 W. Britton Rd., #204, Oklahoma City, OK
73120

922.JB:kr:x5109:8/23/07:tu protestfinal 8-23-07.doc