



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Montana State Office  
5001 Southgate Drive  
Billings, Montana 59102  
<http://www.mt.blm.gov/>

In Reply To:

3100 (922.JB)

June 26, 2007

CERTIFIED-RETURN RECEIPT REQUESTED

## DECISION

Michael Gibson  
Conservation Director  
Montana Trout Unlimited  
PO Box 7186  
Missoula, Montana 59807-7186

### **Protest Dismissed in Part Affirmed in Part**

On May 15, 2007, we received your protest filed on behalf of Montana Trout Unlimited (Enclosure 1). You protested the May 30, 2007, competitive oil and gas lease sale of the following parcels:

MT 05-07-15 and MT 05-07-21

#### **General Protest Concerns**

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

**Protest:** Your protest alleges that the underlying management plans covering the areas where the protested parcels are located provide only a general analysis and leasing decision and that the identification of site-specific parcels for the lease sale notice represents changed circumstances that need to be analyzed in supplements to these plans.

You further stated

"while the public had the opportunity to comment on the underlying land use plan, that right has not been made available regarding the specific lease parcels. The BLM has provided no opportunity for public comment on the protested lease parcels prior to this protest, which is essentially an after-the-fact opportunity for involvement, which fails to meet the requirements of FLPMA. Until this oversight is corrected, the protested lease parcels should not be offered for sale."

**Response:** The Record of Decision and Oil and Gas RMP/EIS Amendment for the Miles City District (Miles City Amendment) was approved on February 2, 1994. This plan amendment contains the leasing decisions for parcel MT 05-07-21. The ROD and the Dillon RMP was approved on February 7, 2006. This document contains the leasing decisions for parcel MT 05-07-15. As part of our planning process used to prepare the RMP and RMP amendments, specific areas

within the two planning areas were identified that would either be opened or closed to leasing subject to the following levels of constraints:

- Areas opened to leasing, subject to existing laws, regulations, and formal orders; and the terms and conditions of the standard lease form.
- Areas opened to leasing, subject to leasing, subject to moderate constraints such as seasonal and controlled surface use restrictions.
- Areas open to leasing subject to major constraints such as no-surface-occupancy stipulations on areas more than 40 acres in size or more than 0.25 mile in width.
- Areas closed to leasing.

These areas are mapped and displayed in the documents.

The Proposed Dillon RMP also identified the fact that there were existing leases within the planning area and suspended nominations that would be available when the plan was completed. The Miles City Amendment listed existing oil and gas fields in the planning area which included the Billings Field Office.

Because of our open and public process for preparation of documents, the public was made aware of lands that were available for lease and what terms would apply if any lands were offered for lease. Opportunity for public involvement and comment on the leasing decisions was offered by the BLM during preparation of the documents. These opportunities are documented in Chapters 5 of the Proposed Dillon RMP and the Final Miles City Amendment. In addition, Chapter 5 of the Proposed Dillon RMP also lists Montana Trout Unlimited as an organization that commented on the Draft RMP. The organization also received a printed copy of the Proposed RMP.

The Dillon Field Office reviewed the Dillon RMP to determine leasing availability and appropriate stipulations for each parcel in the Field Office. The Billings Field Office completed a similar review for parcels in their Field Office. Both offices, following their review of the leasing decisions in the RMP as well as any new circumstances, completed Documentations of Land Use Plan Conformance and NEPA Adequacy (DNAs). DNAs are completed by Field Offices to confirm their review of leasing requests and constitute a final check to ensure that the planning and NEPA analysis from that RMP was still adequate for leasing. They are not to be considered NEPA documents. However, they represent a decision by the BLM that there are no changed circumstances which would warrant further NEPA analysis.

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

**Protest:** You have made comments at this point concerning access to maps to determine where individual lease parcels are located. You believe that the BLM is in violation of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 where it states that a lease sale notice shall include:

"...the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps

shall show the location of all tracts to be leased, and of all leases already issued in the general area." 30 U.S.C. § 226 (f)

**Response:** The notice for the May sale included both a narrative description of all parcels with the legal descriptions for each parcel and a map. All parcels are listed by state, county and township and range. The township and range legal description is recognized by law as to the definite location of a tract of land (Enclosure 2). In addition, each parcel has cross references to all the stipulations that apply to the parcel.

The map accompanying the sale notice for the May sale consisted of a map of Montana and the Dakotas with imbedded hot-links to detailed plats of specific parcels. For existing oil and gas leases, the public can access this information at the following BLM website:

<http://www.geocommunicator.gov/GeoComm/landmin/home/index.html>

If requested, we also assist the public with information on where parcels on a sale notice are located by providing maps and access to ownership plats at our offices. These maps include surface and mineral management status maps, title plats, and oil and gas field maps. The internet sites listed on our sale notice are sites that can be used to identify surface owners. These actions meet the requirements of the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

### **3.) Climate Change:**

#### **Protest:**

"Rivers throughout Montana, including the Clarks Fork of the Yellowstone, have experienced deleterious impacts to the aquatic environment in recent drought years due to low stream flows, increased water temperatures, and inadequate over-wintering habitat. Before leasing, the cumulative effects of climate change and drought need to be analyzed by BLM and the agency needs to conduct an assessment of vulnerable species including aquatic resources and natural systems that will be adversely impacted by oil and gas development impacts on top of global climate change. The BLM should manage vulnerable systems, like the Clark's Fork of the Yellowstone and its tributaries, to prevent them from experiencing regime shifts brought on by the impacts of climate change and remove other stressors from those systems by thoroughly analyzing cumulative impacts in the underlying land use plan and the leasing decisions that have authorized leasing. This analysis should culminate in appropriate stipulations, lease terms, and/or decisions not to lease in these vulnerable habitats."

**Response:** While the BLM did not directly analyze global climate change in either the Miles City Amendment or the Dillon RMP, it did analyze a wide array of alternatives in both documents and the impacts of the proposed alternatives on resources and resource uses in both planning areas. Resources and resource uses analyzed include but are not limited to climate and air quality, hydrology, soils, vegetation, and fish and wildlife. These analyses addressed the cumulative impacts to rivers such as the Clark's Fork

of the Yellowstone and the Beaverhead Rivers from BLM decisions. In our decisions for both planning areas, the BLM balanced all uses that we can impact or manage. The analyses established the appropriate lease terms and conditions and identified areas not available for lease. Montana Trout Unlimited has not provided information to identify flaws in the BLM's analysis in their protest filed on the May lease sale.

#### **Lease Specific Protest Items**

##### **1.) Parcel MT 05-07-21**

The protest makes two allegations about this parcel:

#### **Protest:**

"The issuance of this lease would likely result in CBNG development following the SEIS, yet if this lease is issued prior to the completion of the SEIS, no additional stipulations designed to address the impacts of CBNG development could be attached to the lease without the consent of the lease holder, it is only prudent BLM not offer this lease for sale until the SEIS ROD is finalized, a thorough analysis of the impacts that CBNG will have on fisheries is completed, and proper stipulations are in place to protect watersheds and coldwater fisheries from the impacts of not only conventional gas and oil development, but the impacts specific to CBNG as well."

**Response:** This parcel is located within the boundaries of the Billings Field Office. Present oil and gas leasing decisions are found in the Miles City Amendment. The SEIS referred to in the protest is supplemental to the Final Statewide Oil and Gas Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plans (Statewide Document). As with the Statewide Document, the SEIS serves to change existing land use decisions regarding the development of oil and gas resources, including coal bed natural gas (CBNG) exploration and development. This document will not affect leasing decisions found in the Miles City Amendment.

The protest remarks that the parcel is located on a coal field similar to those in the Powder River Basin with the probability of CBNG. While Carbon County, where this parcel is located, does have a number of mapped coal fields, the nearest one to the parcel, the Montana portion of the Silvertip Field, is located in T. 9 S., R. 23 E., occupying eight sections of land on the Montana side of the stateline and 12 sections on the Wyoming side of the stateline. The coal is fairly uniform, averaging about 4 feet in two or three beds separated by shale partings indicating a very low potential for CBNG (page 70, Billings RMP, 1983). The parcel is located in T. 9 S., R. 22 E., outside of the boundaries of the Silvertip Field. While there is coal underlying the parcel based on the surface formation, the Tertiary Fort Union, the parcel is not located on a major coal field.

This parcel is located in the immediate vicinity of the Clark's Fork South Field and within several miles of the Elk Basin Northwest Field. Both fields produce conventional oil and gas and not CBNG. Elk Basin Northwest is an oil field and Clark's Fork South is a conventional natural gas field. Clark's Fork South Field was discovered in 1969 and Elk Basin Northwest in 1964.

Finally, the BLM notes that outside of a blanket statement in the protest that the parcel lies on a coal field and that there is every reason to believe that any lease issued for the parcel would target CBNG; the protest provides no hard evidence that this would occur. The BLM believes that it is more reasonable that any development would target conventional oil and gas. However, if a successful bidder does target CBNG on the parcel, the BLM would ensure that any mitigation measures for CBNG exploration and development developed in the SEIS would be applied as needed.

**Protest:**

"...the only appropriate stipulation is an NSO for slopes over 30%. At that steepness, development would involve large cut and fill slopes that would greatly increase slope instability and would be difficult to reclaim. Also, a CSU stipulation would not preclude development and therefore would not minimize sediment output or maintain slope stability as an NSO stipulation would."

**Response:** As noted in the protest, the BLM has applied a controlled surface use stipulation for steep slopes to portions of parcel MT 05-07-21:

T. 9 S., R. 22 E., PMM  
 sec. 24: W2NW, E2SW, SE  
 34: W2NE, E2NW, NESE

The stipulation reads as follows:

"Surface occupancy or use is subject to the following special operating constraints.

Prior to surface disturbance on slopes over 30 percent, an engineering/reclamation plan must be approved by the authorized officer.

Such plan must demonstrate how the following will be accomplished:

- Site productivity will be restored.
- Surface runoff will be adequately controlled.
- Off-site areas will be protected from accelerated erosion, such as rilling, gullyng, piping, and mass wasting.
- Water quality and quantity will be in conformance with state and federal water quality laws.
- Surface-disturbing activities will not be conducted during extended wet periods.
- Construction will not be allowed when soils are frozen.

To maintain soil productivity, provide necessary protection to prevent excessive soil erosion on steep slopes, and to avoid areas subject to slope failure, mass wasting, piping, or having excessive reclamation problems."

This stipulation was applied to those portions of parcel MT 05-07-21. The BLM analysis in the Miles City Amendment RMP determined that steep slopes are

adequately protected by the use of this stipulation. Your protest does not provide any new information to support an alternative to the stipulations in the ROD for the Miles City Amendment RMP. The BLM does not believe that further stipulations are needed. On slopes less than 30 percent, potential impacts can be mitigated with conditions of approval/best management practices at the APD stage.

**2.) Parcel MT 05-07-15**

The protest makes three allegations about this parcel:

**Protest:**

"Trout Unlimited Protests the inclusion of lease MT 05-07-15 located in the Birch Creek watershed. Birch Creek contains a population of Westslope cutthroat trout. While this population is not a conservation population because of hybridization with Yellowstone cutthroat trout based upon a single 1991 genetic sampling of 10 specimens never the less, the restoration potential needs to be taken into account before offering this lease."

**Response:** This parcel is within the boundaries of the Dillon RMP. The trout populations in Birch Creek are significantly less than 90 percent genetically pure Westslope Cutthroat Trout. Decisions in the RMP only mandate stipulations for habitat with 90 to 100 percent genetically pure strains of Westslope Cutthroat Trout. A no surface occupancy stipulation is required in habitat with 99 to 100 percent genetically pure strains. A controlled surface use stipulation is required in habitat with 90 to 99 percent pure strains.

Therefore, stipulations for Westslope Cutthroat Trout do not apply to this parcel.

**Protest:**

"Again, the only stipulation on this lease designed to protect water quality and fisheries is CSU 12-1 as referenced in Lease Specific Protest Item 1. While this stipulation should be applied lease-wide, it is not appropriate for slopes over 30% where an NSO stipulation is necessary because development would involve large cut and fill slopes that would greatly increase slope instability and would be difficult to reclaim."

**Response:** As noted in the protest, the BLM has applied a controlled surface use stipulation for steep slopes to portions of parcel MT 05-07-15:

T. 14 S., R. 8 W., PMM

sec. 29: E2NE

31: E2NE, SENW, NESW, N2SE

32: SWNE, W2NW, NESW, S2SW, W2SE

The stipulation reads as follows:

"Surface occupancy or use is subject to the following special operating constraints.

Prior to surface disturbance on slopes over 30 percent, an engineering/reclamation plan must be approved by the authorized officer.

Such plan must demonstrate how the following will be accomplished:

- Site productivity will be restored.
- Surface runoff will be adequately controlled.
- Off-site areas will be protected from accelerated erosion, such as rilling, gullyng, piping, and mass wasting.
- Water quality and quantity will be in conformance with state and federal water quality laws.
- Surface-disturbing activities will not be conducted during extended wet periods.
- Construction will not be allowed when soils are frozen.

To maintain soil productivity, provide necessary protection to prevent excessive soil erosion on steep slopes, and to avoid areas subject to slope failure, mass wasting, piping, or having excessive reclamation problems."

This stipulation was applied to parcel MT 05-07-15 where BLM analysis indicated there were areas of slopes over 30 percent. The BLM analysis in the Dillon RMP determined that steep slopes are adequately protected by the use of this stipulation. Your protest does not provide any new information to support an alternative to the stipulations in the ROD for the Dillon RMP. The BLM does not believe that further stipulations are needed. On slopes less than 30 percent, potential impacts can be mitigated with conditions of approval/best management practices at the APD stage.

**Protest:**

"Birch Creek flows directly through this lease, yet there the lease terms for sale do not include NSO stipulation 11-2, precluding activity in wetlands, floodplains, and riparian areas as mandated by the Dillon Resource Management Plan ROD Appendix K, page 145. This oversight needs to be corrected before this lease is offered for sale."

**Response:** The BLM agrees with the protest. The riparian area stipulation mentioned in the protest, NSO 11-2, will be added to the lease issued for this parcel. It will be applied to the following portions of the parcel:

T. 14 S., R. 8 W., PMM  
 sec. 20: Lot 1  
 29: E2NE  
 31: E2NE, SENW, NESW, N2SE  
 32: SWSW

**Decision:** For the reasons stated above, your protest is dismissed in part and affirmed in part. The BLM will add the requested riparian stipulation to

those areas of Parcel MT 05-07-15 where it is required. All parcels addressed will be issued concurrent with this letter. This decision to deny this protest may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and the enclosed Form 1842-1 (Enclosure 3). 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 4). 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 05-07-15 and 05-07-21 to the successful bidders.

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

Canyon Ranch  
Box 240084  
Dell, Montana 59724

Fidelity Exploration & Production Co.  
1700 Lincoln, #2800  
Denver, Colorado 80203

/s/ Gene R. Terland

Gene R. Terland  
State Director

4 Enclosures

- 1-Protest Letter Received March 12, 2007 (5 pp)
- 2-Glosaries of BLM Surveying and Mapping Terms (Cover and page 30) (2 pp)
- 3-Form 1842-1 (2 p)
- 4-43 CFR 4.21(a) (2 p)

cc: (w/enclosures)

Canyon Ranch, Box 240084, Dell, MT 59724  
Fidelity Exploration & Production Co., 1700 Lincoln, #2800, Denver, CO 80203