



November 13, 2007

**By Fax**

Gene Terland  
Montana State Director  
Bureau of Land Management  
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**Re: Notice of Competitive Oil and Gas Lease Sale – November 27, 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:**

**1.) Changed Circumstances and a Lack of Public Comment Opportunity**

The underlying Resource Management Plans covering the management areas where these leases are located provide a general analysis and leasing decision, however, the identification of site-specific lease parcels represents changed circumstances that need to

be analyzed in a supplement to that leasing decision. Because specific lease parcels have never been analyzed in a NEPA document, this needs to occur before they can be offered for sale.

Up until the sale notice, the public was unaware of the location of specific lease parcels to be sold. Because the public has been unaware as to where specific lease parcels would be sold, identification of specific lease parcels represent changed circumstances upon which the public has not been able to comment or review site-specific NEPA analysis. The Federal Lands Policy Management Act (FLPMA) requires that BLM "shall allow an opportunity for public involvement and . . . shall establish procedures . . . to give . . . the public adequate notice and an opportunity to comment on and participate in the formulation of . . . programs relating to the management of the public lands." 43 U.S.C. § 1712(f). While the public had the opportunity to comment on the underlying land use plan, that right has not been made available regarding the specific leases parcels. The BLM has provided no opportunity for public comment on the protested lease parcels prior to this protest, which is essentially an after-the-fact opportunity for involvement, which fails to meet the requirements of FLPMA. Until this oversight is corrected, the protested lease parcels should not be offered for sale.

## **2.) Failure to Properly Map Lease Parcels**

Given the documents provided in the Competitive Lease Sale Notice, it is difficult at best to for the public to understand where the leases are located. As a result, it is extremely difficult for the public to offer meaningful public comment and analysis. In the maps made available that the sale notice, the relation to existing lease parcels is not shown. We believe that this constitutes a violation of the Federal Onshore Oil and Gas Leasing reform Act (FOOGLRA) that requires: "*Such notice shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all leases already issued in the general area.*" 30 U.S.C. § 226(f) (emphasis added).

Certainly in the information age when oil and gas lease sale notices are made available online, appropriate lease sale maps are "practical" need to be included as well. These maps are required to not only show lease parcels to be sold, but there relation to existing parcels. In addition, it would be extremely helpful if the maps provided showed drainages, roads, and other topographical features so that the public can accurately determine what lands and resources they own are up for lease.

## **3.) Lack of Cumulative Impacts Analysis**

Rivers throughout Montana, including those in the watersheds for which Montana TU is protesting the sale of lease parcels, have experienced deleterious impacts to the aquatic environment in recent drought years due to low stream flows and increased water temperatures. The condition of several fisheries this past summer prompted Montana

Fish Wildlife and Parks to impose fishing closures to protect trout from additional stresses. The BLM needs to conduct an assessment of vulnerable aquatic and wildlife species, and natural systems that will be adversely impacted by global climate change. The BLM should manage vulnerable systems 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 that leasing, and in turn development, authorizes. Additionally the impacts of closures to angling, and relationships between land use decisions such as oil and gas leasing by the BLM and the impaired nature of coldwater fisheries leading to closures in the planning area needs to be analyzed. This analysis should culminate in appropriate stipulations, lease terms, and/or decisions not to lease in these vulnerable habitats.

**Lease Specific Protest Items:**

Montana TU protests the inclusion leases 11-07-01 through 11-07-14; 11-07-17 through 11-07-20; 11-07-22; 11-07-23; 11-07-214 and 11-07-215; and 11-07-207 through 11-07-211 in the November 2007 Montana BLM oil and gas lease sale.

**1.) Clark Fork of the Yellowstone leases 11-07-214 and 11-07-215:**

Lease 11-07-214 needs NSO 11-2 "*Surface occupancy and use is prohibited within riparian areas, plains of major rivers, and on water bodies and streams.*" to apply to the portions of the lease in Sections 3 and 4 that are within the 100 year flood plain of the Clarks Fork of the Yellowstone River. Given that this stipulation also applies to "water bodies and streams" NSO stipulations needs to be included for those waters on the lease including Hollenbeck Draw and Williams Draw.

Like wise, while NSO 11-2 is applied to portions of lease 11-07-215, this stipulation needs to apply to all water bodies on lease, including Sand Coulee.

Because of the omission of these stipulations designed to protect the water quality, and because the Clarks Fork of the Yellowstone River is a cold water fishery that sustains Yellowstone cutthroat trout, Montana TU protest the inclusion of these leases in the November 2007 BLM oil and gas lease sale.

**2.) Beaverhead leases 11-07-207 through 11-07-211:**

Unstable drainages that feed the Beaverhead River on these leases are Gallagher Gulch Creek, Long Gulch and Bill Hill Creek. Development on these leases holds the potential to generate soil erosion and sedimentation directly into these streams that are tributaries to the Beaverhead River, a Blue Ribbon Fishery.

While CSU 12-1 is designed to protect slopes over 30%, there are no stipulations protecting soils with high erosive potential on slopes less than 30%. Also, CSU-1 would require a plan that demonstrates how 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; and construction will not be allowed when soils are frozen. However, these standards that would need to be met are not quantified in any way. For instance at what point if "site productivity restored" and what is the threshold for "adequately controlled" surface runoff? Without defined measurable thresholds of disturbance that must be adhered to, this stipulation offers no assurance that development on slopes over 30% would not have deleterious impacts to water quality. For these reason's TU protests the inclusion of these lease parcels in any BLM lease sale until meaningful and measurable protections are applied to the leases to adequately control erosion and sedimentation of streams

Finally, NSO 11-2. "Surface occupancy and use is prohibited within riparian plains of major rivers, and on water bodies and streams." has been left off of lease 11-07-210 even though Long Gulch flows through the southwest portion of the lease.

For these reasons, Montana TU protests the inclusion of lease parcels 11-07-207 through 11-07-211 in the November, 2007 Montana BLM oil and gas lease sale.

**3.) Helena National Forest Leases: 11-07-01 through 11-07-14; 11-07-17 through 11-07-20; 11-07-22; and 11-07-23:**

These leases are being offered under the direction of the 1997 Helena National Forest and Elkhorn Portion of the Deerlodge National Forest Oil and Gas Leasing Analysis (1997 EIS.) Yet it appears that information regarding westslope cutthroat trout has not been updated to reflect current populations or the *Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout and Yellowstone Cutthroat trout in Montana (April, 2007)*, (Cutthroat Trout Westslope MOU) to which the Forest Service is a party. The fact that only one lease 11-07-13 has an NSO 4-A: "To preclude construction of well sites and related facilities, such as tank batteries in priority bull trout drainages and other drainages having an elevated importance to the viability of Upper Missouri Westslope cutthroat trout and bull trout" shows that the agency has not updated it's environmental impact statement and the stipulation designed to protect Westslope cutthroat trout has not been applied using the most current distribution data. Conservation populations of Westslope cutthroat trout are found in at least one drainage, Bear Gulch and this lease does not have the required NSO stipulation for this drainage.

CSU-18 is a lease notice applied to all USFS leases (1-14; 17-20; 22-23) and states that "A biological evaluation of the leased lands may be required prior to surface disturbance to determine if endangered, threatened, proposed, candidate or sensitive plant or animal species or their habitat are present and to identify needed mitigation measures. Prior to under taking any surface-disturbing activities on the lands covered by this lease" It is assumed that it applies to Westslope cutthroat trout, a US Forest Service sensitive specie.

However, this lease notice fails to recognize that leasing is an irretreivable commitment of resources and it is the Forest Service's duty under NEPA to update the leasing EIS to

current conditions, so as to ensure that the public is aware of potential impacts leasing would have on Westslope cutthroat trout and disclose where those populations are located. CSU-18 does not replace the agencies NEPA obligations and before any of these leases in historic Westslope cutthroat habitat can be offered, the Forest must conduct inventories of streams to determine the presence of Westslope cutthroat trout, and apply necessary stipulations.

Further NSO 14-A is designed to protect priority drainages and *drainages that are important to the viability* of Westslope cutthroat trout. The Cutthroat Trout Westslope MOU lists as Objective 3 to "*Seek collaborative opportunities to restore and/or expand populations of each cutthroat trout subspecies into selected habitats within their respective historical ranges.*" Given that streams with suitable habitats for potential restoration efforts are important to the viability of westslope cutthroat trout, before the irrevocable commitment of leasing is made, the Forest Service - in conjunction with Montana Fish, Wildlife and Parks - needs to conduct a survey of drainages that leasing would affect and determine what streams are suitable for restoration. Stipulation NSO 14-A would then need to be applied to these restoration drainages *before* leasing occurs.

This is particularly true for the North Fork of Deep Creek, which is one drainage west of the Westslope cutthroat trout-occupied Bear Gulch and may contain conservation populations of this Sensitive Species. However, the Montana Fisheries Information System does not contain fisheries data for this drainage. Nevertheless, a lack of Sensitive Species data does not mean that leasing can or should take place in that drainage, rather it highlights the need to perform surveys on suspected drainages that may contain Westslope cutthroat trout and apply protective stipulation *before* leasing occurs.

Although Deep Creek is recognized as an important spawning tributary for rainbow and brown trout in the Missouri River above Canyon Ferry Reservoir, there are no stipulations designed to protect the investment made through Future Fishery restoration projects. These projects - designed to stabilize banks, reduce sedimentation and improve spawning success of trout - were started in 1996 and 2004, with the 1996 project influencing a 20 miles stretch of stream. (MT Fisheries Information System <http://maps2.nris.mt.gov/scripts/esrimap.dll?name=MFISH&Cmd=INST> accessed on 11-7-07). Also, the impacts to the effectiveness of these projects that leasing and resulting development that leasing authorizes has not been analyzed nor has the public had the opportunity to comment on this issue once the leases to be sold were identified.

Stipulations that do apply are NSO-2 that "precludes surface disturbing activities on areas within 100 feet of courses, water bodies, flood plains, and riparian areas to protect water quality" and stipulation CSU-4 that allows "activities within 500 feet of water courses, water bodies, flood plains, and areas may be located and/or designed to avoid or minimize the potential for adverse effects to surface water." Given the importance of Deep Creek and the restoration work that has been invested in this watershed, NSO within 500 feet of Deep Creek and its tributaries would help ensure that oil and gas activities do not comprise the time, money, and effort spent to restore this coldwater

fishery that is an important component of the Missouri River, a recognized Blue Ribbon Fishery.

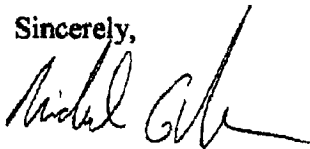
For these reasons, Montana TU protests the inclusion of lease parcels 11-07-01 through 11-07-14; 11-07-17 through 11-07-20; 11-07-22; and 11-07-23 in the November, 2007 Montana BLM oil and gas lease sale.

**Conclusion:**

While Trout Unlimited does not oppose oil and gas drilling in principle, we strongly urge the BLM to reconsider selling leases on parcels that abut or that may affect native trout streams and watersheds. The BLM has no legal obligation to lease the disputed parcels and Montana TU request that BLM is required to withdraw them until the agencies have complied with applicable law and objectives of the Cutthroat Trout MOU. We further urge the BLM to consult with conservation groups like Trout Unlimited and offer public input before offering leases in watersheds that support important trout fisheries. Doing so will go a long ways toward reducing conflict over the management of public lands, and will save time, effort, and expense on all sides.

Thank you for your consideration, and please let us know if you would like to discuss these concerns in greater detail.

Sincerely,



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