

**Fax Cover**

**To:** Gene Terland

**Fax #:** 406-896-5292

**From:** Montana TU

**# of Pages:** 6

**Comments:** \_\_\_\_\_  
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July 10, 2007

**By Fax**

Gene Terland  
Montana State Director  
Bureau of Land Management  
5001 Southgate Drive  
Billings, Montana 59101-4669  
Fax (406) 896-5292

Re: Notice of Competitive Oil and Gas Lease Sale – July 31, 2007

Dear Director Terland:

**Introduction:**

Trout Unlimited (TU) is America's leading trout and salmon conservation organization with over 152,000 members nationwide, including Montana Trout Unlimited which represents the 3,200 members and 13 chapters of TU in Montana. Our mission is to conserve, protect and restore the nation's coldwater fisheries and their watersheds. Trout Unlimited is not against oil and gas leasing on public lands. Instead, we advocate for development that does not make oil and gas the dominant land use while setting aside special areas and ensuring lease stipulations, environmental mitigation, and enforcement are effective to guarantee protection of fish and wildlife and their habitats. Given the pace and scope of harmful oil and gas development we have witnessed in Wyoming, we are concerned similar impacts could occur to Montana's world renowned coldwater fisheries. Oil and gas development in Montana should occur only if – *before leasing* – it is demonstrated that existing uses of our public lands and the fish, wildlife and the quality of life Montanans associate with healthy public lands will not be harmed by oil and gas activities.

**General Protest Concerns:**

Trout Unlimited protests the inclusion of BLM lease parcels 07-07-154, 07-07-155, 07-07-156, 07-07-157, 07-07-158, 07-07-159 in the Montana BLM July 31, 2007 oil and gas lease sale for both general and lease-specific concerns. Our general concerns revolve around a lack of analysis and issuing leases in the Billings Resource Management Area, for which there is an unfinished oil and gas planning process underway.

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

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 BLM making an irrevocable 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 would violate NEPA's supplemental analysis requirement 40 C.F.R. § 1502.9(c).

In addition, Trout Unlimited, having commented on the Draft SEIS, feels that issuing leases in this planning area circumvents the public process we have been involved in, even if CBNG is never produced from the lease. In our Draft SEIS comments, we stated the existing stipulations for oil and gas exploration and development are not adequate, and made suggestions for better conserving Yellowstone Cutthroat Trout populations in face of oil and gas activities. For reference, our specific comments were:

*"Moreover, under the lease stipulation table located in the Minerals Appendix (Min 5), there are no stipulations designed to protect conservation populations of Yellowstone cutthroat trout, even though genetically pure and slightly introgressed populations are present within the planning area. During this planning process the BLM should put in place protective stipulations that have been used elsewhere in the state of Montana by the BLM, such as an NSO within one half-mile of a stream containing genetically pure (99-100%) native trout. The Dillon field office currently uses this stipulation, with the support of Montana FWP. TU suggests this stipulation be incorporated into the Final SEIS and be expanded to include all conservation populations (90-100% genetically pure) of YCT."* (Montana TU SEIS comments, filed May 2, 2007)

Because the BLM has signed onto the April 2007 *Memorandum of Understanding and Conservation Agreement for Westslope and Yellowstone Cutthroat Trout in Montana* and Objective 1 of that agreement is to *"Maintain, secure, and/or enhance all cutthroat populations designated as conservation populations..."* issuing leases with inadequate stipulations to protect this unique and sensitive specie of cutthroat trout that would run counter to the this agreement.

**2.) Climate Change**

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 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.

**Lease Specific Protest Items:**

**1.) Lease MT 07-07-155**

Trout Unlimited Protests the inadequacy of stipulations placed on lease 07-07-155 located in the Clarks Fork of the Yellowstone River watershed. This lease parcel is located adjacent to the Clarks Fork of the Yellowstone River, in closer proximity than lease 07-07-156. However, lease 07-07-156 is under NSO stipulations that prohibit use and occupancy "*within riparian areas, 100-year flood plains of major rivers, and on water bodies and streams,*" 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/wetlands function and water quality.*" (Notice of Competitive Oil and Gas Lease Sale, pp.68) Lease 07-07-155 should be under the same stipulations as lease 07-07-156, given their inherent equal riparian functions and habitat values. There is no reason for lease 07-07-155 to be offered with less protective stipulations than lease 07-07-156. If NSO stipulations are necessary to maintain the integrity of lease 07-07-156, then they are most certainly appropriate, and necessary, for lease 07-07-155.

The only stipulation listed to address the protection of riparian zones and the Clarks Fork is CSU 12-5, which allows the construction of roads and utility crossing in the riparian areas, including the bed of the river. This stipulation is obviously not in the best interest of the "Conservation Population" of Yellowstone Cutthroat trout present in the Clarks Fork of the Yellowstone River. Moreover, the *Draft Supplement to the Montana Statewide Oil and Gas Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plans* (Draft SEIS) does not list this stipulation in Table MIN-5 of the Minerals Appendix, but Table MIN-5 *does* say that "*Surface occupancy and use is prohibited within riparian areas, 100-year flood plains of major rivers, and on water bodies and streams.*" In addition, the Draft SEIS Environmental Consequences Analysis states that "*Lease stipulations would be implemented before conducting exploration, production, and abandonment activities. The following discussion of project impacts assumes applicable stipulations and field rules would be fully implemented and followed.*" (Draft SEIS 4-12)

Because CSU stipulation 12-5 would allow for road and utility crossings in the Clarks Fork of the Yellowstone, riparian zone, and 100 year flood plain, this stipulation runs counter what the Draft SEIS describes as existing lease stipulations and, if issued as such, renders the SEIS analysis fundamentally flawed.

CSU Stipulation 12-5 is the only stipulations of this sort in the entire lease sale and conspicuously only applies to lease MT-07-07-155. TU is left wondering why an NSO stipulation protecting the watershed has been left off of the leases and a stipulation allowing road construction and pipelines was applied to the lease. TU recommends that if this lease is offered, that at a minimum, the required NSO for riparian zones and 100 year flood plains be applied in place of CSU 12-5, which is essentially a development loop-hole to the detriment of a designated "Conservation Population" of Yellowstone cutthroat trout.

The only other stipulation that stands to provide protection for the watershed 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. 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.

While this is appropriate for 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 as an NSO stipulation would.

**2.) Lease MT 07-07-155, MT 07-07-157, MT 07-07-158, MT 07-07-159**

Trout Unlimited protests the stipulations placed on lease 07-07-155, 07-07-157, 07-07-158 and 07-07-159 in the Clarks Fork of the Yellowstone River watershed. The Clarks Fork of the Yellowstone River supports coldwater fisheries including brook trout, brown trout, rainbow trout, and Yellowstone cutthroat trout.

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. 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.

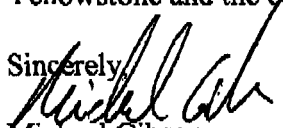
While this is appropriate as a lease-wide stipulation, on slopes over 35% the only appropriate stipulation is an NSO. At that steepness, development would involve large cut and fill slopes that would greatly increase slope instability and would be difficult to reclaim. Also, a CSU stipulation would not preclude development and therefore would not minimize sediment output or maintain slope stability in the same capacity as an NSO stipulation.

Trout Unlimited believes that the most protective approach to development is the most responsible. Poor land management decisions quite literally flow down hill, and NSO stipulations on slopes over 35% are the only environmentally conscientious land management decision for oil and gas development.

**3.) Lease MT 07-07-155, MT 07-07-157 and MT 07-07-159**

Trout Unlimited protests the inadequate stipulations places on leases 07-07-155, 07-07-157 and MT 07-07-159 which lie in the Clarks Fork of the Yellowstone watershed. 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 flood plains 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.

Sincerely,

  
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