



# 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. William H. Geer  
Policy Initiatives Manager  
Theodore Roosevelt Conservation Partnership  
P.O. Box 16868  
Missoula, Montana 59808-6868

**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 through MT-03-07-48 and MT-03-07-50 through MT-03-07-54.

We are including Parcel MT-03-07-09 as subject to the protest which you identified on Pages 1 and 7 of your protest as Parcel MT-03-09-07.

Parcels MT-03-07-20 through MT-03-07-25 and MT-03-07-48 are lands administered by the Forest Service. The others are administered by the BLM.

Your protest involved several resource specific issues and issues relating to compliance with the Federal Land Policy and Management Act (FLPMA). Resource concerns center around the Beaverhead River Corridor, an area on the Beaverhead-Deerlodge National Forest (NF) that is referenced as the White Pine Ridge Area, parcels under or adjacent to sage grouse leks, and parcels within the boundaries of BLM Field Offices with ongoing land use planning.

#### **Resource Concerns:**

##### **1. Beaverhead River Corridor**

Protest 1a: You protest 35 parcels in the Beaverhead River Corridor:

MT-03-07-07 through MT-03-07-19 and MT-03-07-26 through MT-03-07-47.

You state:

"...the most recent Resource Management Plan (RMP) that includes these 35 disputed parcels fails to address the impacts of drilling for oil, gas or coalbed natural gas on fish and wildlife resources in Clark Canyon Reservoir or the Beaverhead River."

Additionally, you state:

"...finally, depending on the type of development activity that could occur in the future, the proposed leases most certainly represent actions that could substantially affect the environment on a specific localized basis. As such, an Environmental Analysis (EA) or a full Environmental Impact Statement (EIS) should be completed and accompany these proposed actions."

You further state:

"...although FWP staff did participate in the Dillon Resource Management Plan development, new and significant information exists that is pertinent to these 35 parcels, especially since this potential scale of development was not recognized in the foreseeable future during the development of the Resource Management Plan (RMP)."

You indicate that new site-specific information needs to be considered prior to leasing.

Response 1a: The BLM has completed a comprehensive interdisciplinary analysis of the human and natural environments of Madison and Beaverhead Counties in our Dillon RMP that was approved on February 7, 2006. We believe that 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. The reasonably foreseeable development (RFD) scenario for oil and gas determined that there was a very low potential for coal bed natural gas 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 and Final EIS, Volume 1, starting at page 361. The alternatives, affected environment, and environmental impacts are all described in the RMP as required by our NEPA and Planning Handbooks.

You indicate on page 6 of your protest that although Montana Fish, Wildlife and Parks (FWP) staff participated in the development of the Dillon RMP, the FWP believes new and significant information exists that is pertinent to these 35 parcels, especially since, in your eyes, this potential scale of oil and gas development was not recognized during development of the RMP. The Proposed RMP notes at page 204 that at the end of 2001 there were 12,611.68 acres under Federal lease. It also notes that in March 2002, there were 36 suspended, nominated lease parcels covering 34,023.37 acres in the planning area. You have not provided any new information regarding the potential scale of oil and gas development. The BLM feels the existing RFD scenario for a total of 10 wells and 523 acres is still valid. During the planning process, leasing interest was considered based upon industry nominations that were suspended and pending for several years prior to completion of the Dillon RMP. A total of 97 parcels in Beaverhead County have been offered

since the RMP was approved and 26 have been received bids or have been leased.

Prior to offering the 35 parcels for leasing, the BLM completed a review of the Dillon RMP and any new information to determine leasing availability. This review was documented in a Documentation of Land Plan Conformance and NEPA Adequacy (DNA). A DNA documents that the BLM has taken a "hard look" at whether new circumstances, new information, or environmental impacts not previously anticipated or analyzed warrant new analysis or supplementation of existing NEPA documents and whether the impact analysis supports the proposed action. Review of the Dillon RMP and any new information resulted in a decision to proceed with leasing because there were no significant new circumstances or information bearing on the environmental consequences of leasing not within the broad scope previously analyzed in the RMP. No evidence or information demonstrating there are new circumstances or information requiring additional NEPA analysis was provided with your protest. After completion of an RMP, the BLM is normally not required to complete further NEPA analysis prior to leasing. This policy is consistent with BLM Handbook, H-1624-1 - Planning for Fluid Mineral Resource, Chapter I, Release 1-1583, that establishes that 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 which is also consistent with Handbook H-1624-1.

Protest 1b: The environmental consequences of the kind of drilling deep or shallow gas or coal bed natural gas has not been identified or evaluated by BLM and, as a result, the FWP has been unable to accurately assess most likely impacts of drilling on the fish and wildlife resources or hunting and fishing opportunities in the Beaverhead Corridor or the disputed parcels.

Response 1b: Environmental consequences of the oil and gas development in Madison and Beaverhead Counties were fully addressed in the Dillon RMP. There is a very low potential for coal bed natural gas in either county. Appendix H to the Proposed RMP includes a summary of the RFD scenario for oil and gas for the planning area including a drilling activity forecast and surface activity description. The appendix forecasts a total of 10 wells in the planning area. The appendix predicts that there will be a total of six wildcat wells (wells drilled in an area with no existing production) drilled during the life of the plan. Two of these are projected to be producing wells. Two development wells are forecast for each producer. It also included a description of procedures in oil and gas recovery. Finally, it included all of the lease notices and stipulations that were analyzed under each alternative in the RMP. All of this information was used in the analysis found in the main body of the RMP.

The RMP fully complies with BLM Handbook, H-1600-1 - Land Use Planning Handbook. It specifically meets the requirements of that Handbook in Appendix C part H at page 24 of the appendix by making all of the required land use plan decisions for oil and gas. It also complies with the requirements of BLM Handbook H-1624-1 - Planning for Fluid Mineral Resource, Release 1-1583, which contains planning guidance/requirements for oil and gas. Finally, it is in compliance with Washington Office Instruction Memorandum (IM) No. 2004-89, which updated Handbook H-1624-1.

The environmental consequences of oil and gas exploration, production, and drilling have been identified and evaluated by BLM in detail in the RMP. As

a result, the BLM has determined that enough detail has been provided to be able to accurately assess the most likely impacts of drilling on the fish and wildlife resources or hunting and fishing opportunities in the Beaverhead Corridor or the disputed parcels.

Protest 1c:

At page 6, your protest states:

"None of the lease stipulations address the potential problem of the interception of upper water table aquifer flow into Clark Canyon Reservoir, Beaverhead River, Grasshopper Creek, Little Sheep Creek or any of their tributaries from drilling activity. The materials also do not address the potential for drilling activities to intercept deeper aquifers and result in inflows of poor or unacceptable water quality. Both of these problems represent potential threats to fisheries adjacent to the proposed leases."

Response 1c: These concerns are addressed in Appendix H at page 99 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 1995 Forest Service Beaverhead National Forest Oil and Gas Leasing Final Environmental Impact Study (1995 FEIS). Specific procedures for protecting ground and surface waters would be determined 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.

Protest 1d: At page 6 of your protest, you also state:

"...the FWP holds In-Stream Flow Reservations in both the Beaverhead River and Grasshopper Creek that have not been met as minimum in-stream flows over the recent past. TRCP feels the potential for drilling activity to negatively affect stream flow and water quality has been ignored in the current analysis."

Response 1d: The oil and gas RFD scenario for this planning area forecast a total of six wildcat wells (wells drilled in an area with no existing production). We forecast that four of those wells would be dry holes and two would produce either oil or gas. A total of four step-out wells drilled near the discoveries are forecast. This scenario covers wells drilled on federal, state, and fee minerals in Madison and Beaverhead Counties. Currently, there are no producing oil or gas wells in these two counties. The BLM does not consider it reasonable to forecast any impacts from oil and gas drilling activity on the river or creek. As noted above the Dillon RMP forecast a total of ten wells would be drilled in Madison and Beaverhead Counties during the life of the plan. These would be drilled on Federal, State, and fee lands over the total expanse of the two counties. If any of these wells are drilled on Federal leases near the two streams, the applicable lease stipulations would be enforced. In addition, at the APD stage, the BLM has the authority to add site-specific conditions of approval to provide further mitigation. Finally, if stipulations are not attached to a lease, regulations allow the BLM, at a minimum, to move a location up to 200 meters or delay actions for 60 days to mitigate impacts to specific resources.

Protest 1e: In your protest, you suggested that a number of parcels in the river corridor and around Clark Canyon Reservoir are located at a sufficient distance from existing developments in the corridor and around the reservoir that they provide a high quality visual experience that could be compromised by oil and development. You request that a visual resource stipulation such as one similar to stipulation CSU 12-4 be applied to these specific parcels:

MT-03-07-08, MT-03-07-08, MT-03-07-33, and MT-03-07-37

In addition, you requested that the same stipulation be applied to parcels around Clark Canyon Reservoir.

Response 1e: None of the parcels in question received bids at the March sale. However, 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 and 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 (FO) offered for lease 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. A No Surface Occupancy (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.

Protest 1f: At page 7 of your protest letter, you comment:

"While NSO 11-20, grants a half-mile setback along the Class I (Blue Ribbon) fishery of the Beaverhead River, no such protection has been afforded the Class I (Blue Ribbon) fishery of the Clark Canyon Reservoir, which includes a native population of burbot, a Species of Concern in Montana. We feel that this minimum setback should also be applied to Clark Canyon Reservoir (at mean full pool surface). TRCP does not believe 3109-1 provides adequate setbacks."

Response 1f: 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 for 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 of 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.

Protest 1g: At page 7 of the protest, you make the following comment:

"CSU 12-1 provides for relatively aggressive restrictions to protect slopes greater than 30% from erosion and subsequently protects adjacent streams from sedimentation, but a higher standard should be applied on leases adjacent to highly unstable and erodable tributaries to the Beaverhead River. Many of these tributaries have been known to produce extremely high turbidities and sediment loads into the Beaverhead River under wet climatic conditions."

On the same page you make the request that:

"...due to the sensitivity of the soils and erodable nature of these drainages, TRCP requests that CSU 12-1 standards be applied on all slopes within the specified drainages or, a similar set of standards be developed to protect the specified streams from increased sedimentation resulting from lease development."

Response 1g: You request that CSU 12-1 stipulation for steep slopes be applied to all lands in drainages adjacent to the Beaverhead River; not just those with slopes over 30 percent.

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 a 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 (landslides).

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 protested parcels where BLM analysis indicated there were areas of slopes over 30 percent or there were areas of mass wasting regardless of slope angle. The RMP analysis determined that steep slopes and drainages adjacent to the Beaverhead River are adequately protected by the use of these two stipulations. The BLM does not believe that further stipulations are needed and your protest does not provide any new information to support an alternative to the stipulations selected in the ROD for the Dillon RMP. 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.

Protest 1h: At page 8 of your protest, you make the following comment:

"For these 35 disputed parcels, no-surface-occupancy (NSO) or other stipulations are not likely to be successful in the protection of essential trout habitat characteristics, in-stream flows or water quality in the reservoir and river. If the reservoir and river trout habitat conditions cannot be sustained at the current high quality, the recreational values of the fisheries will be lost and anglers will permanently lose the world-class trophy trout fishing opportunities. BLM did not analyze its ability to protect the habitat function of reservoir and river trout through "no-lease" stipulations."

You believe that NSO stipulations are not adequate to protect the Beaverhead River and Clark Canyon Reservoir. You believe that the BLM should have considered a "no-lease" alternative in the Dillon RMP.

Response 1h: The BLM did consider two highly restrictive alternatives. Alternative C which was considered in the Proposed Dillon RMP but not selected would have made 80 percent of the planning area unavailable for lease. While not making all portions of the planning area unavailable, the majority would have been.

We would also point out that the Proposed RMP addresses an alternative as considered but eliminated from detailed analysis that would have closed all public land to leasing on page 21 of the proposed RMP. This is described below with an explanation as to why it was not considered in detail:

**"EXCLUSIVE USE OR PROTECTION**

Alternatives proposing exclusive production or protection of one resource at the expense of other resources were not considered. FLPMA mandates BLM to manage public lands for multiple use and sustained yield. This eliminates alternatives such as closing all public land to grazing or oil and gas leasing, or managing only for wildlife values at the exclusion of other considerations. In addition, resource conditions do not warrant planning area wide prohibition of any particular use. Each alternative considered in the Draft RMP/EIS allows for some



level of support, protection, and/or use of all resources present in the planning area."

## **2. United States Forest Service White Pine Ridge Area**

Protest: You protested the inclusion of five parcels on Beaverhead National Forest based on concerns including proximity to roadless areas, big game (elk and mule deer) winter range and cumulative effects analysis. These include parcels MT-03-07-20, MT-03-07-21, MT-03-07-23, MT-03-07-25 and MT-03-07-48.

Response: While some of the parcels on the March lease sale may be in the vicinity of roadless areas, the Forest Service's 2001 Roadless Rule does not impose any restrictions on lands outside the Inventoried Roadless Area (IRA) boundaries. The 1995 Beaverhead NF Oil and Gas Leasing FEIS (1995 FEIS) analyzed the effect of oil and gas leasing on IRAs (Chapter IV, pages 3-8).

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 nonforest, 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 encompassed by oil and gas leases. Management Area 24 includes lands that are generally nonforested or sparsely forested with slopes less than 45 percent with significant wildlife habitat values within existing livestock grazing allotments.

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 lands in the five parcels listed in your letter have a timing stipulation protecting big game winter range 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 winter range, approximately 8,700 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 web site: <http://fwp.mt.gov/insidefwp/GIS/download.aspx>

This coverage was imported for Forest Plan revision and incorporated as suggested revisions by FWP area biologists.

As part of the 1995 FEIS, the Forest Service analyzed not only the effects of single wells drilled as a result of leasing, but small field development as projected in the RFD scenario. The analysis also took into account cumulative effects with other forest management activities such as but not limited to timber, range or other mineral activities. Effects noted by the 1995 FEIS (pages IV-12 thru 20) included "increase in road density might increase the vulnerability of wildlife due to the ease in access," "disturbance and displacement would be greatest during. . .the initial drilling activity" and "displacement of wintering elk might impact private lands adjacent to this wintering area." The decision, while trying to minimize effects through the use of the timing stipulation for big game winter range, recognized that there may be some effects from leasing and subsequent development to big game.

Your protest did not identify what new significant information is available nor did it identify why the timing stipulation is insufficient to protect big game.

### 3. Parcels Under or Adjacent to Sage Grouse Leks

Protest: Based on concerns relating to sage grouse, you protested Parcels MT-03-07-02, MT-03-07-07, MT-03-07-26 through MT-03-07-31, MT-03-07-33 through MT-03-07-37, MT-03-07-40, MT-03-07-43, and MT-03-07-50 through MT-03-07-54. Your protest makes the claim that these parcels all occur within a 2-mile radius of active sage grouse leks. You 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 3-mile seasonal 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 and Conservation Strategies for Sage Grouse, the BLM should take a conservative approach to leasing and development near sage grouse leks.

Response: Your protest provides no justification that leasing oil and gas within a 1-mile radius of active leks is not appropriate. The 3-mile seasonal timing buffer from March 1 to June 30 that you use as a reason for deferring offering of the parcels, is a stipulation adopted in the Dillon RMP as discussed below. A less restrictive timing stipulation; i.e., 2-mile buffer for period March 1 to June 15, is used for parcels outside the Dillon RMP. The less restrictive stipulations for those areas are based upon decisions in the applicable plans.

Parcels MT-03-07-07, MT-03-07-26 through MT-03-07-31, MT-03-07-33 through MT-03-07-37, MT-03-07-40, are MT-03-07-43 are located within the boundaries of the Dillon FO on lands administered by the BLM. The Dillon RMP was approved on February 7, 2006. 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 an NSO 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 guidelines in the 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 Sage Grouse Conservation Strategy for sage grouse in final management decisions at Appendix X, Sage Grouse Management.

The BLM would like to point out that the FWP participated in development of the Dillon RMP. We also note that the FWP also commented on the Draft RMP (Enclosure 2). Their comment letter contained no comments concerning the sage grouse stipulations. We also note that FWP received copies of the Proposed RMP.

The other protested parcels, MT-07-03-02 and MT-03-07-50 through MT-03-07-54, are within the boundaries of the planning area for the 1994 Miles City Oil and Gas RMP/EIS. 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 December 31 within crucial winter range. The second stipulation is an NSO 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 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 our FOs use 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 FWP, private landowner, consultants, and other sources.

In this 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. The BLM believes that, in this case, impacts to sage grouse are adequately protected by the use of the three stipulations on the subject lease parcels.

#### **4. Other RMP Areas**

Protest: You note that the BLM is working on new land use plans for the Butte, Malta, and Miles City FO and contend that any mineral leases that are issued in areas where planning is not yet finished would be premature and counter productive. For those reasons, you protested all parcels on the sale located within the three FOs. You also requested that future nominations should be deferred until the plans are finished.

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 RMPs for the Butte, Malta, and Miles City 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 starts were scheduled based on the results of our periodic reviews. In the interim, during plan preparation, the BLM is still leasing in areas that the FOs determine

available 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 3). 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 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 4), 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 where 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.

While not within the list of protested parcels, 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 are not within the broad scope analyzed previously in the governing RMPs to support deferring leasing of the protested parcels.

**Legal Concerns:**

**1. National Environmental Policy Act (NEPA)**

Protest: You state that the BLM violated NEPA by failing to take the required "hard look" at significant new information that questions the general validity of its current RMPs including the 1995 Beaverhead FEIS.

In your protest, you allege that the BLM failed to take a hard look at new information and new circumstances that have come to light since the BLM's original boundaries were defined for mule deer crucial winter ranges. Additionally, you state FWP has updated the information for crucial mule deer and known elk winter ranges and mule deer and elk migration routes in the USFS White Pine Ridge Area, on wild trout habitat characteristics in both Clark Canyon Reservoir and the Beaverhead River, and on active sage grouse leks and associated habitat in Carter County. Your protest further states that recent updates to the seasonal boundaries and migration routes for mule deer were completed in 2006, after most of the RMPs were completed or revised. The DNAs prepared for the leasing action inadequately address the significant impacts of mineral development on the crucial mule deer and known elk winter ranges and migration routes, on wild trout habitat characteristics in both Clark Canyon Reservoir and the Beaverhead River, and on active sage grouse leks and associated habitat in Carter County. For this reason, you believe that BLM's approval of the disputed lease parcels is arbitrary, capricious, contrary to law, and an abuse of discretion.

Response: The BLM completed a DNA for each of the parcels on the March 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 warrant new analysis or supplementation of existing NEPA documents and whether the impact analysis supports the proposed action. Based on our completed analysis, the BLM Dillon FO made a decision that the Dillon RMP still supported oil and gas leasing without the need for supplemental NEPA or planning analysis. The same decision was made by the Miles City FO for parcels in the Miles City FO.

The Forest Service completed a similar review before transmitting the parcels under their jurisdiction to BLM for lease. As part of their 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 NF specialists updated the resource information for the various stipulations with the latest survey information. Please see the response to the issues related to the Forest Service White Pine Ridge area for updates on big game winter range information. Forest Service specialists also review their area of expertise to see if there are significant new issues that would require possible analysis in a supplemental NEPA document. No new significant issues were identified for the Beaverhead NF parcels on the March sale. Checking by the Beaverhead-Deerlodge NF specialists verified that leasing was adequately addressed in the 1995 FEIS and decision.

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 EIS for BLM and the Forest Service to consider deferring leasing of these parcels

Protest: You state that the BLM violated NEPA by failing to conduct site-specific pre-leasing analysis of mineral development impacts on the public lands in the protested parcels.

You further state that the BLM must analyze the impacts of subsequent development prior to leasing. You indicate that you believe the BLM has not

analyzed protesters' documentation of special surface values that will be permanently compromised by future development. Therefore, the BLM cannot defer all site-specific analysis to later stages such as submission of APDs or proposals for full-field development. Law and common sense require the agencies to analyze the impacts to crucial mule deer winter range and migration routes areas before issuing leases.

Finally, you state that, in the present case, the BLM is attempting to defer environmental review without retaining the authority to preclude surface disturbances. You contend none of the environmental documents previously prepared by BLM examine the site-specific or cumulative impacts of mineral leasing and development to the crucial mule deer winter ranges and migration routes. You allege that BLM has not analyzed the new information, nor has it assessed what stipulations, other than timing restrictions, might protect special surface values. This violates federal law by approving leasing absent environmental analysis as to whether NSO stipulations should be attached to the crucial mule deer winter ranges and migration routes lands.

Response: The Beaverhead NF, the Dillon FO, and the Miles City FO completed site-specific analyses of mineral development impact on all lands in the two planning areas including the lands in the protested parcels. The BLM was a joint lead agency for the 1995 FEIS with the Forest Service. The Forest Service and the BLM made leasing decisions for lands under the administration of the Beaverhead National Forest. The Dillon RMP covers all other federal oil and gas interests in Madison and Beaverhead Counties. The 1994 Miles City Amendment and the Big Dry RMP cover all other protested parcels.

Both documents include RFD scenarios for oil and gas. An RFD scenario for oil and gas is a long-term projection of oil and gas exploration, development, production, and reclamation activity. The RFD scenario covers oil and gas activity in a defined area for a specified period of time. The RFD scenario projects a baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order. The baseline RFD scenario provides the mechanism to analyze the effects that discretionary management decisions have on oil and gas activity. The RFD scenario also provides basic information that is analyzed in the NEPA document under various alternatives. The RFD scenario for the 1995 FEIS projected 14 total wells would be drilled. The RFD scenario for the Dillon forecast a total of 10 wells.

In the case of the Dillon RMP, the 1994 Miles City Amendment, and the Big Dry RMP, those documents meet the requirements of BLM Handbook H-1601-1 - Land Use Planning Handbook. The following decisions required by that handbook were made for BLM administered oil and gas estate. The RMP identifies:

1. Areas open to leasing, subject to existing laws, regulations, and formal orders; and the terms and conditions of the standard lease form.
2. Areas open to leasing, subject to moderate constraints such as seasonal and controlled surface use restrictions.
3. Areas open to leasing, subject to major constraints such as no-surface-occupancy stipulations.
4. Areas closed to leasing. Identify whether such closures are discretionary or nondiscretionary; and if discretionary, the rationale.
5. Resource condition objectives that have been established and specific lease stipulations and general/typical conditions of approval and best

management practices that will be employed to accomplish these objectives in areas open to leasing.

6. For each lease stipulation, the circumstances for granting an exception, waiver, or modification. Identify the general documentation requirements and any public notification associated with granting exceptions, waivers, or modifications.

7. Whether the leasing and development decisions also apply to geophysical exploration.

8. Whether constraints identified in the land use plan for new leases also apply to areas currently under lease.

9. Long-term resource condition objectives for areas currently under development to guide reclamation activities prior to abandonment.

- A plan-level decision to open the lands to leasing represents BLM's determination, based on the information available at the time, that it is appropriate to allow development of the parcel consistent with the terms of the lease, laws, regulations, and orders, and subject to reasonable conditions of approval.

For the 1995 Beaverhead FEIS, the BLM was a joint lead agency. In that role, the BLM provided staff in assisting the Forest Service in conducting interdisciplinary analysis and preparing needed documentation. The BLM also reviewed work accomplished by the Forest Service including proposed decisions, recommendations, and alternatives. The Beaverhead 1995 FEIS also identified the same items included in the numbered list above.

All of the documents meet our guidance for oil and gas and include reasonably foreseeable development scenarios for oil and gas, identification of oil and gas potential within the planning areas, and the site-specific identification of leasing stipulations to be used. They also identified a range of alternatives with varying levels of constraints. Further, the documents also identify a range of conditions of approval that can be used to mitigate impacts from oil and gas leasing and development. They also reflect consideration of public, other agency, and interdisciplinary team input.

Protest: You state that the BLM violated NEPA by failing to consider NSO and No-Leasing Alternatives.

Response: The Dillon RMP analyzed four alternatives. Alternative C in the Dillon RMP, which was the most restrictive alternative, would have made 80 percent of the BLM minerals in Madison and Beaverhead Counties unavailable for lease. Eighty-eight percent of the lands unavailable would have been discretionary closures. Big game habitat would have been unavailable. Fisheries would have been protected with a mixture of no lease decisions and NSO stipulations. Please see the response to 1h for the discussion of alternatives considered but eliminated from detailed analysis.

The 1994 Amendment analyzed four alternatives with varying levels of constraints. Alternatives considered but not analyzed in detail included a no leasing alternative. The Big Dry RMP also analyzed four alternatives with varying levels of constraints for oil and gas leasing.

The Beaverhead 1995 FEIS fully analyzed seven alternatives. Alternative 3 in the Beaverhead 1995 FEIS was the no-action alternative. Under this alternative, the Forest Service would not have authorized the BLM to lease any lands on the Beaverhead National Forest. Alternative 6 in the Beaverhead

1995 FEIS made 88 percent of the Forest unavailable for lease including big game winter range and calving areas.

All of the documents listed above considered a range of stipulations. The NSO stipulations were considered in each alternative analyzed.

#### **Federal Land Policy and Management Act (FLPMA)**

Protest: You state that the leasing decision violated FLPMA's requirement to prevent undue or unnecessary degradation of mule deer crucial winter ranges, known elk winter ranges, mule deer and elk migration routes, wild trout habitat characteristics in both Clark Canyon Reservoir, and the Beaverhead River, and active sage grouse leks and associated habitat. You further state that existing analysis has not been sufficient to satisfy the BLM's obligation to prevent undue and unnecessary degradation by showing that future impacts from development will be mitigated and thus avoid undue or unnecessary degradation of mule deer crucial winter ranges, known elk winter range, mule deer and elk migration routes, wild trout habitat characteristics in both Clark Canyon Reservoir and the Beaverhead River, and active sage grouse leks and associated habitat.

Response: The BLM believes that we have complied with FLPMA by completing the Dillon RMP, 1994 Miles City Amendment, Big Dry RMP, and working with the Forest Service as a joint lead on the Beaverhead FEIS. These documents contain comprehensive environmental analyses that were used to develop mitigation measures for impacts from oil and gas to other resources and resources uses in the two counties. In the case of the Dillon RMP, 1994 Miles City Amendment, and Big Dry RMP, these documents meet the requirements of BLM Handbook H-1601-1 - Land Use Planning Handbook and make all decisions required for oil and gas. For the Beaverhead 1995 FEIS, BLM staff assisted in conducting interdisciplinary analysis and helped prepare needed documentation. The BLM also reviewed work accomplished by the Forest Service including proposed decisions, recommendations, and alternatives. The documents meet our guidance for oil and gas and include RFD scenarios for oil and gas, identification of oil and gas potential within the planning areas, and identification of leasing stipulations to be used. They also reflect consideration of public, other agency, and interdisciplinary team input. In addition to mitigation built into the documents, the BLM has the regulatory authority to adopt reasonable measures at the application for permit to drill stage and later. We believe that by completing these documents and the use of our regulatory authority at a later date, the BLM has complied with our mandate to ensure that our actions to not lead to undue and unnecessary degradation FLPMA's requirement to prevent undue or unnecessary degradation of mule deer crucial winter ranges, known elk winter ranges, mule deer and elk migration routes, wild trout habitat characteristics in both Clark Canyon Reservoir, and the Beaverhead River, and active sage grouse leks and associated habitat.

#### **The Mineral Leasing Act (MLA) gives the BLM discretion over whether to lease the disputed parcels**

Protest: You state that:

"withdrawing the protested parcels from the lease sale until proper pre-leasing analysis is performed is a proper exercise of the BLM's discretion under the MLA. The BLM has no legal obligation to lease the disputed parcels and is required to



withdraw them until the agencies have complied with the applicable law."

**Response:** The BLM understands our discretion under the MLA. However, we have completed the proper pre-leasing analysis as documented in the protest response. We have complied with applicable law.

**Decision:** For the reasons stated above, your protest on all parcels noted in your letter 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 your protest in part 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-03-07-1, MT-03-07-03 through MT-03-07-06, MT-03-07-20 through MT-03-07-25, and MT-03-07-48 to the successful bidders:

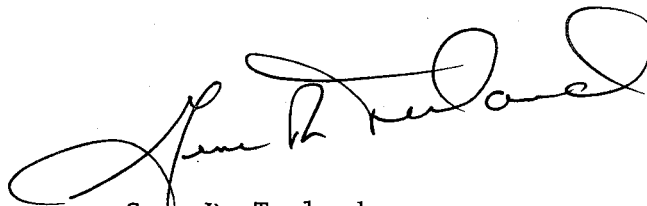
<http://www.mt.blm.gov/oilgas/leasing/index.html>

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

Klabzuba Oil & Gas, 700 17th Street, Ste. 1300, Denver, CO 80202  
 Empire Oil Company, P.O. Box 1835, Williston, ND 58802  
 Nance Petroleum Corporation, P.O. Box 7168, Billings, ND 59103  
 Headington Oil Ltd Partnership, 7557 Rambler Road, Suite 1100, Dallas, TX  
 75231

Nisku Royalty, LP, P.O. Box 2293, Billings, MT 59103  
 Baseline Minerals, Inc., 518 17th Street, Suite 950, Denver, CO 80202

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 (21pp)
- 2-FWP Letter of June 29, 2004 (9pp)
- 3-WO IM No. 2004-110 (8pp)
- 4-WO IM No. 2004-110, Change 1 (3p)
- 5-Form 1842-1 (2pp)
- 6-43 CFR 4.21 (a) (2pp)

cc: (w/enclosures)

Tom Tidwell, Regional Forester, U. S. Forest Service, PO Box 7669,  
Missoula, MT 59807-7669

Leslie Vaculik, U. S. Forest Service, PO Box 7669, Missoula, MT  
59807-7669

- Supervisor, Beaverhead NF, 420 Barrett St., Dillon, MT 59725-3572  
Klabzuba Oil & Gas, 700 17th Street, Ste. 1300, Denver, CO 80202-3550  
Empire Oil Company, PO Box 1835, Williston, ND 58802-1835  
Nance Petroleum Corporation, PO Box 7168, Billings, ND 59103-7168  
Headington Oil Ltd Partnership, 7557 Rambler Road, Suite 1100, Dallas, TX  
75231-2310

Nisku Royalty, L.P., PO Box 2293, Billings, MT 59103-2293

Baseline Minerals, Inc., 518 17th Street, Suite 950, Denver, CO 80202-4110