



# 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

May 30, 2007

### DECISION

Mr. T. O. Smith  
Comprehensive Fish and Wildlife  
Planning and Energy Coordinator  
Montana Fish, Wildlife and Parks  
P.O. Box 200701  
Helena, Montana 59620-0701

**Protest Dismissed  
Except Visual Concerns  
Additional Visual Lease Stipulations to be Added  
To Future Leases**

On March 12, 2007, we received your protest (Enclosure 1) affecting the following parcels on our March 27, 2007, Competitive Oil and Gas Lease Sale (March sale): MT-03-07-01, MT-03-07-03 through MT-03-07-48 and, MT-03-07-50 through MT-03-07-54. Parcels MT-03-07-20 through MT-03-07-25 and MT-03-07-48 are lands administered by the Forest Service. The other parcels are administered by the BLM.

You also provided comments indicating that specific stipulations and other mitigation measures should be attached to the following parcels: MT-03-07-01, MT-03-07-03, MT-03-07-04, MT-03-07-06, and MT-03-07-51 through MT-03-07-54.

***Four general issues were raised in the Protest:***

1. Protest: You protest the offering of parcels MT-03-07-01, MT-03-07-03 through MT-03-07-06, and 03-07-50 through MT-03-07-54. These parcels are in the Miles City and Malta Resource Management Planning areas. You assert that any mineral leases that are issued in areas where planning is ongoing would be premature, counterproductive, and would not afford the latest information and guidance concerning potential impacts to fish and wildlife and their habitat. You request that all future nominations in planning areas with new scheduled plans be deferred until the new plans are completed.

Response: There were no parcels on the March sale list located within the boundaries of the Butte FO. However, we will address the Butte FO in our response in order to address all RMPs in progress in Montana.

As you note, the BLM is working on new Resource Management Plans (RMPs) for the Butte, Malta, and Miles City Field Offices (FOs). Start dates for the Butte and Miles City RMPs were in Fiscal Year (FY) 2004. Start date

for the Malta was in FY 2006. The Butte and Miles City RMPs are scheduled to be completed in FY 2008. The Malta RMP is scheduled to be completed in FY 2009. These new planning efforts were scheduled based on our periodic reviews. In the interim, during plan preparation, the BLM is leasing in areas that the Field Office determines available for leasing following a determination of compliance with the National Environmental Policy Act (NEPA) and other applicable statutes. This is in line with BLM policy established in Washington Office Instruction Memorandum (IM) No. 2004-110 (Enclosure 2). 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 allocations are made at the planning stage and the Environmental Impact Statement (EIS) associated with the RMP is intended to meet the NEPA requirements in support of leasing 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." Finally, 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."

The BLM provided additional clarification to IM No. 2004-110 in the form of IM No. 2004-110, Change 1 (Enclosure 3), in August 2004. That change to the original memorandum provides additional guidance when the BLM has developed alternatives and has released a draft RMP/EIS for public review. The IM also reemphasizes the importance of considering temporary deferral of oil and gas leasing in those areas with active land use planning activities. The IM reemphasized that it is BLM policy to consider temporarily deferring oil and gas leasing on federal lands with land use plans are being revised or amended. A decision to temporarily defer could include lands that are designated in the preferred alternative of draft or final RMP revisions as: 1) lands closed to leasing; 2) lands open to leasing under no surface occupancy; 3) lands open to leasing under seasonal or other constraints with emphasis on wildlife concerns; or 4) other potentially restricted lands. Areas designated as open to leasing under the terms and conditions of the standard lease form would not be deferred. This IM is intended to provide flexibility and to reemphasize the discretionary authority of the State Director to temporarily defer leasing of specific tracts of land when there are legitimate BLM-recognized resource concerns. We are deferring leasing in some areas in Malta and Butte for a number of concerns including wildlife, fragile soil, and cultural resources. There are currently approximately 311,076 acres that are deferred from leasing until completion of the Malta and Butte RMPs. We are deferring leasing in the West HiLine RMP area until completion of the Malta RMP. You have not provided any significant new circumstances or information bearing on the environmental consequences of

leasing which were not within the broad scope analyzed previously in the governing RMPs to support deferring leasing of the protested parcels.

2. **Protest:** Based on concerns relating to sage grouse, you protested parcels MT-03-07-07, MT-03-07-26 through MT-03-07-29, MT-03-07-34, MT-03-07-36, MT-03-07-37, MT-03-07-40, MT-03-7-51, MT-03-07-52, and MT-03-07-54. Your protest makes the claim that these parcels all occur within a 2 mile radius of active sage grouse leks and that several of the parcels have active leks on sections within the parcel. The Montana Fish, Wildlife and Parks expressed the belief that any future nominations to lease lands within a 1-mile radius of active sage grouse leks should be deferred and that there should be no surface occupancy within a 1-mile radius around active leks and a 4-mile timing buffer from March 1 to June 30. You believe that in light of concerns about the status of sage grouse, ongoing research, and the Montana Management Plan for Sage Grouse, the BLM should take a conservative approach to leasing and development in sage grouse habitat.

**Response:** The first nine parcels listed above are located within the boundaries of the Dillon FO on lands administered by the BLM. The Dillon RMP was approved on February 7, 2006. Montana Fish, Wildlife and Parks (FWP) participated in development of the Dillon RMP. We also note that FWP received copies of the Draft RMP with Region Three submitting comments. The comment letter contained no comments concerning the sage grouse stipulations (Enclosure 4). The ROD for the RMP specifically adopted three stipulations to mitigate impacts to sage grouse (Appendix K, page 137). The first stipulation states that no activity is allowed in winter and spring range for sage grouse from December 1 through May 15. The second stipulation is a no surface occupancy stipulation to protect sage grouse leks. This stipulation prohibits activity within ¼-mile of leks. The third stipulation is a timing limitation stipulation which restricts activity from March 1 through June 30 in nesting and early brood rearing habitat (defined as within 3 miles of leks). A major objective of all three stipulations is ensuring the long-term maintenance of regional sage grouse populations.

The timing limitation stipulation for sage grouse nesting and early brood rearing in the Dillon RMP is based on a 3-mile buffer given local circumstances and additional information available for the Dillon FO. Radio telemetry studies in southwest Montana indicate that some populations of sage grouse are migratory and move considerable distances during their annual life cycle, including during their nesting season. In addition, habitat in the planning area is unevenly distributed. Based on the most current research examined in the Western Association of Fish and Wildlife Agencies (WAFWA) guidelines in preparation of the Dillon RMP (Volume I, page 55, alternative B, line 10), a 3-mile buffer was recommended for unevenly distributed habitats. The ROD and approved Dillon RMP explicitly incorporate the Montana Management Plans for Sage Grouse in final management decisions at Appendix X, Sage Grouse Management.

The last three parcels listed above are within the boundaries of the Miles City FO. Leasing decisions for this area are found in the 1994 Miles City Oil and Gas Leasing Amendment. This oil and gas plan amendment was

adopted on February 2, 1994. 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 31 within crucial winter range. The second stipulation is a no surface occupancy 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 Management Plan for Sage Grouse will be used as needed to develop site specific conditions of approval.

The sage grouse lek data our FOs use to determine whether any of the stipulations need to be attached to a lease parcel is a compilation of information collected by a number of agencies and individuals. The BLM uses its own inventory data supplemented by data from the FWP, private landowners, consultants, and other sources.

As noted above under the response to protest 1, it is BLM policy to follow current land use allocations and existing land use plan decisions for oil and gas actions during the preparation of land use plan amendments or revisions. The BLM has prepared Documentations of Land Use Plan Conformance and NEPA Adequacy (DNAs) with input from Field Office specialists to verify conformance with existing land use allocations and plans.

Your protest includes no supporting justification that leasing oil and gas within a 1-mile radius of active leks is not appropriate nor does it provide justification for the suggested no surface occupancy stipulation one mile radius around active leks and a 4-mile seasonal timing stipulation from March 1 to June 30.

3. Protest: Based on concerns related to the Beaverhead River corridor, you protested parcels MT-03-07-07 through MT-03-07-19 and MT-03-07-26 through MT-03-07-47. You requested that these leases be deferred until such time as the BLM conducts a comprehensive environmental assessment (EA), EIS and or other such complete analysis of the potential impacts to fish and wildlife and recreational uses of these parcels. Your protest also noted a number of specific concerns including potential for impact to ground water, lack of a ½-mile buffer around Clark Canyon Reservoir, visual resource impacts, and steep slope concerns.

Response: The BLM has completed a comprehensive interdisciplinary analysis of the human and natural environments of Madison and Beaverhead Counties in our Dillon RMP/EIS that was adopted on February 7, 2006. This analysis adequately addressed all reasonably foreseeable future actions in the Beaverhead River Corridor including those related to oil and gas

leasing, exploration, and development. This analysis of the existing environment and environmental impacts is documented in the Dillon RMP by resource and resource use. Cumulative impacts are described in the Proposed Dillon RMP starting at page 361. The alternatives, affected environment, and environmental impacts are all described as required by our NEPA and Planning Handbooks.

The first part of your protest concerns the sale list that was circulated for public notice and your belief that there is a need for further environmental review. Sale notices are circulated and posted for public notice as required by law (30 U.S.C. § 226(f)). At this stage, the BLM has completed the required NEPA review for the sale.

As noted earlier in this decision, the resource management planning tier is where the BLM determines where and under what conditions oil and gas exploration, development, and utilization activities will be permitted. The EIS associated with the RMP is intended to meet the NEPA requirements in support of leasing decisions. Before leasing, BLM completes a DNA for all nominated parcels. Additional NEPA documentation would only be needed prior to leasing if there are significant new circumstances or information bearing on the environmental consequences of leasing which were not within the broad scope analyzed previously in the RMP/EIS. The BLM does not believe that you have been demonstrated that new information exists in this protest.

Your protest also makes the comment on page 4 that the potential scale of development, based on the lease parcels being offered in Beaverhead County, was not recognized in the foreseeable future during the development of the RMP. This is not correct. The proposed RMP noted on page 224, Volume I, that as of March 2002, there were 36 suspended, nominated lease parcels in Beaverhead and Madison Counties that could not be leased until the RMP was completed and adopted. With the approval of the RMP in 2006, these parcels became available for lease. Further, a reasonably foreseeable development (RFD) scenario for oil and gas was developed for the RMP. This RFD scenario forecast a total of six wildcat (exploratory wells drilled in areas of no production) drilled in Madison and Beaverhead Counties during the next 10 to 15 years. Of these six wells, it is forecast that four would be dry holes and two would produce either gas or oil. For each of the producing wells, it was forecast that there would be two step-out wells (wells drilled adjacent to or near a producing well to establish the limits of an oil or gas reservoir). This is a total of ten wells. As noted on page 46 of the ROD for the Dillon RMP, the RFD scenario for the RMP forecast a total of 523 acres of disturbance as a result of well drilling and field development. After the general introduction of this portion of the protest that deals with Beaverhead River corridor, you address a number of site-specific concerns. These are addressed below.

#### **Impacts to Ground Water**

You express concerns about impacts to ground water in the river corridor. These concerns are addressed in Appendix H of the proposed RMP that describes procedures used by the BLM to permit oil and gas activities on BLM lands. They are also addressed in Appendix C of the Forest Service 1995 EIS.

Specific concerns expressed at this point would be addressed when permitting drilling through the application for permit to drill (APD) process. All APDs include requirements to mitigate such concerns. A short description of these requirements follows.

Specifically, if a reserve pit is required on a drilling location to hold drill cuttings and used drilling fluids, it is usually excavated in "cut" material on the well pad. The BLM may require that such pits be lined to contain the contents and reduce seepage. This is normally required based upon factors such as soils, pit locations, ground water, and drilling mud constituents. In cases where reserve pits are not used, closed systems are used to hold drill cuttings and drilling fluids.

As drilling progresses for a vertical well, the hole is drilled and pipe is placed in the hole to maintain the integrity of the hole. The first string of pipe is the conductor pipe, which stabilizes the hole near the surface. The second string of pipe placed in the hole is for surface casing, which is set deep enough to reach a competent zone below the deepest usable freshwater aquifer. The surface casing is set and cemented in the hole by pumping cement between the casing and the well bore wall. Surface casing acts as a safety device to protect freshwater zones from drilling fluid contamination. To prevent the well from "blowing-out" in the event the drill bit hits a high-pressure zone, blowout preventers are mounted on top of the surface casing. If high-pressure zones are encountered that cannot be controlled with mud additives, the blowout preventers can be closed to effectively seal the well. After the surface casing is set, a smaller drill bit that fits inside the surface casing is installed and drilling resumes. Depending on well conditions, additional strings of casing called intermediate casing may be installed and cemented into place. Conditions resulting in the need for intermediate casing include freshwater zones and sloughing formation zones. Casing prevents the flow of freshwater into the wellbore, and conversely prevents drilling fluids from infiltrating porous formations with low internal pressures. Casing also prevents mixing of waters from different formations (interformational mixing) where water within the formations is of differing quality.

If no oil or gas is encountered, the well is plugged with cement and abandoned in accordance with state and federal requirements. If the well is a producer, casing is set and cemented in place. All cementing operation plans are reviewed to assure cement is placed at the appropriate depths and a sufficient quantity is utilized to effectively seal all freshwater-bearing formations from contamination by interformational mixing or migration of fluids.

#### **Visual Impacts**

You express concerns about visual resources in both Clark Canyon and adjacent to the Clark Canyon Reservoir. None of the parcels in the vicinity of Clark Canyon and the Clark Canyon Reservoir received bids at the March sale. Parcels in Beaverhead County receiving bids at the sale were south of the area on the Beaverhead National Forest. The Dillon RMP requires a controlled surface use stipulation for all lands available for leasing in Madison and Beaverhead Counties, including the Beaverhead River corridor, which is used to mitigate impacts to visual resources.

"Resource: VRM Class II, III & IV Areas

Stipulation: Controlled Surface Use. All surface disturbing activities and construction of semi-permanent and permanent facilities may require special design including location, painting, and camouflage to blend with the natural surroundings and meet the visual quality objectives for each respective class.

Objective: To control the visual impacts of activities and facilities within acceptable levels."

The stipulation was inadvertently not included with BLM parcels in Beaverhead County on the March sale notice. This stipulation will protect the visual integrity of BLM lands and will be added to any leases issued for parcels that were available in the March sale in Beaverhead County. This stipulation applies to Visual Resource Management Classes II, III, and IV instead of only VRM Class II as CSU 12-4 does. In order to implement the applicable decision in our Dillon RMP, this stipulation will be added to any BLM parcel in the Dillon Field Office in the future. The Forest Service also uses stipulations to protect the visual quality on some lands that they administer within the boundaries of the Beaverhead National Forest. While not directly in the Beaverhead River corridor, the Forest Service parcels in Beaverhead County receiving bids all had such stipulations applied. An NSO stipulation and two different CSU stipulations were added to portions of parcel MT-03-07-25. Parcels MT-03-07-20 through MT-03-07-25 and MT-03-07-48 have a single visual quality stipulation applied to them.

#### **Setbacks for the Clark Canyon Reservoir**

While you do not believe that stipulation 3109-1 provides adequate setbacks from the Clark Canyon Reservoir, the protest does not provide information explaining why the setbacks applied to the Reservoir are inadequate. Stipulation 3109-1 does not address setbacks. This stipulation is a BLM form adopted in 1972 that governs general operations on an oil and gas lease on Bureau of Reclamation projects. The stipulation that does describe setbacks from the Reservoir is GP-135 and that was applied to parcels around the Reservoir which was developed for the Great Plains Region of the Bureau of Reclamation. That stipulation package provides for various set backs and no surface occupancy stipulations and applies in this situation. The first stipulation requires no surface occupancy within 1,000 feet, the maximum water surface of the Reservoir as defined in the Standard Operating Procedures of the Reservoir and related facilities. We believe that for a reservoir, the 1,000 feet setback is adequate. The other stipulation requires no surface occupancy within 2,000 feet of dams and associated structures. The stipulation numbered NSO 11-20, requiring no surface occupancy along the Beaverhead River, only applies to Class 1 fishery streams and not lakes or reservoirs.

#### **Steep Slopes**

Finally, you expressed concerns about steep slopes. The protest requests that a higher standard be applied to all parcels with slopes over 30 percent. You request that our CSU stipulation be applied to all lands in drainages adjacent to the Beaverhead River. Our analysis in the Dillon RMP indicated

that the following CSU stipulation that was selected for the lands in the Dillon RMP planning area is adequate to protect steep slopes:

Resource: Slopes >30 percent

Stipulation: Controlled Surface Use. Prior to surface disturbance on slopes greater than 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 soil erosion.

Surface disturbing activities will not be conducted during extended wet periods

Objective: To maintain soil productivity and provide necessary protection to prevent excessive soil erosion on steep slopes."

In addition, it was recognized that there are areas of mass wasting (areas prone to landslides) in Beaverhead and Madison Counties. The following NSO stipulation is applied to such areas:

Resource: Active Mass Movement Areas

Stipulation: No Surface Occupancy. Use and occupancy is prohibited on areas of active mass movement (land-slides).

Objectives: To prevent potential damage to pipelines, well heads, and other facilities from landslides in areas of active mass movement."

These two stipulations were applied to all parcels on the March sale list where BLM analysis indicated there were areas of slopes over 30 percent or there were areas of mass wasting. Parcels MT-03-07-07 through MT-03-07-19, MT-03-07-26 through MT-03-07-47, MT-03-07-49, and MT-03-07-52.

The BLM RMP analysis determined that steep slopes and drainages adjacent to the Beaverhead River are adequately protected by the use of these two stipulations and your protest does not provide any new information to support an alternative to the stipulations in the ROD for the Dillon RMP. The BLM does not believe that further stipulations are needed. On slopes less than 30 percent or areas without mass movement, potential impacts can be mitigated with conditions of approval/best management practices at the APD stage.

4. Protest: You protested the inclusion of seven parcels on the Beaverhead National Forest based on concerns including proximity to roadless areas and Wilderness Study Areas, and elk winter range. These include parcels MT-03-07-20 through MT-03-07-25 and MT-03-07-48. You also requested that these parcels be deferred and no additional parcels sold until the USFS completes its Beaverhead National Forest plan revision.

Response: While some of the parcels on the March lease sale may be in the vicinity of roadless areas or Wilderness Study Areas, neither the Forest Service's 2001 Roadless Rule nor the Montana Wilderness Act of 1977 impose any restrictions on lands outside their boundaries. Use of the lands is



guided by direction in the Forest Plan. The lands authorized for lease on the March sale have been categorized for multiple use management in Management Areas 1 and 24 in the Beaverhead Forest Plan. Management Area 1 consists of a wide variety of non-forest, noncommercial forest, and forested lands which are "unsuitable for timber production," but which accommodate numerous other resource uses. At the time the Plan was written, most of the area was covered by oil and gas leases. Management Area 24 includes multiple use lands that are generally non-forested or sparsely forested with slopes less than 45 percent with significant wildlife habitat values within existing livestock grazing allotments.

Your protest states "...BLM does not reflect crucial elk winter range in portions of five leases." The Forest Service and BLM do recognize the importance of elk and other big game in southwest Montana and analyzed the effects in the 1995 FEIS. All or a majority of the land in the five parcels listed in your letter carry a timing stipulation protecting big game from the effects of drilling from December 1 to May 15. Of the 8,919 acres in the parcels noted in your protest as important for elk winter range, approximately 8700 or more acres, 98 percent are protected with the timing stipulation. Information on big game winter range was updated using FWP GIS coverage at the State's website:

<http://fwp.mt.gov/insidefwp/GIS/download.aspx>

These coverages were imported for Forest Plan revision and used for the parcel verification process. These coverages incorporated suggested revisions by FWP area biologists. Your protest requested that parcels be deferred and no additional parcels sold until the Forest Service completes its Beaverhead National Forest plan revision. The Energy Security Act of 1980 codified at 42 U.S.C. 8854 et seq., states in Sec. 262:

"It is the intent of the Congress that the Secretary of Agriculture shall process applications for leases of National Forest System lands, notwithstanding the current status of any plan."

Therefore, the Beaverhead has continued to process lease requests subject to the verification and validation process described below. It is correct that the Forest Service lease parcels being offered (MT-03-07-20 through MT-03-07-25 and MT-03-07-48) have leasing decisions based on the 1995 Final EIS for Oil and Gas Leasing on the Beaverhead National Forest (1995 EIS). As part of pre-sale review, the Forest Service verifies that the leasing of the specific lands has been adequately addressed in a NEPA document. The Beaverhead-Deerlodge National Forest specialists updated the resource information for the various stipulations with the latest survey information. Forest Service specialists also review their area of expertise to see if there is significant new information that would require possible analysis in a supplemental NEPA document. No new significant issues were identified for the Beaverhead National Forest parcels on the March sale. The Forest Service review verified that leasing was adequately addressed in the 1995 EIS and 1996 decision. Your protest said:

"In addition because of the sensitive nature of this area we would recommend that a no surface occupancy stipulations be applied to all future leases in this area."

The final decision for the 1995 FEIS did not choose a 100 percent NSO decision. It was developed to address resource concerns and to attempt to address public concerns. Analysis in the FEIS shows that oil and gas activities are compatible with the multiple-use management prescribed by

the 1986 Forest Plan. Parcels on the March lease sale were offered with stipulations dictated by the final decision for the 1995 FEIS.

#### Comments

Your protest letter of March 12, 2007, also included a number of comments on specific parcels. The following are our responses to these comments.

1. Comments on Parcels MT-03-07-51 through MT-03-07-54: The FWP questioned why the BLM did not apply an NSO stipulation requiring no surface occupancy within 4 miles of the leks on these parcels. Based on your earlier discussion on the same subject, you believe BLM should apply a timing limitation stipulation within a 4-mile radius of an active lek from March 1 to June 30 on these parcels.
  1. Response: You did not provide any justification for a 4-mile timing limitation NSO stipulation from March 1 to June 30. As noted above, it is BLM policy to follow current land use allocations and existing land use plan decisions for oil and gas actions during the preparation of land use plan amendments or revisions. In your protest, you have not demonstrated that there are significant new circumstances or information bearing on the environmental consequences of leasing not within the broad scope analyzed previously in the governing RMPs. These parcels are within the Miles City FO. Based on this, the BLM will be following existing Miles City planning decisions and apply a 2-mile buffer between March 1 and June 15.
2. Comments on Parcels MT-03-07-01, MT-03-07-03, MT-03-07-04, and MT-03-07-06: The FWP requested that all of these parcels should have baseline surveys conducted to assess the presence of Species of Concern. You also requested a 100 meter setback from ephemeral wetlands and that wet and muddy conditions be avoided. Finally, any sagebrush areas and drainages should be avoided.
  2. Response: Baseline wildlife surveys are commonly done by the BLM where they are identified as needed. We will address that concern when development proposals are received. The other requests are items that will be addressed when an APD is filed by using our regulatory authority to apply site-specific mitigation measures.
3. Comments on Parcel MT-03-07-01: You note that the parcel is within the boundaries of the Creedman's Coulee National Wildlife Refuge. The FWP questioned why the parcel did not include the same stipulations that were attached to the lease recently issued on nearby lands withdrawn for the Fish and Wildlife Service.
  3. Response: While parcel MT-03-07-01 is within the boundaries of the Wildlife Refuge, the land is not withdrawn Federal land as are the lands within the lease you note in your letter. The lands within Parcel MT-03-07-01 are privately-owned and the only interest that the Fish and Wildlife Service has in these lands is a flowage easement requiring the surface owner to maintain water in the wetland. However, the BLM did consult with the Fish and Wildlife Service on this parcel for stipulations and other mitigation measures. Based on consultation,

a timing limitation stipulation is attached which restricts surface occupancy between April 1 through August 15. The following Lease Notice requested by the Fish and Wildlife Service is also attached to the parcel.

"U.S. Fish and Wildlife staff responsible for the management of the Creedman's Coulee National Wildlife Refuge will be notified of any exploration and development proposals by the BLM. This notice is necessary to provide the USFWS an opportunity to participate in the evaluation of any proposed activity on the lease, including on-site inspections before site preparation occurs."

4. Comments on Parcel MT-03-07-03: The letter noted that the parcels are on dry crop land and Conservation Reserve Program (CRP) lands. The parcel is 1 mile from Syme Slough and adjacent to a shallow wetland. You suggested that CRP lands should not have any surface disturbance during spring nesting and brooding season between April 1 and July 15.

4. Response: The BLM will take potential wildlife concerns into account if an APD is filed by using our regulatory authority, as needed, to apply site-specific mitigation measures including the authority to, at a minimum, restrict operations for up to 60 days or require relocation of proposed location by 200 meters (43CFR 3101.1-2).

5. Comments on Parcel MT-03-07-04: Your letter indicates numerous potential wildlife concerns including the potential for Bald Eagles in the area of the parcel though you note that there are currently no known nests.

5. Response: The BLM will take potential wildlife concerns into account if an APD is filed by using our regulatory authority to apply site-specific mitigation measures including the authority to, at a minimum, restrict operations for up to 60 days or require relocation of proposed location by 200 meters.

As to the concerns about Bald Eagles, the BLM has no data showing the presence of Bald Eagles in the area of the parcel.

6. Comments on Parcel MT-03-07-6: Your letter provides a general description of the setting of the parcel and notes possible use by wildlife in the area. You recommend pre-development surveys for a number of species of wildlife. You specifically note the potential presence of ferruginous hawks.

6. Response: The BLM will take potential wildlife concerns into account if an APD is filed by using our regulatory authority, as needed, to apply site-specific mitigation measures including the authority to, at a minimum, restrict operations for up to 60 days or require relocation of proposed location by 200 meters.

As to the presence of ferruginous hawks in the area, the BLM has no data showing that they are in the area.

**Decision:** For the reasons stated above, your protest is dismissed except for those issues relating to the future application of visual resource stipulations on BLM Lands in Beaverhead County. 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) define the standards and procedures for filing a petition to obtain a stay pending appeal.

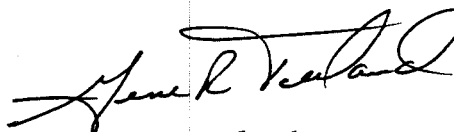
We are issuing a lease for the lands included in parcels MT-03-07-01, MT-03-07-03 through MT-03-07-06, and MT-03-07-20 through MT-03-07-48 to the successful bidders:

<http://www.mt.blm.gov/oilgas/leasing/index.html>

In case of an appeal, the adverse parties to be served are:

Baseline Minerals, Inc., 518 17<sup>th</sup> Street, Suite 950, Denver, CO 80202  
Empire Oil Company, P.O. Box 1835, Williston, ND 58802  
Headington Oil Ltd. Partnership, 7557 Rambler Rd., Ste. 1100, Dallas, TX  
75231  
Klabzuba Oil & Gas, 700 17<sup>th</sup> St., Ste. 1300, Denver, CO 80202  
Nance Petroleum Corporation, P.O. Box 7168, Billings, MT 59103  
Nisku Royalty, L.P., P.O. Box 2293, Billings, MT 59103

If you have any questions regarding this decision, you may contact John Bown at (406) 896-5109 or fax (406) 896-5292.



Gene R. Terland  
State Director

## 6 Enclosures

- 1-Protest of March 12, 2007 (15 pp)
- 2-WO IM No. 2004-110 (8 pp)
- 3-WO IM No. 2004-110, Change 1 (3 pp)
- 4-MT FWP Letter of June 29, 2004 (9 pp)
- 5-Form 1842-1 (2 pp)
- 6-43 CFR 4.21(a) (2 pp)

cc: (w/enclosures)

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