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BY FACSIMILE

Gene Terland, State Director
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RE: PROTEST OF MONTANA BLM MARCH 27, 2007, LEASE SALE OF 52 PARCELS THAT INCLUDE (WITH SOME DUPLICATION): (1) 35 PARCELS THAT INCLUDE LANDS THAT COULD SIGNIFICANTLY IMPACT THE CLASS 1 (BLUE-RIBBON) FISHERIES IN CLARK CANYON RESERVOIR AND THE BEAVERHEAD RIVER BELOW CLARK CANYON RESERVOIR; AND (2) 10 PARCELS IN THE USFS WHITE PINE RIDGE AREA (FWP HUNTING DISTRICT 300) THAT COULD SIGNIFICANTLY IMPACT ELK AND MULE DEER AND BIG GAME HUNTING OPPORTUNITIES; (3) 20 PARCELS IN CARTER COUNTY THAT CONTAIN (4 PARCELS) OR ARE WITHIN 3 MILES (16 PARCELS) OF ACTIVE SAGE GROUSE LEKS; AND (4) 10 PARCELS THAT WILL BE INCLUDED IN MILES CITY, MALTA, AND BUTTE RMPs CURRENTLY UNDER DEVELOPMENT, AND IN WHICH MAY OCCUR ADVERSE IMPACTS TO FISH AND WILDLIFE IF DRILLING IS APPROVED AND BEGINS BEFORE COMPREHENSIVE PLANNING TO PREVENT FISH AND WILDLIFE IMPACTS CAN BE DEVELOPED IN THE RMPs.

INTRODUCTION

On behalf of the Theodore Roosevelt Conservation Partnership (hereinafter referred to as "TRCP" or "Protester"), I respectfully protest the inclusion of the 52 proposed lease sale parcels listed below, including 35 parcels in the Beaverhead Corridor; 7 parcels in the White Pine Ridge Area; 20 parcels in Carter County; and 10 parcels in areas covered by the Miles City, Malta, and Butte Resource Management Plans, administered by the Bureau of Land Management ("BLM") or the USDA Forest Service (USFS) within the state of Montana and request that these parcels be withdrawn from the March 27, 2007, lease sale. This protest is filed pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3.

Protested Lease Sale Parcels

MT-03-07-01; MT-03-07-02; MT-03-07-03; MT-03-07-04; MT-03-07-05; MT-03-07-06; MT-03-07-07; MT-03-07-08; MT-03-07-10; MT-03-07-11; MT-03-07-12; MT-03-07-13; MT-03-07-14; MT-03-07-15; MT-03-07-16; MT-03-07-17; MT-03-07-18; MT-03-07-19; MT-03-07-20; MT-03-07-21; MT-03-09-22; MT-03-07-23; MT-03-07-24; MT-03-07-25; MT-03-07-26; MT-03-07-27; MT-03-07-28; MT-03-07-29; MT-03-07-30; MT-03-07-31; MT-03-07-32; MT-03-07-33; MT-03-07-34; MT-03-07-35; MT-03-07-36; MT-03-07-37; MT-03-07-38; MT-03-07-39; MT-03-07-40; MT-03-07-41; MT-03-07-42; MT-03-07-43; MT-03-07-44; MT-03-07-45; MT-03-07-46; MT-03-07-47; MT-03-07-48; MT-03-07-50; MT-03-07-51; MT-03-07-52; MT-03-07-53; MT-03-07-54.

Beaverhead Corridor

The BLM proposes to offer at the scheduled March 27, 2007 Competitive Oil & Gas Lease Sale certain parcels located in numerous BLM Resource Areas. TRCP protests the nomination and leasing of the following 35 parcels constituting the area commonly referred to as the Beaverhead River Corridor, including both Clark Canyon Reservoir and the Beaverhead River below Clark Canyon Reservoir: MT-03-07-07; MT-03-07-08; MT-03-09-07; MT-03-07-10; MT-03-07-11; MT-03-07-12; MT-03-07-13; MT-03-07-14; MT-03-07-15; MT-03-07-16; MT-03-07-17; MT-03-07-18; MT-03-07-19; MT-03-07-26; MT-03-07-27; MT-03-07-28; MT-03-07-29; MT-03-07-30; MT-03-07-31; MT-03-07-32; MT-03-07-33; MT-

03-07-34; MT-03-07-35; MT-03-07-36; MT-03-07-37; MT-03-07-38; MT-03-07-39; MT-03-07-40; MT-03-07-41; MT-03-07-42; MT-03-07-43; MT-03-07-44; MT-03-07-45; MT-03-07-46; and MT-03-07-47.

Both Clark Canyon Reservoir and the Beaverhead River below the reservoir are classified as Class I (Blue Ribbon) trout fisheries, the highest classification afforded Montana lakes and streams by Montana Department of Fish, Wildlife and Parks (FWP). Each year thousands of anglers visit from other nations, across the United States and within Montana to experience these world-class Blue Ribbon trout fisheries. The Beaverhead River produces some of the largest trout, particularly brown trout, in Montana.

Leasing of these 35 parcels would irretrievably and unlawfully commit these priceless Montana waters to oil and gas development with a high likelihood that most or all Blue Ribbon fishery values would be lost in both Clark Canyon Reservoir and the Beaverhead River:

- Leases MT-13-07-07; MT-03-07-08; MT-03-07-33; and MT-03-07-37 should have the added protection of CSU 12-4 to protect the quality of the world-class, Blue Ribbon trout fishing experience.
- 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.
- The environmental consequences of the kind of drilling (deep or shallow gas or coalbed natural gas) has not been identified or evaluated by BLM, and as a result 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.
- Stipulations and conditions-of-approval are not adequate to protect and manage reservoir and river fisheries subjected to lateral inflow of poor quality or contaminated water incidental to drilling, and have a history of being waived in many BLM field offices.
- Because BLM has failed to state how the comprehensive management of public lands with drilling will support FWP objectives for trout populations in Clark Canyon Reservoir and the Beaverhead River, it is highly likely leasing and subsequent surface development and road construction will render these waters unsuitable for management of the current Class I (Blue Ribbon) trout fisheries.
- BLM has not conducted new on-the-ground inventories or environmental analysis required by the National Environmental Policy Act, 42 U.S.C. §§4321 *et seq.* (NEPA) and the Federal Lands Policy and Management Act, 43 U.S.C. §§1701 *et seq.* (FLPMA).
- Accordingly, including the disputed parcels in the upcoming lease sale violates federal law.

Therefore, Protesters request that the BLM withdraw these parcels from leasing until the agency has fully complied with applicable law.

USFS White Pine Ridge Area

The BLM proposes to offer at the scheduled March 27, 2007 Competitive Oil & Gas Lease Sale certain parcels located in numerous BLM Resource Areas. TRCP protests the nomination and leasing of the following 7 parcels constituting the area referred to as the USFS White Pine Ridge Area: MT-03-07-20; MT-03-07-21; MT-03-09-22; MT-03-07-23; MT-03-07-24; MT-03-07-25; and MT-03-07-48. These

leases represent the third consecutive sale offering leases in Hunting District 300 since lease activity began in November 2006.

The disputed lease parcels are being offered under an underlying leasing decision that is based upon the 1995 Final EIS for Oil & Gas Leasing on the Beaverhead National Forest (1995 EIS). The information and data contained in the EIS and the opportunity for public comment is over 12 years old. Many changes come to that petroleum-economy that drives new exploration and development. This is expressed in the Draft EIS for the Beaverhead-Deerlodge Revised Forest Plan, which states: "With the current all time high in oil & gas prices, we may see a renewed interest in leasing on the Forest. Certainly, any discovery in southwest Montana, whether on public or private land, would result in more leases and likely Applications for Permits to Drill (APDs)." (DEIS Chapter 3, 391) The 1995 EIS analysis and the stipulations derived from it are based upon the economic reality and reasonable foreseeable development scenario from 1995. As the USFS recognizes in their DEIS, this reality has changed. If the BLM insists on leasing these parcels before the completion of the revised plan and as FWP points out an updated reasonable foreseeable development scenario, then the entire 1995 analysis needs to be supplemented to reflect this changed circumstance, as required by NEPA supplemental analysis requirement.

Parcels 03-07-48; 03-07-24; and 03-07-25 are immediately adjacent to roadless areas recently identified by Governor Brian Schweitzer's Roadless Area Task Force. In addition, the information provided by the BLM does not reflect crucial elk winter range in portions of five leases, specifically those portions of sections 3 and 5, T14S, R9W of lease 03-07-20; all of lease 03-07-21; those portions of sections 11 and 15, T14S, R9W of lease 03-07-23; all of lease 03-07-25; and sections 12, 13 and 24, T14S, R10W of lease 03-07-48. The impacts of road construction and motor vehicle activity on elk habitat, population distribution, and hunter success are well known from more than 30 years of field studies conducted in western states by state fish and wildlife agencies, the USDA Forest Service, and universities, and are presented below in **Roads and Elk Habitat, Vulnerability and Security**. While many of these studies investigated the impacts of roads and vehicle use in logging areas, the results apply also to other developments in which road construction and heavy vehicle traffic are predicted.

The intensity of oil and gas leasing activity within the Lima Peaks area, and the extreme variability of both the terrain and wildlife values that are found throughout the Lima Peaks area make commenting on these leases very difficult. Significant and new information leads us to believe that big game winter range in this area needs to be better refined. Further complicating the lease assessment is the fact that the Beaverhead National Forest Management Plan has not yet been finalized. Upon review, it is apparent that the mineral leasing portion of this management plan was not adequately addressed during the planning process.

TRCP believes that due to the need for defining crucial winter range habitat for mule deer and elk (big game), the need for revising and or completing the Beaverhead National Forest Plan, and the proximity to identified inventoried roadless areas, an Environmental Analysis (EA) if not a full Environmental Impact Statement (EIS) should be completed and accompany these proposed actions. More information is presented below in **Crucial Winter Ranges and Migration Routes**. As such, we protest the nomination and leasing of BLM parcels MT-03-07-20; MT-03-07-21; MT-03-07-22; MT-03-07-22; MT-03-07-23; MT-03-07-24; MT-03-07-25; and MT-03-07-48, and request that their leasing should be deferred until such time as the USFS completes it's Beaverhead National Forest Plan and until an EA or EIS is completed.

Furthermore, we request that no additional parcels in the National Forest System in this area be leased until the Management Plan adequately addresses mineral leasing and development, and also until new and significant big game winter range information can be incorporated into the Beaverhead National Forest Management Plan. In addition, because of the sensitive nature of this area we recommend that a NSO

stipulation be applied to all future leases in this area. Winter elk distribution data supporting the crucial nature of these leases is available from the Dillon FWP office.

- Leasing of these 7 parcels would irretrievably and unlawfully commit these priceless Montana wildlands to oil and gas development.
- The most recent RMP that includes these 7 disputed parcels fails to address the impacts of drilling for oil, gas or coalbed natural gas on fish and wildlife resources in the USFS administered White Pine Ridge Area.
- The environmental consequences of the kind of drilling (deep or shallow gas or coalbed natural gas) have not been identified and evaluated by BLM, and as a result, 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 USFS White Pine Ridge Area or the disputed parcels.
- Because BLM has failed to state how the comprehensive management of public lands and National Forest System lands with drilling will support FWP objectives for mule deer and elk, it is highly likely leasing and subsequent surface development and road construction will render these lands unsuitable for management of the current high quality public hunting.
- BLM has not conducted new on-the-ground inventories or environmental analysis required by the National Environmental Policy Act, 42 U.S.C. §§4321 *et seq.* (NEPA) and the Federal Lands Policy and Management Act, 43 U.S.C. §§1701 *et seq.* (FLPMA).
- Accordingly, including the disputed parcels in the upcoming lease sale violates federal law.

Parcels Under or Adjacent to Sage Grouse Leaks

In 2005, the State Director of the BLM signed the Management Plan and Conservation Strategies for Sage Grouse in Montana. The overall goal of this document is for cooperators to implement strategies that "Provide for the long-term conservation and enhancement of the sagebrush steppe/mixed-grass prairie complex within Montana in a manner that supports sage grouse and a healthy diversity and abundance of wildlife species and human uses". Specifically, the document cites Policy Act BLM 6840, "[BLM] State directors, usually in cooperation with state wildlife agencies, may designate sensitive species. BLM shall carry out management, consistent with the principles of multiple use, for the conservation of sensitive species and their habitats and shall ensure that actions authorized, funded, or carried out do not contribute to the need to list any of these species as T&E".

Currently, there are regional concerns about the overall status of sage grouse, and recent research indicates that, at a minimum, any energy development within 1 mile of an active sage grouse lek has adverse impacts on sage grouse populations, even when ¼ mile no-surface-occupancy (NSO) and 2-mile seasonal timing stipulations are applied. There is still considerable research that needs to occur in order to better define how development should occur in order to avoid impacts to sage grouse. TRCP believes that, considering the status of sage grouse, the results of recent research, the additional research that is needed to avoid additional impacts related to energy development, and agreement between FWP and BLM to cooperate through the Montana Management Plan for Sage Grouse, a conservative approach to leasing and development near Sage Grouse leks is warranted. We believe that leasing minerals within a 1-mile radius of active sage grouse lek at this time is not appropriate, and that leases should at minimum require a no

surface occupancy for a 1-mile radius around active leks and a 3-mile radius, March 1 to June 30 seasonal timing stipulation.

Accordingly, TRCP protests the nomination and leasing of BLM Parcels **MT-03-07-02; MT-03-07-07; MT-03-07-26; MT-03-07-27; MT-03-07-28; MT-03-07-29; MT-03-07-30; MT-03-07-31; MT-03-07-33; MT-03-07-34; MT-03-07-35; MT-03-07-36; MT-03-07-37; MT-03-07-40; MT-03-07-43; MT-03-07-50; MT-03-07-51; MT-03-07-52; MT-03-07-53; MT-03-07-54**. Parcels in bold have active sage grouse leks within the parcel.

These referenced leases all occur within a 2-mile radius of active sage grouse leks. TRCP asserts that the leasing of all of these parcels should be deferred until range wide populations of sage grouse have increased to the degree that the species is no longer considered sensitive and until additional research is conducted to help define how development should occur near active sage grouse leks. Also, any future nominations to lease minerals within a 1-mile radius of active sage grouse lek should be deferred, and if there should be a minimum requirement for no surface occupancy for a 1-mile radius around active leks and a 3-mile, March 1 to June 30 seasonal timing stipulation. These nominations should be deferred until range wide populations of sage grouse have increased to the degree that the species is no longer considered sensitive and additional research is conducted to help define how development should occur near active sage grouse leks. .

Other RMP Areas

BLM in cooperation with partners and the public is currently developing the Miles City, Malta, and Butte RMPs. These RMPs will establish guidance, objectives, policies, and management actions for public lands administered by the affected BLM Field Offices for the next 10 to 15 years. These documents describe broad, multiple-use guidance for managing public land and mineral estates administered by BLM and provide broad guidance for potential impacts to fish and wildlife through an environmental impact statement. TRCP contends that any mineral leases that occur in these areas where planning is not yet completed would be premature and counterproductive, and would not afford the use of the latest information and guidance concerning potential impacts to fish and wildlife and their habitat.

Because of the concerns expressed above, TRCP protests the nomination and leasing of BLM parcels **MT-03-07-01; MT-03-07-03; MT-03-07-04; MT-03-07-05; MT-03-07-06; MT-03-07-50; MT-03-07-51; MT-03-07-52; MT-03-07-53; and MT-03-07-54** and request that their leasing should be deferred until such time as the BLM RMP planning process for these areas is completed. Furthermore, TRCP believes that all future nominations of parcels that fall within these RMP areas should also be deferred until such time as the RMP planning process has been completed for these areas. TRCP also believes that, following our future review of all RMPs, there could be a need to revise other land-use plans based on the increasing number and frequency of lease sales that are occurring in RMPs where mineral extraction activities might not have been included in the foreseeable future at the time the RMP was developed.

PROTESTER

A. Theodore Roosevelt Conservation Partnership

The Theodore Roosevelt Conservation Partnership is a national non-profit conservation organization (501-3c) that is dedicated to guaranteeing every American places to hunt or fish. TRCP accomplishes its goal through three areas of concern, access to public lands, funding for natural resource agencies, and conservation of fish and wildlife habitat. TRCP has formed, with various partners, a Fish, Wildlife, and Energy Working Group, which is comprised of some of the country's oldest and most respected hunting, fishing, and conservation organizations.

TRCP is working hard to ensure that the development of oil and gas resources on public lands in the Rocky Mountains is balanced with the needs of fish and wildlife resources. It is of great concern that the rapid pace of energy development has precluded the BLM from managing wildlife and fish resources for the future. We are especially concerned with the fate of mule deer, elk, sage grouse, and trout and other desirable fish species and the recreational opportunities they provide tens of thousands of sportsmen each fall in Montana. Without comprehensive habitat management planning that is coordinated with the FWP, leasing and development of crucial big game winter ranges and migration routes and valuable fish habitat in lakes, reservoirs and streams will have a devastating effect on the fishing and hunting opportunities in Montana and jeopardize more than \$1 billion in sustainable economic benefits that come from fishing- and hunting-based recreation.

BACKGROUND

Beaverhead Corridor

Both Clark Canyon Reservoir and the Beaverhead River below the reservoir are classified as Class I (Blue Ribbon) trout fisheries – the highest classification afforded Montana lakes and streams – by the Montana Department of Fish, Wildlife and Parks. Further, Clark Canyon Reservoir includes a native population of burbot, a Species of Concern in Montana that is addressed in the Montana Comprehensive Wildlife Management Strategy, approved by the U.S. Fish & Wildlife Service in October 2005. The Beaverhead River is a Blue Ribbon Stream based on recreational and fisheries habitat values. Each year thousands of anglers visit from other nations, across the United States and within Montana to experience a world-class blue ribbon trout fishery. The Beaverhead River produces some of the largest trout, particularly brown trout, in Montana.

FWP biologists closely analyzed the sections and stipulations that have been nominated along the Beaverhead River. It is clear that the documents that were provided by the BLM are inadequate and the comment deadline too short to provide a thoughtful and detailed analysis of a resource of this magnitude. Moreover, the materials provided are disjointed and poorly coordinated requiring far too much time link location, issues and concerns, and lease stipulations. These tasks should have been completed by the leasing agencies prior to circulation for environmental review. 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.

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 Resources Management Plan (RMP). New site-specific information that needs to be considered prior to leasing includes the following:

1. 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. Moreover, 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. This information requires a more comprehensive review prior to leasing.

2. While many reaches of the Beaverhead River are adjacent to the U.S. Highway I-15 right-of-way and adjacent to the Union Pacific Railroad easement, other reaches, and specific public Fishing Access Sites (FAS), are located at sufficient distances from these developments to provide a high quality visual experience that could be compromised by oil and gas developments despite the one-half mile setback mandated by NSO 11-20. Specific FAS include Barretts, Clark Canyon Dam, and Buffalo Bridge (BOR), and Grasshopper, Pipe Organ, and Henneberry (FWP). Leases MT-03-07-07; MT-03-07-08; MT-03-07-33; and MT-03-07-37 should have the added protection of CSU 12-4 to protect the quality of the experience. A complete analysis of these FAS is in the Appendix A.
3. 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. Moreover, TRCP has the same concerns for visual quality as it pertains to the Beaverhead River. Due to the abundance of campground and boat-launch facilities around the reservoir; added protection of CSU 12-4 should be mandated to help maintain the current quality of experience.
4. 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 erodible 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. A perfect example of a proposed lease that holds great developmental potential to generate sediment from unstable soils is Lease 03-07-30 that parallels Grasshopper Creek along both ridges for a significant distance. Other unstable tributary streams include Clark Canyon Creek, Henneberry Gulch Creek, Gallagher Gulch Creek, and Bill Hill Creek. Leases holding the potential to generate soil erosion and sedimentations directly into these streams include: MT-3-07-08; MT-3-07-10; MT-03-07-14; MT-03-07-19; MT-03-07-28; MT-03-07-29; MT-03-07-30; MT-03-07-35; MT-03-07-36; MT-03-07-38; MT-03-07-39; MT-03-07-40; and MT-03-07-41. Due to the sensitivity of the soils and erodible 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.
5. TRCP supports and appreciates the application of NSO 11-18 on leases adjacent to specified streams that support populations of pure or slightly introgressed westslope cutthroat trout. These streams, under the current review, include Little Sheep Creek, Sage Creek, and Divide Creek. No new genetic information is available to specify additional streams within the proposed area.

Based entirely upon these examples of the types and extent of information that have been precluded from consideration and should be considered new, and significant information that needs to be considered and subjected to public input, TRCP protests the nomination and leasing of BLM parcels MT-03-07-07; MT-03-07-08; MT-03-09-07; MT-03-07-10; MT-03-07-11; MT-03-07-12; MT-03-07-13; MT-03-07-14; MT-03-07-15; MT-03-07-16; MT-03-07-17; MT-03-07-18; MT-03-07-19; MT-03-07-26; MT-03-07-27; MT-03-07-28; MT-03-07-29; MT-03-07-30; MT-03-07-31; MT-03-07-32; MT-03-07-33; MT-03-07-34; MT-03-07-35; MT-03-07-36; MT-03-07-37; MT-03-07-38; MT-03-07-39; MT-03-07-40; MT-03-07-41; MT-03-07-42; MT-03-07-43; MT-03-07-44; MT-03-07-45; MT-03-07-46; and MT-03-07-47, and request their leasing be deferred until a comprehensive, Environmental Analysis (EA), Environmental Impact Statement (EIS) or other complete analysis can be made of the potential impacts to fish and wildlife, their habitat and recreational uses of these parcels.

Reservoir and river water quality and in-stream flows have been identified by FWP as essential to maintaining the Clark Canyon Reservoir and Beaverhead River Class 1 (Blue Ribbon) trout fisheries. This means that the reservoir and river habitat features are vital to sustaining production of trophy-sized trout. No loss in habitat function is recommended; these habitats should be managed retain their capability to sustain populations, species or diversity over time. Class 1 trout fisheries are managed for a pleasing natural environment, public accessibility to larger fish and higher wild trout numbers to support the high and growing public demand for Montana's world-class, Blue Ribbon trout fishing experience. Therefore any loss in these kind of reservoir and river fisheries would be very damaging to the state's national fishing reputation. The predicted impacts of water quality degradation, possible interruption or reduction in river flows incidental to drilling in the aquifer within ½ mile of the Beaverhead River channel and ½ mile from the reservoir edge represent significant threats to the existing Class 1 (blue Ribbon) fisheries in the Beaverhead Corridor.

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.

USFS White Pine Ridge Area

The Lima Peaks Area is highly popular for mule deer and elk hunting, with high elk hunting success ratios (more than 8 elk harvested per 10 square miles). Further, parcels 03-07-48, 03-07-24, and 03-07-25 are immediately adjacent to inventoried roadless areas recently identified by Governor Brian Schweitzer's Roadless Area Task Force.

Significant new information reveals that big game (mule deer and elk) winter range in this area needs to be better refined. The information provided by the BLM does not reflect crucial elk winter range in portions of five leases in portions of Sections 3 and 5, T14S, R9W of lease 03-07-20; all of lease 03-07-21; those portions of Sections 11 and 15, T14S, R9W of lease 03-07-23; all of lease 03-07-25; and Sections 12, 13 and 24, T14S, R10W of lease 03-07-48. Further complicating the lease assessment is the fact that the Beaverhead National Forest Management Plan has not yet been finalized.

TRCP believes that due to the need for defining crucial winter range habitat, the need for revising and or completing the Beaverhead Nation Forest Plan and the proximity to identified roadless areas, an EA or EIS should be completed and accompany these proposed actions. Winter elk distribution data supporting the crucial nature of these leases is available from the FWP Dillon office.

BLM has used timing stipulations and conditions-of-approval to prevent impacts from human disturbance on critical winter ranges since the early 1980s. BLM did not analyze the impacts that habitat fragmentation, loss, and other factors, both indirect and cumulative, associated with energy field development within their RMPs. BLM determined that leasing was suitable and any specific analysis was deferred to the specific project level.

LEGAL REQUIREMENTS

I. National Environmental Policy Act ("NEPA")

A. The BLM violated NEPA by failing to take the required "hard look" at significant new information that questions the validity of its current RMPs.

NEPA requires federal agencies to take a hard look at new information or circumstances concerning the environmental effects of a federal action, even after an initial environmental analysis has been prepared. Agencies must supplement the existing environmental analyses if the new circumstances "raise [] significant new information relevant to environmental concerns." Portland Audubon Soc'y v. Babbitt, 998 F.2d 705, 708-709 (9th Cir. 2000). Specifically, an "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look' at the environmental effects of [its] planned actions." Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557 (9th Cir. 2000).

NEPA's implementing regulations further underscore an agency's duty to be alert to, and to fully analyze, potentially significant new information. An agency "shall prepare supplements to either draft or final environmental impact statements if... there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. §1502.9(c)(1)(ii) (emphasis supplied).

An agency must prepare a Supplemental EIS "if the new information is sufficient to show that the remaining action will ... 'affect the environment' in a significant manner or to a significant extent not already considered." Marsh v. Oregon Natural Resources Council, 109 S.Ct. 1851, 1859 (1989) (internal citations omitted). The Council on Environmental Quality ("CEQ") regulations provide that, where either an EIS or Supplemental EIS is required, the agency "shall prepare a concise public record of decision" which "shall: (a) [s]tate what the decision was[], (b) [i]dentify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable," and (c) "[s]tate whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted and, if not, why they were not." 40 C.F.R. § 1505.2.

CEQ NEPA guidance states that "if the proposal has not yet been implemented, EISs that are more than 5 years old should be carefully reexamined to determine if [new circumstances or information] compel preparation of an EIS supplement." *See*, 46 Fed. Reg. 18026 (1981)(Question 32).

This requirement is supported by BLM Instruction Memoranda ("IM"). According to a 2000 IM from the Washington Office: "We are concerned about the maturity of some of our NEPA documents. In completing your [Determination of NEPA Adequacy or DNA], keep in mind that the projected impacts in the NEPA document for given activities may be understated in terms of the interest shown today for any given use. You need to take a "hard look" at the adequacy of the NEPA documentation."

IM No. 2000-034 (expired September 30, 2001). In a subsequent IM, the Washington Office instructed field offices as follows: If you determine you can properly rely on existing NEPA documents, you must establish an administrative record that documents clearly that you took a "hard look" at whether new circumstances, new information, or environmental impacts not previously analyzed or anticipated warrant new analysis or supplementation of existing NEPA documents... The age of the documents reviewed may indicate that information or circumstances have changed significantly.

IM No. 2001-062 (emphasis supplied) (expired September 30, 2002). When considering whether BLM has taken a hard look at the environmental consequences that would result from a proposed action, the Interior Board of Land Appeals will be guided by the "rule of reason." Bales Ranch, Inc., 151 IBLA 353, 358 (2000). "The query is whether the [BLM's DNA] contains a 'reasonably thorough discussion of the significant aspects of the probable environmental consequences' of the proposed action. Southwest Center for Biological Diversity, 154 IBLA 231, 236 (2001) (quoting California v. Block, 690 F.2d 753, 761 (9th Cir. 1982)) (emphasis supplied). *See also*, Friends of the Bow v. Thompson, 124 F.3d 1210, 1213 (10th

Cir. 1997) (to comply with NEPA's "hard look" requirement an agency must adequately identify and evaluate environmental concerns) (emphasis supplied).

BLM failed to take a hard look at new information and new circumstances that have come to light since the BLM's original boundaries for mule deer crucial winter range. More specifically, FWP has updated and new information on 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. 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, BLM's approval of the disputed lease parcels is arbitrary, capricious, contrary to law, and an abuse of discretion.

1. Crucial Winter Ranges and Migration Routes

All or parts of parcels MT-03-07-20; MT-03-07-21; MT-03-07-22; MT-03-07-23; MT-03-07-24; MT-03-07-25; and MT-03-07-48 in the USFS White Pine Ridge Area and provide critical habitat for mule deer, and are considered vital by the FWP for the survival and sustainability of mule deer populations. BLM found these habitats to be important enough to identify them in some existing RMPs in neighboring Wyoming and provided the use of timing stipulation to prevent unwanted impacts.

In a neighboring state, BLM through its Memorandum of Understanding with the Wyoming Department of Game & Fish (WGF), agreed to consider the information provided by WGF on a regular basis to update the boundaries and other special features and habitats for big game, including mule deer. This information has not been analyzed in existing NEPA documents, particularly with the subsequent development that leasing causes. Therefore, this important mule deer documentation constitutes significant new information, triggering additional requirements before leasing can proceed.

Note, BLM has funded and served as advisors on specific research in Wyoming (Sublette Mule Deer Study) to evaluate impacts on mule deer from development in winter range. The most recent findings, including published literature, reported finding significant impacts to mule deer use of winter range, with 27% being attributed to energy development. This, too, proves that there is significant new information concerning impacts to crucial mule deer winter range and migration routes sufficient to trigger supplemental NEPA analysis.

It is also consistent with other actions taken by BLM field offices in other states. For example, the Glenwood Springs Field Office in Colorado on January 10, 2002, stated that BLM will "hold in abeyance any leasing decisions until we are able to do a complete and thorough job" evaluating a submission of significant new information for the Grand Hogback Citizens Wilderness Proposal because "[t]hese values are not adequately addressed in current plans or NEPA..."

The majority of current RMPs do not address the impacts of mineral leasing and development on crucial mule deer winter ranges and migration routes. The information provided by mule deer research in Sublette County, Wyoming, paints a "seriously different picture of the likely environmental consequences of the proposed action" that has never been discussed in an environmental assessment or impact statement. State of Wisconsin v. Weinberger, 745 F.2d 412 (7th Cir. 1984); accord, Essex county Preservation Ass'n v. Campbell, 536 F.2d 956 (1st Cir. 1976) (where the court held that a Governor's moratorium on the construction of new highways was significant new information that required preparation of a supplemental EIS). For this reason, the agency's decision to lease parcels that could

significantly impact crucial mule deer winter range and migration routes in the absence of an environmental assessment that addresses the impacts of leasing for oil and gas development and demonstrably complies with the requirements of NEPA is arbitrary, capricious, contrary to law, and an abuse of discretion.

2. Roads and Elk Habitat, Vulnerability and Security

The impacts of road construction and motor vehicle activity on elk habitat, elk population distribution, and hunter success are well known from more than 30 years of field studies conducted in western states by state fish and wildlife agencies, the USDA Forest Service, and universities. The following bulleted statements are followed by numerical references to studies listed in Appendix B.

1. Results from the Montana Elk Logging Study, 1975-1985, show that roads reduce big game use of adjacent habitat from the road edge to over 0.5 mile away. *1*
2. Logging and road-building activity along major migration routes change the winter distribution of elk. *2*
3. Elk in Montana avoid habitat adjacent to open forest roads, and road construction creates cumulative habitat loss that increases impacts to elk as road densities increase. *3*
4. Roads are a major contributor to habitat fragmentation by dividing large landscapes into smaller patches and converting interior habitat into edge habitat. With increased habitat fragmentation across large areas, the populations of some species become isolated, increasing the risk of local extirpations or extinctions. *4*
5. National forest backcountry areas accessible only by trail act as a barrier against noxious invasive plant and provide vital habitat and migration routes for many wildlife species, and are particularly important for those [like elk] requiring large home ranges. *5*
6. When many elk herds were located in inaccessible areas and elk harvests were below their potential in most states, construction of new roads was viewed as a positive contribution to more intensive elk management. Now, however, timber harvest is greater on previously unroaded national forests, and the network of roads is a major wildlife management problem. *6*
7. A west central Idaho study shows elk occur in greater densities in roadless area compared to roaded areas, and hunter success is higher in roadless areas compared to roaded areas. *7*
8. In another study, an expanding network of logging roads made elk more vulnerable to hunters and harassment, and higher road densities caused a reduction in the length and quality of the hunting season, loss of habitat, over harvest, and population decline. *8*
9. Logging roads make nearby elk herds more vulnerable to human interference year-round, not just during hunting season. *9*
10. Poor elk security can result in re-distribution of elk from public lands to private lands during the hunting season, where the average hunter has no access or permission to hunt.
11. One result of road construction is the decreased capacity of the habitat to support elk from decreased habitat effectiveness. In highly-roaded areas in Montana, only 5% of bull elk live to maturity. Road closures extend the number of mature bulls to 16% and extend their longevity to 7.5 years. *10*

12. Deer and elk in Colorado avoid roads, particularly areas within 200 meters of a road. 11
13. Travel restrictions on roads appear to increase the capability of the area to hold elk in Montana. 12
14. Road closures allow elk to remain longer in preferred areas. 13
15. Road closures in the Tres Piedras area in New Mexico during big game season are generally accepted by the public and result in increased elk harvest. 14
16. Increased hunter success was found in unroaded areas (25%) and reduced open-road density areas (24%) than roaded areas (15%). 15
17. Elk run away when ATVs passed within 2,000 yards but tolerate hikers within 500 feet, and then only walk away when hikers get closer. 16
18. Road-related variables have been implicated as increasing elk vulnerability in virtually every study in which the influence of roads has been examined. Bull elk vulnerability is highest in areas with open roads, reduced in areas with closed roads, and lowest in roadless areas. 17

B. The BLM violated NEPA by failing to conduct site-specific pre-leasing analysis of mineral-development impacts on the special public lands in the disputed parcels

The BLM must analyze the impacts of subsequent development prior to leasing. 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 Applications for Permit to Drill ("APDs") or proposals for full-field development. Just as it is futile to try and put Humpty-Dumpty back together again, law and common sense require the agencies to analyze the impacts to crucial mule deer winter range and migration routes areas before issuing leases. Because stipulations and other conditions affect the nature and value of development rights conveyed by the lease, it is only fair that potential bidders are informed of all applicable lease restrictions before the lease sale.

An oil and gas lease conveys "the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold." 43 C.F.R. §3101.1-2. This right is qualified only by "[s]tipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed." 43 C.F.R. § 3101.1-2.

Unless drilling would violate an existing lease stipulation or a specific nondiscretionary legal requirement, the BLM argues lease development must be permitted subject only to limited discretionary measures imposed by the surface-managing agency. However, moving a proposed wellpad or access road a few hundred feet generally will fall short of conserving mule deer habitat and other special habitats.

Accordingly, the appropriate time to analyze the need for protecting site-specific resource values is *before* a lease is granted. *Sierra Club v. Peterson* established the requirement that a land management agency undertake appropriate environmental analysis prior to the issuance of mineral leases, and not forgo its ability to give due consideration to the "no action alternative," 717 F.2d 1409 (D.C. Cir. 1983). This case challenged the decision of the Forest Service ("FS") and BLM to issue oil and gas leases on lands within the Targhee and Bridger-Teton National Forests of Idaho and Wyoming without preparing an EIS. The

FS had conducted a programmatic NEPA analysis, then recommended granting the lease applications with various stipulations based upon broad characterizations as to whether the subject lands were considered environmentally sensitive. Because the FS determined that issuing leases subject to the recommended stipulations would not result in significant adverse impacts to the environment, it decided that no EIS was required at the leasing stage of the proposed development. *Id.* at 1410. The court held that the FS decision violated NEPA:

Even assuming, *arguendo*, that all lease stipulations are fully enforceable; once the land is leased the Department no longer has the authority to preclude surface disturbing activities even if the environmental impact of such activity is significant. The Department can only impose "mitigation" measures upon a lessee . . . Thus, with respect to the [leases allowing surface occupancy] the decision to allow surface disturbing activities has been made at the leasing stage and, under NEPA, this is the point at which the environmental impacts of such activities must be evaluated.

Id. at 1414 (emphasis added). The appropriate time for preparing an EIS is prior to a decision "when the decision-maker retains a maximum range of options" prior to an action which constitutes an "irreversible and irretrievable commitments of resources[.]" *Id.* (citing Mobil Oil Corp. v. F.T.C., 562 F.2d 170, 173 (2nd Cir. 1977)); see also Wyoming Outdoor Council, 156 IBLA 347, 357 (2002) *rev'd on other grounds by Pennaco Energy, Inc. v. US Dep't of Interior*, 266 F.Supp.2d 1323 (D. Wyo. 2003).

The court in Sierra Club specifically rejected the contention that leasing is a mere paper transaction not requiring NEPA compliance. Rather, it concluded that where the agency could not completely preclude all surface disturbances through the issuance of NSO leases, the "critical time" before which NEPA analysis must occur is "the point of leasing." 717 F.2d at 1414. This is precisely the situation for disputed crucial mule deer parcels.

In the present case, the BLM is attempting to defer environmental review without retaining the authority to preclude surface disturbances. 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. The agency 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.

Federal law requires performing NEPA analysis before leasing, because leasing limits the range of alternatives and constitutes an irretrievable commitment of resources. Deferring site-specific NEPA to the APD stage is too late to preclude development or disallow surface disturbances of important mule deer habitat.

C. The BLM violated NEPA by failing to consider NSO and No-Leasing Alternatives

The requirement that agencies consider alternatives to a proposed action further reinforces the conclusion that an agency must not prejudge whether it will take a certain course of action prior to completing the NEPA process. 42 U.S.C. §4332(C). CEQ regulations implementing NEPA and the courts make clear that the discussion of alternatives is "the heart" of the NEPA process. 40 C.F.R. §1502.14. Environmental analysis must "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. §1502.14(a). Objective evaluation is no longer possible after agency officials have bound themselves to a particular outcome (such as surface occupation within these sensitive areas) by failing to conduct adequate analysis before foreclosing alternatives that would protect the environment (i.e. no leasing or NSO stipulations).

When lands with special characteristics, such as wilderness, are proposed for leasing, the IBLA has held that, "[t]o comply with NEPA, the Department must either prepare an EIS prior to leasing or retain the

authority to preclude surface disturbing activities until an appropriate environmental analysis is completed." Sierra Club, 79 IBLA at 246. Therefore, formal NEPA analysis is required unless the BLM imposes non-waivable NSO stipulations. TRCP believes crucial winter ranges and migration routes are as special as wilderness and therefore require NEPA analysis before leasing.

Here, the BLM has not analyzed alternatives to the full approval of the leasing nominations for the parcels that contain or are within ¼ mile of crucial mule deer winter range and migration routes, such as NSO and no-leasing alternatives. 42 U.S.C. § 4332(2)(C)(iii). Federal agencies must, to the fullest extent possible, use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment. 40 C.F.R. § 1500.2(e). "For all alternatives which were eliminated from detailed study," the agencies must "briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a).

Further, BLM has not analyzed alternatives to the full approval of the leasing nominations for the parcels that contain or are within ¼ mile of known elk winter range and migration routes in the USFS White Pine Ridge Area, such as NSO and no-leasing alternatives. Finally, BLM has not considered or analyzed alternatives to the full approval of the leasing nominations for the parcels with a ½-mile buffer on either side of the Beaverhead River or within ½ mile of Clark Canyon Reservoir that will degrade the water quality and fish habitat characteristics of both the reservoir and the river with corresponding losses in public enjoyment of world-class Blue Ribbon trout fisheries.

Wyoming Outdoor Council held that the challenged oil and gas leases were void because BLM did not consider reasonable alternatives prior to leasing, including whether specific parcels should be leased, appropriate lease stipulations, and NSO stipulations. The Board ruled that the leasing "document's failure to consider reasonable alternatives relevant to a pre-leasing environmental analysis fatally impairs its ability to serve as the requisite pre-leasing NEPA document for these parcels." 156 IBLA at 359 *rev'd on other grounds by Pennaco*, 266 F.Supp.2d 1323 (D.Wyo., 2003) (holding that when combined NEPA documents analyze the specific impacts of a project and provide alternatives, they satisfy NEPA). The reasonable alternatives requirement applies to the preparation of an EA even if an EIS is ultimately unnecessary. See Powder River Basin Resource Council, 120 IBLA 47, 55 (1991); Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988), cert. denied, 489 US 1066 (1989). Therefore, the BLM must analyze reasonable alternatives under NEPA prior to leasing.

Here, lease stipulations must be designed to protect the important mule deer and elk habitats and migration routes in Montana. The agency, at a minimum, must perform an alternatives analysis to determine whether or not leasing is appropriate for these parcels given the significant resources to be affected and/or analyze whether or not NSO restrictions are appropriate. In this case, Protestor believes that the proposed lease sale parcels cannot lawfully proceed unless NSO stipulations are added for all parcels within these sensitive areas. Thus, BLM's failure to perform an alternatives analysis to determine the appropriateness of such restrictions in advance of leasing is arbitrary, capricious, and an abuse of discretion.

II. Federal Lands Policy and Management Act ("FLPMA")

A. 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

"In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). In the context

of FLPMA, by using the imperative language "shall", "Congress [leaves] the Secretary no discretion" in how to administer the Act. NRDC v. Jamison, 815 F.Supp. 454, 468 (D.D.C. 1992).

The BLM's duty to prevent unnecessary or undue degradation ("UUD") under FLPMA is mandatory, and BLM must, at a minimum, demonstrate compliance with the UUD standard. See, Sierra Club v. Hodel, 848 F.2d 1068 (10th Cir. 1988) (the UUD standard provides the "law to apply" and "imposes a definite standard on the BLM."). In this case involving proposed leasing of the protested parcels, the agency is required to demonstrate compliance with the UUD standard 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. See e.g., Kendall's Concerned Area Residents, 129 IBLA 130, 138 ("If unnecessary or undue degradation cannot be prevented by mitigation measures, BLM is required to deny approval of the plan.").

BLM's obligation prevents UUD of the mule deer and elk winter ranges and migration routes are not "discretionary." "[T]he court finds that in enacting FLPMA, Congress's intent was clear: Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary... is undue or excessive." Mineral Policy Center v. Norton, 292 F.Supp. 2d 30, 43 (D.D.C., 2003) (emphasis supplied). "FLPMA, by its plain terms, vests the Secretary of the Interior with the authority—and indeed the obligation—to disapprove of an otherwise permissible... operation because the operation though necessary... would unduly harm or degrade the public land." *Id.* at 40 (emphasis supplied). In the case at hand, BLM has a statutory obligation to demonstrate that leasing in or adjacent to crucial mule deer and 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 will not result in UUD.

Specifically, BLM must demonstrate that leasing will not result in future mineral development that causes UUD by irreparably damaging the habitat function of crucial mule deer winter ranges and migration routes that could lead to population decline. Further, the agency is required to manage the public's resources "without permanent impairment of the productivity of the land and the quality of the environment..." 43 U.S.C. §1702(c). See also; Mineral Policy Center v. Norton, 292 F.Supp. 2d at 49.

Existing analysis has not satisfied the BLM's obligation to comply with the UUD standard and prevent permanent impairment of the function of crucial winter ranges and migration routes of these public lands. Proceeding with leasing would be arbitrary, capricious, and an abuse of discretion.

III. The Mineral Leasing Act gives the BLM discretion over whether to lease the disputed parcels
BLM has broad discretion in leasing federal lands. The Mineral Leasing Act ("MLA") provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary." 30 U.S.C. § 226(a). In 1931 the Supreme Court found that the MLA "goes no further than to empower the Secretary to lease [lands with oil and gas potential] which, exercising a reasonable discretion, he may think would promote the public welfare." U.S. ex rel. McLennan v. Wilbur, 283 U.S. 414, 419 (1931). A later Supreme Court decision stated that the MLA "left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 85 S.Ct. 792, 795 (1965) *reh. den.* 85 S.Ct. 1325. Thus, the BLM has discretionary authority to approve or disapprove mineral leasing of public lands.

When a leasing application is submitted and before the actual lease sale, no right has vested for the applicant or potential bidders and BLM retains the authority not to lease.

"The filing of an application which has been accepted does not give any right to lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary whether or not to issue leases for the lands involved." Duesing v. Udall, 350 F.2d 748, 750-51 (D.C. Cir. 1965), *cert. den.* 383 U.S. 912 (1966). See also Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1230 (9th Cir. 1988) ("[R]efusing to issue [certain petroleum] leases ... would constitute a legitimate exercise of the discretion granted to the Secretary of the Interior"); McDonald v. Clark, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [MLA] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory"); Burglin v. Morton, 527 F.2d 486, 488 (9th Cir. 1975) ("[T]he Secretary has discretion to refuse to issue any lease at all on a given tract"); Pease v. Udall, 332 F.2d 62 (C.A. Alaska) (Secretary of Interior has discretion to refuse to make any oil and gas leases of land); Geosearch, Inc. v. Andrus, 508 F. Supp. 839 (D.C. Wyo. 1981) (leasing of land under MLA is left to discretion of the Secretary of Interior). Similarly, IBLA decisions consistently recognize that BLM has "plenary authority over oil and gas leasing" and broad discretion with respect to decisions to lease. See Penroc Oil Corp., et al., 84 IBLA 36, 39, GFS (O&G) 8 (1985), and cases cited therein.

Withdrawing the protested parcels from the lease sale until proper pre-leasing analysis has been performed is a proper exercise of BLM's discretion under the MLA. BLM has no legal obligation to lease the disputed parcels and is required to withdraw them until the agencies have complied with applicable law.

CONCLUSION

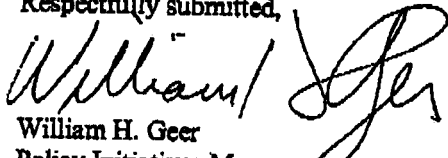
For the reasons stated above, the protested parcels in the Beaverhead Corridor and the USFS White Pine Ridge Area are inappropriate for mineral leasing and development. Existing pre-leasing analysis does not comply with NEPA, FLPMA or other applicable law. New information on crucial mule and known elk winter ranges and migration routes in the USFS White Pine Ridge Area, on trophy trout habitat characteristics, angler use and angling economic value in the Beaverhead Corridor, and on the location, condition and use of active sage grouse leks and associated habitat in Carter has not been incorporated into BLM's evaluation of the proposed lease sale parcels. As a result, BLM's current RMPs are non-existent in the areas of some proposed parcels, or, where RMPs are in place, reflect inadequate management of fish and wildlife habitat and associated public hunting and fishing use of those parcels. The lack of use of new information and the inadequacy of present land and water management seriously jeopardizes the annual contribution exceeding \$1 billion hunting and fishing make to Montana's economy.

The leasing of parcels containing or near active sage grouse leks in Carter County should be deferred until the federal status of the sage grouse is determined, until range-wide populations of sage grouse have increased to the degree that the species is no longer considered sensitive, and the potential for federal listing is not in question. In addition, at any time in the future when leasing might occur, all areas within a 3-mile radius of an active sage grouse lek should carry a no-surface-occupancy (NSO) stipulation without seasonal considerations, until additional research better defines potential impacts. Montana citizens have raised substantial concerns about surface impacts to fish and wildlife resources and hunting and fishing opportunities, and the need for exclusions of parcels from leasing and NSO restrictions for parcels that can accommodate drilling but not surface occupancy of structures, equipment, vehicles or workers. The Protester respectfully requests that the State Director withdraw these disputed parcels from the March 27, 2007, competitive lease sale. In the event that the BLM proceeds to offer these parcels, all prospective bidders should be informed of the pending protest.

While the presentation in this current protest document appears critical of BLM, TRCP's intent is solely to work towards conservation of important fish and wildlife values and associated public hunting and fishing recreation while minerals are being extracted for the public good. In our view, there needs to be a new strategy to conserve fish and wildlife habitat and associated hunting and fishing recreation while minerals are being extracted from public lands and National Forest System lands. The current strategy

employed by BLM in Wyoming, Colorado and Utah has and is resulting in enormous losses in fish and wildlife resource values that hunters and anglers believe are often avoidable with a new approach to public lands management. TRCP stands ready to assist BLM in devising a new public lands conservation strategy that fits with a sound mineral extraction program, but we see the current fast pace of leasing as preventing a more reasoned and less destructive management approach.

Respectfully submitted,



William H. Geer

Policy Initiatives Manager

Theodore Roosevelt Conservation Partnership

Appendix A

FWP Land Transactions Which Occur In the Same Township, Range, and Section As Identified In the BLM March 2007 Proposed Leases Document:

Township 08 South Range 09 West

Corrals FAS BLM LeaseID 03-07-07 Easement - In 3370.2(E)01 T08S R09W 19
Corrals FAS BLM LeaseID 03-07-08 Easement - In 3370.2(E)01 T08S R09W 30

Township 09 South Range 10 West

Henneberry FAA BLM LeaseID 03-07-35 Feetitle 3243.1(01) T09S R10W 10
Pipe Organ FAS BLM LeaseID 03-07-35 Lease - In 3374.2(L)01 T09S R10W 11
Henneberry FAA BLM LeaseID 03-07-36 Feetitle 3243.1(01) T09S R10W 15
Henneberry FAA BLM LeaseID 03-07-36 Easement - In 3243.2(E)01 T09S R10W 15
Henneberry FAA BLM LeaseID 03-07-36 Row - Easement - Out 3243.6(B)01 T09S R10W 15
Henneberry FAA BLM LeaseID 03-07-37 Feetitle 3243.1(01) T09S R10W 21
Henneberry FAA BLM LeaseID 03-07-37 Disposal 3243.5(01) T09S R10W 21
Henneberry FAA BLM LeaseID 03-07-37 Row - Easement - Out 3243.6(A)01 T09S R10W 21
Henneberry FAA BLM LeaseID 03-07-37 Feetitle 3243.1(01) T09S R10W 22
Henneberry FAA BLM LeaseID 03-07-37 Disposal 3243.5(01) T09S R10W 22
High Bridge FAS BLM LeaseID 03-07-40 Feetitle 3445.1(01) T09S R10W 33
Low Bridge FAS BLM LeaseID 03-07-40 Miscellaneous 3273.8(01) T09S R10W 33

Comparison of Property Legal Description of FWP Parcels & BLM Mineral Leases:

3370.2(E)01 T08S R09W 19
A Tract of land in the SW1/4SE1/4
BLM LeaseID 03-07-07 T08S R09W 19
Lots 1, 2, 3, 4, NW1/4NE1/4, E1/2W1/2

3370.2(E)01 T08S R09W 30
Portion of the NE1/4NW1/4 & NW1/4NE1/4
BLM LeaseID 03-07-08 T08S R09W 30
Lot 4, SE1/4NE1/4, SE1/4SW1/4, N1/2SE1/4, SE1/4SE1/4

3243.1(01) T09S R10W 10
SW1/4, NW1/4SE1/4, & Portion of SW1/4SE1/4
BLM LeaseID 03-07-35 T09S R10W 10
Lots 1, 2, 3, 4

3374.2(L)01 T09S R10W 11
Tract in NW1/4SW1/4 and SW1/4NW1/4
BLM LeaseID 03-07-35 T09S R10W 11
Lots 2, 7, 8

3243.1(01) T09S R10W 15
N1/2NW1/4, SW1/4NW1/4 & N1/2NW1/4SW1/4
BLM LeaseID 03-07-36 T09S R10W 15
SE1/4SE1/4

3243.2(E)01 T09S R10W 15

Portion of the NW1/4NE1/4, N1/2SW1/4NE1/4
BLM LeaseID 03-07-36 T09S R10W 15
SE1/4SE1/4

3243.6(B)01 T09S R10W 15
30' R/W Easement for Road and 50' Easement for Bridge across the N1/2NW1/4.
BLM LeaseID 03-07-36 T09S R10W 15
SE1/4SE1/4

3243.1(01) T09S R10W 21
S1/2NW1/4, W1/2NE1/4 & Portion OF E1/2NE1/4, 1/2 Interest in N1/2NW1/4
BLM LeaseID 03-07-37 T09S R10W 21
N1/4SE1/4

3243.5(01) T09S R10W 21
Tract IN S1/2NE1/4 AND NE1/4NE1/4
BLM LeaseID 03-07-37 T09S R10W 21 N1/4SE1/4

3243.6(A)01 T09S R10W 21
A strip of land 20 feet in width located in NE1/4
BLM LeaseID 03-07-37 T09S R10W 21
N1/4SE1/4

3243.1(01) T09S R10W 22
Portion of NW1/4NW1/4 Lying N & W OF U.S. Highway 15
BLM LeaseID 03-07-37 T09S R10W 22
NE1/4, S1/2NW1/4, S1/2W1/2

3243.5(01) T09S R10W 22
Portion in NW1/4NW1/4
BLM LeaseID 03-07-37 T09S R10W 22
NE1/4, S1/2NW1/4, S1/2W1/2

3445.1(01) T09S R10W 33
Portion of NW1/4
BLM LeaseID 03-07-40 T09S R10W 33
NE1/4, E1/2NW1/4, N1/4SE1/4, SE1/4SE1/4
3273.8(01) T09S R10W 33

Appendix B

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