



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

April 21, 2008

DECISION

Tom France, Executive Director
National Wildlife Federation
Northern Rockies Office
240 North Higgins Ave., #2
Missoula, Montana 59802

Protest Dismissed

On November 13, 2007, we received your protest filed on behalf of the National Wildlife Federation (NWF) (Enclosure 1). You protested the November 27, 2007, competitive oil and gas lease sale as to the parcels listed below. You make reference to 95 parcels in your protest. Parcels MT 11-07-36, MT 11-07-37, MT 11-07-53, MT 11-07-71, MT 11-07-76 and MT 11-07-77 are listed twice resulting in 89 parcels that are affected by the protest instead of the 95 referenced in your protest:

MT 11-07-26, MT 11-07-29, MT 11-07-30, MT 11-07-35 through MT 11-07-38, MT 11-07-42, MT 11-07-45, MT 11-07-46, MT 11-07-50 through MT 11-07-53, MT 11-07-57, MT 11-07-60, MT 11-07-61, MT 11-07-64 through MT 11-07-79, MT 11-07-81 through MT 11-07-87, MT 11-07-95 through MT 11-07-98, MT 11-07-101, MT 11-07-103, MT 11-07-105 through MT 11-07-111, MT 11-07-114 through MT 11-07-129, MT 11-07-131 through MT 11-07-134, MT 11-07-140, MT 11-07-141, MT 11-07-146, MT 11-07-147, MT 11-07-150 through MT 11-07-152, MT 11-07-154, MT 11-07-157 through MT 11-07-159, MT 11-07-179, MT 11-07-181, and MT 11-07-213 through MT 11-07-215.

Parcel MT 11-07-26 is located within the Lewistown Field Office (FO) and applicable leasing decisions are found in the Headwaters RMP. Parcels MT 11-07-42, MT 11-07-45, MT 11-07-46, MT 11-07-53, MT 11-07-57, MT 11-07-60, and MT 11-07-64 through MT 11-07-70 are within the Lewistown FO, however applicable leasing decisions are found in the Fergus Management Framework Plan (MFP) and the Lewistown District Oil and Gas EA. Parcels MT 11-07-71, MT 11-07-72, MT 11-07-78, MT 11-07-79, MT 11-07-81, MT 11-07-86, MT 11-07-95, MT 11-07-97, MT 11-07-98, and MT 11-07-108 are also within the Lewistown FO with applicable leasing decisions being found in the Petroleum MFP and Lewistown District EA. Parcels MT 11-07-101, MT 11-07-106, and MT 11-07-213 through MT 11-07-215 are within the Billings FO and applicable leasing decisions are found in the Miles City District Oil and Gas RMP Amendment.

Parcels MT 11-07-103, MT 11-07-105, MT 11-07-107, MT 11-07-109 through MT 11-07-111, MT 11-07-114 through MT 11-07-129, MT 11-07-131 through MT 11-07-134, MT 11-07-140, MT 11-07-141, MT 11-07-146, MT 11-07-147, MT 11-07-150 through MT 11-07-152, MT 11-07-154, MT 11-07-157 through MT 11-07-159, MT 11-07-179, and MT 11-07-181 are within the Miles City FO with the applicable leasing decisions found in the Big Dry RMP.

The protest generally focuses on the allegation by the NWF that its members' interests in the public lands that are covered by the protest and the wildlife resources that depend on those lands for habitat will be adversely affected if the sale of these parcels proceeds, as the Bureau of Land Management (BLM) proposed, without adequate environmental analysis or safeguards to protect the functionality of critical wildlife habitat. The protest further suggests that the BLM uses its discretion not to lease the above lands that support greater sage-grouse habitat for the following reasons:

- Demand for wildlife recreation is increasing and certain wildlife populations, particularly greater sage-grouse, are decreasing;
- The Billings, Butte, and Malta Resource Management Plans (RMPs) are currently undergoing revision, and premature leasing could unduly prejudice available alternatives;
- It is alleged that other BLM planning documents are out-dated. The BLM has received substantial new information since 2005 regarding sage-grouse population and habitat condition, the effects of oil and gas development and related disease on sage-grouse and policies for minimizing the effects of development on this and other wildlife. The existing National Environmental Policy Act (NEPA) documents do not take into account any of this new information, and are an inadequate basis for new non-No Surface Occupancy (NSO) leasing; and finally,
- The Montana Department of Fish, Wildlife, and Parks (MDFWP) has protested BLM leases of sage-grouse habitat in other areas of Montana, noting that BLM land use plans and proposed lease stipulations and notices are inadequate to address MDFWP's concerns, the state management plan for sage-grouse, and the latest scientific findings on likely impacts of energy development to sage-grouse habitats and populations.

The NWF identifies the following main issues to show why the BLM should not lease the above cited parcels.

I. Description of Affected Resources - Greater Sage-Grouse Habitat.

Protest: According to the protest, all of the protested parcels fall within 2 miles of documented sage-grouse leks. Of these parcels, two are within $\frac{1}{4}$ mile of a sage-grouse lek and two are within 1 mile of a sage-grouse lek.

The protest also states that the protested parcels are subject to timing limitation stipulation MT 13-3 which prohibits surface use from March 1 to June 15 within 2 miles of a grouse lek and timing limitation stipulation MT 13-14 which prohibits surface use from December 1 through May 15 within winter and spring range for sage-grouse. However, neither lease stipulation applies to operation and maintenance of production facilities. The protest also states that two parcels are subject to lease stipulation NSO MT 11-4

which prohibits surface occupancy within a ¼-mile radius of grouse dancing grounds.

According to the protest, these standard stipulations have been repeatedly demonstrated through scientific studies to be ineffective in protecting greater sage-grouse leks dancing grounds, nesting success, and wintering populations, are not supported by any peer-reviewed scientific studies, and are inconsistent with the analysis and recommendations of the federal Fish and Wildlife Service (FWS) and MDFWP for conserving sage-grouse.

Response: You state in your protest that all of the protested parcels fall within 2 miles of documented sage-grouse leks. According to our records, the following 24 protested parcels are located in our Lewistown Field Office and have no active sage-grouse leks within a 2-mile radius:

MT-11-07-26, MT-11-07-42, MT-11-07-45, MT-11-07-46, MT-11-07-53, MT-11-07-57, MT-11-07-60, MT-11-07-64 through 72, MT-11-07-78, MT-11-07-79, MT-11-07-81, MT-11-07-86, MT-11-07-95, MT-11-07-97, MT-11-07-98 and MT-11-07-108.

The following parcels are located in the Billings or Miles City Field Offices and are subject to the sage-grouse timing protective stipulation 13-3 mentioned in the protest. The decision to apply the 13-3 timing stipulation is based on the requirements of governing land use plans and NEPA requirements (the 1994 Miles City District Oil and Gas Resource Management Plan/Environmental Impact Statement (RMP/EIS) Amendment and the Big Dry RMP):

MT 11-07-29, MT 11-07-30, MT 11-07-35, MT 11-07-36, MT-11-07-50 through MT 11-07-52, MT 11-07-73 through MT 11-07-75, MT 11-07-83, MT 11-07-84, MT 11-07-103, MT 11-07-105, MT 11-07-107, MT 11-07-109 through MT 11-07-111, MT 11-07-114 through MT 11-07-129, MT 11-07-131 through MT 11-07-134, MT 11-07-140, MT 11-07-141, MT 11-07-146, MT 11-07-147, MT 11-07-150 through MT 11-07-152, MT 11-07-154, MT 11-07-157 through MT 11-07-159, MT 11-07-179, MT 11-07-181, MT 11-07-214 and MT 11-07-215.

Parcels MT 11-07-38 and MT 11-07-82 are located within the Billings Field Office. They were offered for lease after consultation with MDFWP. The MDFWP confirmed that the adjoining leks were inactive.

We are deferring from leasing the following lands in parcel MT 11-07-101, serialized MTM 97430, due to an adjoining active lek:

T. 11 N., R. 30 E., PMM, MT
 Sec. 2 Lots 1, 2
 Sec. 2 S2NE, SE

For parcel MT 11-07-101, we are adding the sage-grouse protective timing 13-3 stipulation for the following lands:

T. 11 N., R. 30 E., PMM, MT
 Sec. 4 S2
 Sec. 10 E2, NW
 Sec. 12 LOTS 1,2
 Sec. 12 W2NE, NW

We are deferring from leasing the following lands in parcel MT 11-07-125, serialized MTM 97454, due to an adjoining active lek:

T. 12 N., R. 34 E., PMM, MT
Sec. 10 N2

The following parcels have a crucial winter range stipulation for wildlife that includes sage-grouse, MT 13-1, applied to them. The decision to apply this stipulation is based on the requirements of governing land use plans and NEPA requirements (the 1994 Miles City Oil and Gas District RMP/EIS Amendment and the Big Dry RMP):

MT 11-07-50, MT 11-07-61, MT 11-07-74 through MT 11-07-77, MT 11-07-82 through MT 11-07-84, MT 11-07-101, MT 11-07-103, MT 11-07-105 through MT 11-07-107, MT 11-07-109 through MT 11-07-111 MT 11-07-114 through MT 11-07-129, MT 11-07-131 through MT 11-07-134, MT 11-07-140, MT 11-07-141, MT 11-07-146, MT 11-07-147, MT 11-07-150 through MT 11-07-152, MT 11-07-154, MT 11-07-158, MT 11-07-159, MT 11-07-179, MT 11-07-181 and MT 11-07-213 through MT 11-07-215.

The BLM determined that none of the protested parcels are subject to timing stipulation MT 13-14 or NSO stipulation MT 11-4.

The BLM reviewed all of the parcels prior to offering them for lease. A Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) was completed for each of the parcels on the November sale. The DNAs serve to document the "hard look" that the BLM took to determine whether new circumstances, new information, or environmental impacts not previously anticipated or analyzed in the governing land use plans/NEPA documents warranted new analysis or supplementation of existing NEPA documents, and whether the impact analysis supports the proposed action (oil and gas leasing). Based on the completed analysis, the BLM made a decision that the existing land use plans and NEPA analyses supports oil and gas leasing without the need for supplemental NEPA or planning analysis.

Your protest states that there are scientific studies indicating that our existing stipulations are ineffective in protecting greater sage-grouse. We are familiar with the various studies regarding the impacts of oil and gas development on sage-grouse. Some of the studies indicate that the current stipulations may not be adequate to protect sage-grouse; however, there are contradictory conclusions as to what stipulations would be adequate. Because of new information and the various studies regarding the impacts of oil and gas development on sage-grouse, the Montana BLM is not issuing new leases within 1 mile of active leks in areas that we foresee the possibility of developing new stipulations or land use allocations in our ongoing land use plans. We will ensure during our review that we preserve our decision space and that we do not limit our choice of reasonable alternatives within the land use plans if it is determined that the current stipulations need to be revised.

On October 26, 2007, we issued an Instruction Memorandum (IM) No. MT-2008-008 (Enclosure 2) on Procedures for Lease Parcel Review Coordination between the BLM and the MDFWP. This IM formalizes the lease parcel review procedures between the two agencies. In addition, we also suggested to MDFWP that they be involved with all of our future land use plans as a cooperating agency.

II. The Leasing of Sage-Grouse Habitat Absent Full Examination of the Environmental Consequences Will Violate the National Environmental Policy Act.

Protest: The protest states that:

"...The National Environmental Policy Act ... requires the BLM to take a "hard look" at the environmental consequences of their proposed actions....When offering oil and gas leases for sale without stipulations prohibiting surface occupancy leases such (sic) the November protested leases the agencies must assess the environmental impacts of reasonably foreseeable post-leasing oil and gas development prior to issuance of the lease....

The protest also states that the "...RMPs, EISs, and their amendments do not adequately address substantial new relevant information regarding sage-grouse, and the effects on those species from levels of oil and gas development currently being proposed for those areas. The BLM cannot legally avoid analysis of environmental consequences by insisting that lease issuance is a mere paper transaction without on-the-ground consequences. Regardless of the fact that additional federal actions will precede commercial drilling, the issuance of a lease (particularly without stipulations allowing the BLM to preclude surface disturbance) commits the leased parcel to development and conveys legal rights to the purchaser. ... Following lease, land management agencies' ability to prevent impacts to other resources is limited to those "reasonable measures" that are "consistent with lease rights granted..." Where, as here, the lease right allows surface occupancy, a significant commitment of resources is made at the time of lease issuance...." the November 2007 parcels have had no NEPA documentation prepared for them save out-of-date RMP documents that do not and cannot account for significant new developments and information, including increased recreational demand, greatly increased levels of mineral development, and declining populations of greater sage-grouse and new scientific information regarding the species vulnerability to adverse effects from mineral development. Nor does reliance on RMP documents alone suffice for the core NEPA function of adequate consideration of alternatives....Because none of the November 2007 lease parcels are entirely "NSO" leases, leasing, which confers specific rights to develop that the BLM and Forest Service cannot readily deny, is a concrete federal action with readily foreseeable environmental effects, and cannot legally go forward without NEPA analysis."

Response: As we explained earlier in this Decision, the BLM completed a DNA for each of the parcels on the November sale. The DNAs serve to document the "hard look" that the BLM took to determine whether new circumstances, new information, or environmental impacts not previously anticipated or analyzed in the governing land use plans/NEPA documents warrant new analysis or supplementation of existing NEPA documents and whether the impact analysis supports the proposed action (oil and gas leasing). During this review process, the BLM made decisions regarding areas to defer from leasing and

also considered comments provided by the MDFWP. In these reviews, the BLM determined that the stipulations, and the areas to which they apply, identified in the governing NEPA documents and land use plans remain applicable for the lands determined to be available for leasing.

The governing land use plans are the 1994 Miles City District Oil and Gas RMP Amendment, the 1996 Big Dry RMP, the 1984 Headwaters RMP, the 1977 Petroleum Management Framework Plan (MFP), and the 1978 Fergus MFP. The NEPA documentation for oil and gas leasing in Fergus and Petroleum Counties is the 1981 Lewistown District Oil and Gas Environmental Assessment of BLM Leasing Program. All of these documents gave serious consideration to oil and gas leasing and development on Federal lands including impacts to sage-grouse populations and their habitat.

We also explained previously in this Decision, that we are familiar with various studies regarding the impacts of oil and gas development on sage-grouse. Some of the studies indicate that the current stipulations may not be adequate to protect sage-grouse; however, there are contradictory conclusions as to what stipulations would be adequate. Therefore, the Montana BLM is not issuing new leases within 1 mile of active leks in areas that we foresee the possibility of developing new stipulations or land use allocations in our ongoing land use plans.

The stipulations applied to the protested parcels to mitigate impacts to sage grouse and their habitat were developed during preparation of three RMPs or RMP amendments and two MFPs with a later oil and gas leasing Environmental Assessment (EA). These stipulations were reviewed during the review of the lease nomination and a Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) was prepared for all parcels on the November sale.

The BLM would note that the standard BLM "Offer to Lease for Oil and Lease for Oil and Gas" notes immediately above the signature line that rights granted by the lease are subject to "applicable laws" in addition to other restrictions. One such law is the Federal Onshore Oil and Leasing Reform Act of 1987 ("FOOGLRA"), 30 U.S.C § 226; et seq. It states that "No permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary ... of a plan of operations covering proposed surface-disturbing activities within the lease area." This means that a lessee's exclusive right to drill can only be exercised with the approval of the Secretary of the Interior, or for National Forest Lands, the Secretary of Agriculture.

The protest also states that there is a great increase of mineral development. The NWF has not provided any evidence to support that allegation. The BLM does not believe that this suggested level of disturbance is reasonably foreseeable. The parcels you protested are located in Carbon, Fergus, Garfield, Golden Valley, Meagher, Musselshell, Petroleum, and Rosebud Counties. We provide a review of existing reasonably foreseeable development (RFD) scenarios and historic well drilling activities on all ownerships below to explain why we do not believe your argument is valid.

Parcels within Golden Valley and Musselshell Counties are within the BLM's Billings Field Office. The governing land use plan for leasing on BLM lands in that Field Office is the 1994 Miles City District Oil and Gas RMP/EIS Amendment. The RFD scenario for that document projected that a total of 995 wells would be drilled on all ownerships in the Field Office during the life

of the RFD scenario (15 years). Since the plan was completed in 1994, a total of 240 wells have been drilled in the entire Billings Field Office. Four wells were drilled in Golden Valley with one completed as an oil well and the rest plugged and abandoned. Fifty-four wells were drilled in Musselshell County with 12 completed as oil wells.

Parcels within the Miles City FO are within Garfield and Rosebud Counties with the Big Dry RMP the governing land use plan. The RMP forecast a five year drilling rate on all ownerships for that portion of the planning area with high potential located in the two counties to include 18 producing wells and 48 dry wells. A total of 29 producing wells and 78 dry wells were forecast for all moderate potential lands in the planning area. This is a total of 173 wells every five years. The record of decision for this plan was signed approximately 12 years ago. Based on the RFD scenario in the RMP, 450 wells should have been drilled since the RMP was approved. Since the plan was completed, a total of 62 wells of all types have been drilled in Rosebud County and 12 wells in Garfield County. This indicates that the level of impacts forecast in RMP has not been reached.

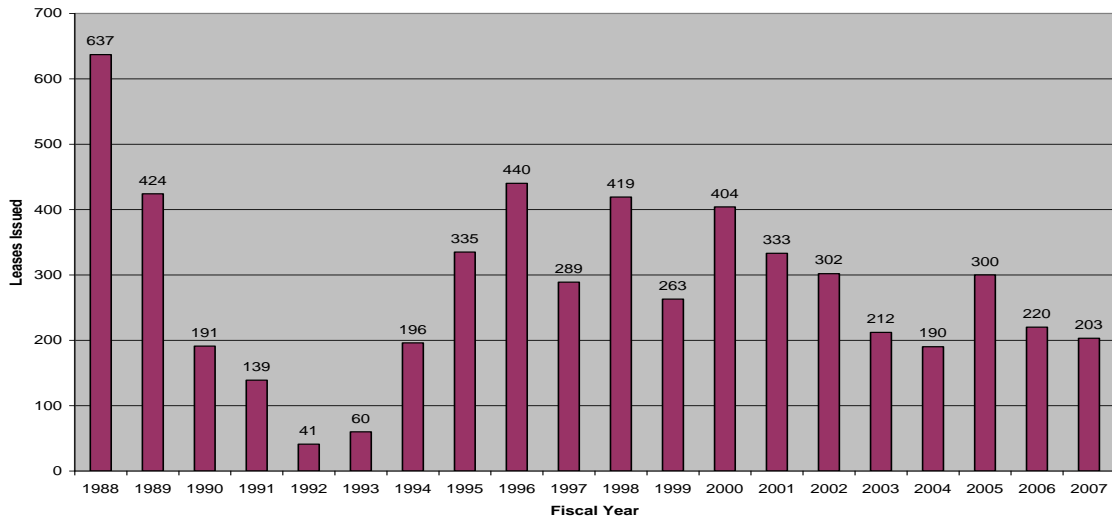
The following is a link to the Montana Board of Oil and Gas Conservation (MBOGC) website that contains information regarding drilling activity in the State of Montana in areas without RFD scenarios for the governing leasing documents: <http://bogc.dnrc.state.mt.us/>

Parcel MT-11-07-26 is located in Meagher County within the BLM's Lewistown Field Office. Historical records of the MBOGC show that there have been a total of nine oil and gas tests drilled on all ownerships in that county to date. Eight of these tests were completed as dry holes and one as a water source well. Parcels within Fergus and Petroleum Counties are also located within the boundaries of the Lewistown Field Office. During the last 27 years, 71 oil and gas tests have been drilled in Fergus County on all ownerships. A total of six of these wells were drilled as gas wells. The status shown on the MBOGC website for three of these well is "gas" and the status of one is shown as "shut in." The others were plugged and abandoned. No producing oil wells were completed in the County. The other wells were either plugged and abandoned or converted to water wells. Average depth of the gas wells was 1883 feet. These wells would be typically spaced at statewide spacing of one well per 640 acres. During the last 27 years, a total of 74 wells have been drilled on all ownerships in Petroleum County. None of these were gas wells. Twenty wells were drilled as oil wells. Of these 20 wells, two were completed as producing wells, nine were either shut-in or temporarily abandoned, and the rest were plugged and abandoned.

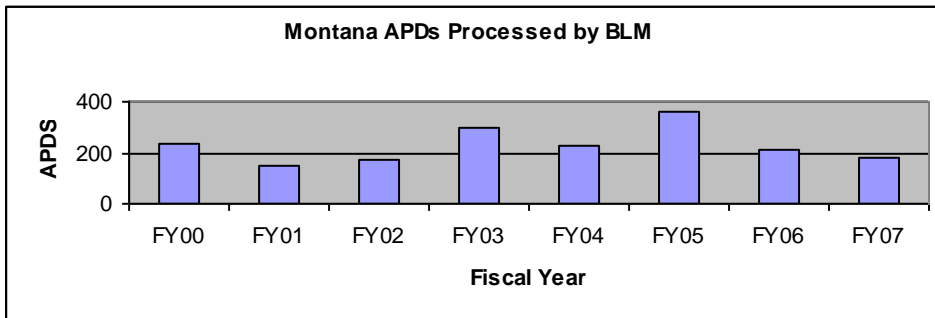
The protest contains no data casting doubt on the geologic interpretation of the BLM and Forest Service. The historical drilling data and existing RFD scenarios support that the interpretation of oil and gas potential for the BLM and FS planning documents remains valid. They do not support the level of effects described in the protest.

Our data does not reflect a great increase in development in Montana in recent years on Federal lands. The following information reflects the historical trend for leasing activity and approval of applications for permit to drill in Montana.

Federal Leases Issued in Montana



Montana APDs Processed by BLM



As can be seen from the above statistics, Federal leasing and permitting activities have not seen major increases. Actually, there is a decrease of both permitting and leasing activity since 2005.

A. The BLM Must Analyze New Scientific Information and Legal Developments Not Available at the Time of Preparation of the Governing RMPs and EISs.

Protest: The protest states that:

"...the governing EIS for any of the above-cited pre-2005 RMPs contain essentially no current analysis of the effects of energy development on greater sage-grouse. The very general analysis of oil and gas impacts in those EISs and RMPs are out-of-date and should be updated to take into account new factual developments and new scientific information. BLM should analyze the relationship between levels of oil and gas development that have substantially increased since the issuance of the cited RMPs, and increased levels of demand for wildlife recreation. NEPA also requires BLM to take into account the substantial new scientific information and analysis available regarding energy development impacts to wildlife habitat and effective measures for mitigating those impacts, particularly the best-available information.

In the governing Montana RMPs and EIS, BLM assumes the effectiveness of a 1/4 mile NSO zone in protecting sage-grouse leks from disturbance, and of the 2 mile timing stipulation for breeding habitat. New research from Wyoming and Montana, and the analysis and recommendations of the MDFWP and the USFWS to Montana BLM, indicate that the ¼ mile NSO, and 2 mile timing stipulations are ineffective.”

Response: As noted earlier in this Decision, the stipulations applied to the protested parcels to mitigate impacts to sage-grouse and their habitat were developed during preparation of three RMPs or RMP amendments and two MFPs with a later oil and gas leasing EA. The stipulations serve to protect leks, breeding habitat, and winter range for sage-grouse. A major objective of all the stipulations is ensuring the long-term maintenance of regional sage-grouse 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.

The sage-grouse lek data that the BLM uses to determine stipulations to attach to a parcel is a compilation of information collected by a number of agencies and individuals. The BLM uses our own inventory data supplemented by data from the MDFWP, private landowners, consultants, and other sources.

As noted earlier in this Decision, the Montana BLM is not issuing any new leases that are within 1 mile of active sage-grouse leks in areas where we foresee the possibility of developing new stipulations or land use allocations in our ongoing land use plans. We will ensure during our review that we preserve our decision space and that we do not limit our choice of reasonable alternatives within the land use plans if it is determined that the current stipulations need to be revised.

In this protest, you have not demonstrated that there are significant new circumstances or information bearing on the environmental consequences of leasing. The BLM believes that impacts to sage-grouse are adequately protected by the use of the existing stipulations on the subject lease parcels.

B. The BLM Must Take Into Account New Information and Advice from the Montana Department of Fish, Wildlife, and Parks.

Protest: The protest states:

“We are particularly concerned by what appears to be BLM’s failure to take into account the recommendations of the MDFWP regarding the potential leasing of sage-grouse habitat within Montana. Issuance of these leases would fall far short of the specific recommendations from MDFWP regarding development in sage-grouse habitat.”

Response: The BLM actively coordinates with the MDFWP on matters concerning sage-grouse populations and habitat in Montana. The BLM uses all credible data from multiple sources including the MDFWP when making decisions regarding leasing availability and determining appropriate stipulations. This is documented in DNAs for all parcels offered for leasing. During our review process we considered comments provided by the MDFWP resulting in deferral of lands from leasing and the addition of stipulations for specific parcels.

In the case of the November sale, the BLM provided a preliminary sale list to the MDFWP for their review and evaluation. In return the MDWFP provided a letter to the BLM detailing their comments and recommendations on all parcels on the sale list. This list was reviewed to determine if it provided new data not previously in the BLM's possession. Where appropriate BLM did accept recommendations from the MDFWP in that in several cases we modified existing nominations by deferring all or portions of the nominations.

III. Leasing Sage-Grouse Habitat without a No Surface Occupancy Stipulation Will Improperly Constrain the Alternatives Available to BLM in Revising the Billings, Miles City, Malta, Butte, and Other Resource Management Plans.

Protest: The National Wildlife Federation notes that:

"...the BLM is currently in the process of amending the Billings, Malta, Miles City, and Butte Resource Area Resource Management Plans (RMPs). Council on Environmental Quality NEPA regulations dictate that when a federal agency is in the process of developing such decision documents, it may not take actions that would "limit the choice of reasonable alternatives." 40 C.F.R, § 1506.1; see also 40 C.F.R. § 1502.2(f). Although these regulations obviously do not prohibit any activity within a planning area during RMP revision, in this case, given new information, serious potential concerns regarding important and unanalyzed resources, it would be entirely inappropriate to foreclose alternatives including NSO or limited surface spacing for sage-grouse by issuing non-NSO leases at this time.

The protest also notes "that the BLM, in its process for revising the Montana statewide oil and gas EIS, states that a key wildlife issue identified during scoping was to address impacts to terrestrial wildlife species, "...especially sage-grouse." To accomplish this, the BLM must defer leasing parcels of sage-grouse habitat which allow any surface occupancy so long as sage-grouse are considered a "sensitive" species, unless regulations and stipulations dictating energy exploration, development, infrastructure, operation, and maintenance are consistent with the best available scientific understanding, analysis and professional advice on practices most likely to maintain viable sage-grouse populations on these Montana landscapes. Anything less is a violation of NEPA and the BLM's own regulations."

Response: As you note, the BLM is working on new RMPs for the Billings, Butte, Malta, and Miles City Field Offices. The start and completion dates for the ongoing RMPs are reflected on Enclosure 3. During plan revisions, the BLM determines availability for leasing following a determination of

compliance with NEPA and other applicable statutes. This is in line with BLM policy established in Washington Office IM No. 2004-110 (Enclosure 4). As noted in that IM, it is our policy to follow current land use allocations and existing land use plan decisions for oil and gas and related energy actions during preparation of land use plan amendments or revisions. Oil and gas leasing decisions are made at the planning stage and the EIS associated with the RMP is intended to meet the NEPA requirements in support of those decisions.

General policy for all resources and resource uses is found in our planning handbook, BLM Handbook H-1601-1, Land Use Planning Handbook. The Handbook points out that "existing land use plan decisions remain in effect during an amendment or revision until the amendment or revision is completed and approved." The Handbook notes:

"A decision to temporarily defer an action could be made where a different land use or allocation is currently being considered in the preferred alternative of a draft or proposed RMP revision or amendment. These decisions would be specific to individual projects or activities and must not lead to an area-wide moratorium on certain activities during the planning process."

You have not provided any significant new circumstances or information bearing on the environmental consequences of leasing to support deferring leasing of the protested parcels. As we explained earlier, the Montana BLM is not issuing any new leases that are within 1 mile of active sage-grouse leks in areas where we foresee the possibility of developing new stipulations or land use allocations in our ongoing land use plans. We will ensure during our review that we preserve our decision space and that we do not limit our choice of reasonable alternatives within the land use plans if it is determined that the current stipulations need to be revised.

Decision: For the reasons stated above, your protest is dismissed. 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 5). 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 6). The provisions of 43 CFR 4.21(b) defines the standards and procedures for filing a petition to obtain a stay pending appeal.

We are issuing leases for the lands included in the protested parcels that received offers to lease. In case of an appeal, the adverse parties to be served are:

Big Sky Minerals LLC, 6558 S. Cook Way, Centennial, CO 80121

Cody Oil & Gas Corporation, PO Box 597, Bismarck, ND 58502
Energy Consultants, LLC, PO Box 159, Billings, MT 59103 *
Green Diamond Oil LLC, PO Drawer 2360, Casper, WY 82602
Gulf Western Geophysical LLC, 7373 Broadway, Suite 300, San Antonio, TX 78209
Petro-Sentinel LLC, PO Box 477, Williston, ND 58802-0477
Retamco Operating Inc, PO Box 790, Red Lodge, MT 59068-0790
Tim J. Keating, PO Box 50715, Billings, MT 59105 *
Tyler Oil Company, PO Box 23203, Billings, MT 59104
Thomas Boyd, 1501 Stampede Ave, Unit 9016, Cody, WY 82414

*Parties filing day-after-the sale noncompetitive offers.

/s/ Howard A. Lemm

Howard A. Lemm
Acting State Director

6 Enclosures

- 1-Protest Received November 13, 2007 (6 pp)
- 2-IM No. MT-2008-008 (4 pp)
- 3-Ongoing & Future Land Use Planning Boundaries
- 4-WO IM No. 2004-110 (8 pp)
- 5-Form 1842-1 (2 pp)
- 6-43 CFR 4.21(a) (2 pp)

cc: (w/enclosures)

Ben Deeble, Sage-Grouse Project Coordinator, National Wildlife Federation,
Northern Rockies Office 240 N. Higgins Ave., #2, Missoula, Montana 59802
Big Sky Minerals LLC, 6558 S. Cook Way, Centennial, CO 80121
Cody Oil & Gas Corporation, PO Box 597, Bismarck, ND 58502
Energy Consultants, LLC, P. O. Box 159, Billings, MT 59103
Green Diamond Oil LLC, PO Drawer 2360, Casper, WY 82602
Gulf Western Geophysical LLC, 7373 Broadway, Suite 300, San Antonio, TX 78209
Petro-Sentinel LLC, PO Box 477, Williston, ND 58802-0477
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