



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Montana State Office
5001 Southgate Drive
Billings, Montana 59101-4669
www.blm.gov/mt

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

Michael Saul
Senior Attorney
Center for Biological Diversity
1536 Wynkoop, Suite 421
Denver, CO 80202

PROTEST DISMISSED

I. INTRODUCTION

On February 4, 2016, a Lease Sale Notice for the May 4, 2016, Competitive Oil and Gas Lease Sale was posted, which initiated a 30-day protest period. At the same time, the Oil and Gas Leasing Environmental Assessment (EA) and unsigned Finding of No Significant Impact (FONSI), updated after a 30-day public comment period, were made available to the public.

In a facsimile (fax) to the Bureau of Land Management (BLM) dated March 7, 2016, the Center for Biological Diversity (CBD) submitted a timely protest to the inclusion of six (6) lease parcels located in Garfield, Richland, Roosevelt and Sheridan Counties, Montana, which are identified as Parcel Numbers MT-05-16-01, MT-05-16-02, MT-05-16-03, MT-05-16-03, MT-05-16-04, MT-05-16-05, and MT-05-16-06. These parcels are located in the Miles City Field Office (MCFO) planning area. See Table 1 below for parcel descriptions.

II. BACKGROUND

Public scoping for this lease sale was conducted from October 6 to 21, 2015. This scoping period was advertised on the BLM Montana State Office website. The MCFO also posted National Environmental Policy Act (NEPA) notification log, reference number DOI-BLM-MT-C020-2016-0022-EA. In addition, the Montana State Office mailed surface owner notification letters explaining the oil and gas leasing and planning processes. The surface owner notification letter requested written comments regarding any issues or concerns that should be addressed in the EA being prepared for the parcels.

The summary of the two scoping comments received is as follows:

- Received a comment from the EPA asking about the location of the Master Stipulation Library. The EPA also wanted to know how the MCFO Final Resource Management Plan (RMP) stipulations were being applied to this lease sale concerning air and water resources. The EPA also requested to be notified of the EA posting for their review.
- Received a comment from a private citizen wanting to know where the EA would be located for review. She “did not find enough information to make an informed decision on the environmental impacts of these leases.”

On December 1, 2015, the BLM Montana/Dakotas released the MCFO Oil and Gas Leasing EA and unsigned FONSI for a 30-day public comment period. The EA analyzed the potential effects from offering six (6) nominated lease parcels in Montana containing 1,028.59 acres of Federal minerals in the May 4, 2016, Competitive Oil and Gas Lease Sale. Relevant public comments received during this process were addressed in the EA, as appropriate. The EA was updated and posted, along with the competitive sale list, and a Press Release, on February 4, 2016, on the BLM’s Montana/Dakotas website and on the ePlanning NEPA Register for a 30-day protest period.

After a careful and reasonable review of relevant environmental concerns presented in the EA and the public comments, the MCFO Field Manager recommended that a total of six (6) nominated lease parcels (1,028.59 acres of Federal minerals) be offered for lease at the May 4, 2016, Competitive Oil and Gas Sale with lease stipulations and/or lease notices as necessary for the proper protection and conservation of the resources associated with the lease issuances.

III. PROTEST ANALYSIS

Protest Summary: The CBD submitted a timely protest (via fax) on March 7, 2016, to the inclusion of six (6) parcels identified as Parcel Numbers MT-05-16-01, MT-05-16-02, MT-05-16-03, MT-05-16-03, MT-05-16-04, MT-05-16-05, and MT-05-16-06 on the May 4, 2016, Competitive Oil and Gas Lease Sale.

PROTEST CONTENTIONS AND BLM RESPONSE

The Protestor contends that BLM’s failure to consider impacts to Sprague’s pipit violates regulations regarding conservation of Bureau Sensitive Species.

BLM Response: The BLM is meeting its obligations under Special Status Species Management Manual (6840 Manual). The BLM is taking proactive measures at the leasing stage to provide for the protection and conservation of habitats and populations. The parcels are recommended with lease stipulations and notices that provide for further conservation of the species.

The BLM determined that the act of issuing the six analyzed leases will have **no effect** on Sprague’s pipit. However, impacts to the species are possible from subsequent oil and gas development activities permitted at the APD stage. Detailed site-specific analysis and mitigation of activities associated with any particular lease would occur when a lease holder submits an APD. This further analysis would identify site-specific impacts that cannot be discerned or

quantified at this time, and would identify the appropriate mitigation measures for the conservation and protection of all natural resources, including wildlife habitat and wildlife species.

The MCFO leasing EA is tiered to the information and analysis and conforms to the decisions contained in the MCFO Approved RMP and Final Environmental Impact Statement (FEIS) of September 2015. In a review of the above documents, every parcel to be offered for sale is within areas determined to be open to oil and gas leasing in the MCFO RMP. An analysis by resource specialists (who relied on professional knowledge of the areas involved) included review of current databases, file information, and site visits. After consultation and consideration, the MCFO Field Manager determined that the leasing of the protested parcels conforms to the 2015 MCFO FEIS and Approved RMP.

The direct, indirect, and cumulative impacts from oil and gas development on wildlife resources are discussed in Chapter 4 of the 2015 MCFO FEIS (pages 4-105 through 4-179) and are incorporated by reference into this EA. This analysis includes discussion on the short-term and long-term disturbance impacts that are contained in the Disturbance Appendix of the FEIS. In summary, the analysis provided that the application of the TES 16-2, CSU 12-26, CSU 12-27, LN 14-19, LN 14-20, LN 14-27 and NSO 11-75 stipulations would provide for the conservation of wildlife resources such as big game, sharp-tailed grouse, special status species, migratory birds, which include Sprague's pipit and piping plover.

In addition, the Fish and Wildlife Service (FWS) published a finding regarding the Sprague's pipit in the Federal Register on April 5, 2016. Docket Number FWS-R6-ES-2009-0081 states the following: "After review of the best available scientific and commercial information, we find that listing...the Sprague's pipit is not warranted at this time."

The Protestor contends that BLM's failure to consult with the Fish and Wildlife Service violates the Endangered Species Act.

BLM Response: The Endangered Species Consultation Handbook states the following on page 3-12: "Although not required, an action agency may request written concurrence from the Services that the proposed action will have no effect on listed species or critical habitat."

The BLM 6840 Manual states the following on page 32: "It is not necessary to consult or confer on candidate or Bureau sensitive species. However, States or offices may wish to seek technical assistance from the FWS and/or NMFS [National Marine Fisheries Service] when it is determined to be advantageous to a species' conservation or BLM management options."

The BLM does not consult with the FWS for no effect determinations. Page 40 of the EA states the following:

"Habitat within one or a portion of all the lease parcels exists to support USFWS threatened, endangered, or candidate, species including the Whooping Crane, Interior Least Tern, Piping Plover, Northern, long-eared bat, Red Knot, and Sprague's pipit. The

BLM has determined that the act of issuing leases within the previously mentioned threatened or endangered habitat will not affect that respective species.”

Further information about the Threatened, Endangered, Candidate and Proposed Species in the MCFO planning area is available in Chapter 3 of the MCFO FEIS (pages 3-53 through 3-55) and Appendix Q-Biological Assessment in the MCFO Approved RMP. For the development of the FEIS, consultation was conducted between the BLM and the FWS for threatened and endangered species within the MCFO RMP planning area. The FWS concurred with the MCFO RMP Biological Assessment on July 10, 2015 (FEIS Appendix Q).

The Protestor contends that the BLM must defer the lease sale and halt all new leasing until it properly considers the climate change effects of new leasing and fracking.

BLM Response: Analysis of the effects of leasing and hydraulic fracturing was included in the 2015 MCFO FEIS and is incorporated by reference in the MCFO leasing EA. The potential direct, indirect, and cumulative impacts to air resources from reasonably foreseeable oil and gas development were analyzed and disclosed in the 2015 MCFO Approved RMP and FEIS. Estimated emissions of several air pollutants including greenhouse gases (GHG) were included in the Air Resource Technical Support Document for Emission Inventories and Near-Field Modeling, March 7, 2013. The emissions were estimated using representative parameters from typical development. However, substantial uncertainty exists at the time the BLM offers a lease for sale regarding crucial factors that affect potential GHG emissions, including: well density; geological conditions; development type (vertical, directional, horizontal); hydrocarbon characteristics; equipment to be used during construction, drilling, production, and abandonment operations; and applicable regulatory requirements. Based on the analysis for this EA, lease stipulations CSU 12-23 and LN 14-18 would be implemented for the protection of air resources (EA p. 38). Additional mitigation measures would be applied when actual operations are proposed on an issued lease through an APD or Sundry Notice (SN).

The lack of scientific tools designed to predict a single proposed action’s impact on climate change at a regional or local scale limits the ability to assess its effect on global climate change. On December 18, 2014, CEQ issued revised draft guidance for assessing greenhouse gas emissions and climate change impacts (CEQ’s 2014 Draft Guidance). This guidance acknowledges that evaluating GHG emissions and climate change is a “particularly complex challenge” (at page 2), and states (at page 3):

“Agencies continue to have substantial discretion in how they tailor their NEPA processes to accommodate the concerns raised in this guidance, consistent with the CEQ Regulations and their respective implementing regulations and policies, so long as they provide the public and decision makers with explanations of the bases for their determinations.”

The CEQ’s 2014 Draft Guidance emphasizes use of the “rule of reason” which (at page 5, footnote omitted):

“...ensures that agencies are afforded the discretion, based on their expertise and experience, to determine whether and to what extent to prepare an analysis based on the availability of information, the usefulness of that information to the decision-making process and the public, and the extent of the anticipated environmental consequences.” When addressing the extent of the anticipated environmental consequences, the CEQ’s 2014 Draft Guidance also indicates the agency should (at page 10) “...consider both the context and intensity.”

The BLM has developed rules pertaining to the regulation of hydraulic fracturing operations (80 FR 16128-16222, March 26, 2015; see also 80 FR 16577, March 30, 2015). The state of Montana Department of Environmental Quality has established permitting and emissions control requirements for oil and gas sources in the Administrative Rules of Montana, Chapter 17.8 Air Quality, Subchapter 16. In addition, voluntary partnerships such as EPA’s Natural Gas Star Program and the Methane Challenge Program encourage new technology that reduce methane emissions and increase efficiency.

The Protestor contends that the BLM must consider limiting greenhouse gas emissions by keeping federal fossil fuels in the ground.

BLM Response: It is the policy of the BLM to make mineral resources available for use and to encourage development of mineral resources to meet national, regional and local needs. This policy is based on law, including the Federal Land Policy and Management Act of 1976 (FLPMA). The following regulations require the BLM Montana State Office to hold four competitive oil and gas lease sales per year:

- Mineral Leasing Act of 1920 as amended- Subtitle B Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA) - “Lease sales shall be held for each State where eligible lands are available at least quarterly....”
- Washington Office Instruction Memorandum 2010-117 Oil and Gas Leasing Reform- “State offices will continue to hold lease sales four times per year, as required by the Mineral Leasing Act, section 226(b)(1)(A) when eligible lands are determined by the state office to be available for leasing.”
- Montana State Office Oil and Gas Leasing Reform Implementation Plan August 2010- “All Montana Oil and Gas Competitive Lease Sales are subject to the following laws, regulations and policies: Required by law and regulation to hold lease sales at least quarterly if lands are available (Public Law 100-203, Sec. 5102, dated 12/22/87 (FOOGLRA)).”

The protestor contends that the BLM must consider a ban on new oil and gas leasing and fracking in a Programmatic Review and halt all new leasing and fracking.

BLM Response: As stated above, the BLM Montana State Office is required to hold four competitive oil and gas lease sales per year. The direct, indirect and cumulative impacts of oil and gas leasing and hydraulic fracturing are analyzed in the 2015 MCFO FEIS and are incorporated by reference into the May 4, 2016 MCFO Leasing EA. Page 3-105 of the FEIS describes the following requirements to mitigate impacts from hydraulic fracturing:

Before hydraulic fracturing takes place, all surface casing and some deeper, intermediate zones are required to be cemented from the bottom of the cased hole to the surface in accordance to Onshore Oil and Gas Order No. 2, MBOGC [Montana Board of Oil and Gas Conservation] rules and regulations, and API [American Petroleum Institute] standards. The cemented well is pressure tested to ensure there are no leaks and a cement bond log is run to ensure the cement has bonded to the casing and the formation. The MBOGC regulations require new and existing wells, which will be stimulated by hydraulic fracturing, must demonstrate suitable and safe mechanical configuration for the stimulation treatment proposed.

In addition, the 2015 MCFO FEIS states the following under Alternative E (Proposed) on page 4-268: “This alternative would restrict and limit drilling and development on BLM-administered minerals under an increased number of restricted acres.”

Both the 2015 MCFO EIS and the May 4, 2016 MCFO Leasing EA incorporate by reference the analysis contained in the 2010 BLM Climate Change Supplementary Information Report for Montana, North Dakota and South Dakota (SIR). The SIR provides detailed information and quantification of anticipated greenhouse gas emissions from MCFO oil and gas leasing through 2028.

The BLM is attempting to further mitigate any potential adverse impacts from oil and gas leasing and hydraulic fracturing. On March 26, 2015, the BLM published in the Federal Register a proposed rule, *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Final Rule*. The rule is intended to support safe, responsible hydraulic fracturing activities on public and tribal lands. In addition, the BLM has proposed a new venting and flaring rule, *Waste Prevention, Production Subject to Royalties, and Resource Conservation*, to reduce the waste of natural gas from venting, flaring, and leaks that could result in eliminating 164,000-169,000 tons of methane emissions per year (81 FR 6615, Feb. 8, 2016). The EPA has proposed several new emission standards and control technique guidelines for controlling methane and volatile organic compounds (VOC) emissions from new, modified, and existing oil and gas sources (80 FR 56593, Sept. 18, 2015).

Current and proposed regulatory requirements are having a significant impact on reducing greenhouse gas (GHG) and other emissions from oil and gas production. The 2015 MCFO FEIS states the following on page 4-19: “Current and future air quality regulations will reduce emissions of carbon dioxide, methane, and nitrous oxide from many types of sources including oil and gas equipment and operations, vehicles, and many types of engines.”

IV. CONCLUSION

In conclusion, the Protestor requested that the BLM defer inclusion of six (6) parcels identified as MT-05-16-01, MT-05-16-02, MT-05-16-03, MT-05-16-03, MT-05-16-04, MT-05-16-05, and MT-05-16-06 in the May 4, 2016, Competitive Oil and Gas Lease Sale. The Protestor suggested that the BLM failed to properly consult with the USFWS, and that there is not proper analysis of potential impacts to Sprague’s pipit and climate change from leasing and hydraulic fracturing.

For the reasons stated above, the BLM dismisses this protest. The outcome of this Decision on the specific areas subject to this protest is identified below.

The BLM, in accordance with existing regulations and policies, will issue leases for all the lands receiving competitive bids or non-competitive offers included on the May 4, 2016, Competitive Oil and Gas Lease Sale Notice.

Table 1- Lease Parcel Descriptions

<p>05-16-01 MTM 108538 MTM 105431-KH Offer: T. 14 N, R. 30E, PMM, MT SEC. 2 LOTS 1-3; SEC. 2; 2 S2NE, SENW, SE; GARFIELD COUNTY 399.57 AC PD</p>	<p>05-16-04 MTM 105840 MTM 102757-6Y Offer: T. 36 N, R. 58 E, PMM, MT SEC. 12 LAKEBED RIPAR TO LOTS 1,7 DESC BY M&B (75.60 AC); <u>1/</u> SEC. 12 LAKEDBED RIPAR TO LOTS 5,6 DESC BY M&B (24.60 AC); <u>1/</u> SEC. 13 LAKEDBED RIPAR TO LOT 3 DESC BY M&B (20.66 AC); <u>1/</u> SEC. 13 LOT 3; SHERIDAN COUNTY 285.73 AC PD</p>
<p>05-16-02 MTM 108539 MTM 102757-V8 Offer: T. 36 N, R. 58 E, PMM, MT SEC. 2 LAKEBED RIPAR TO LOTS 3,4 DESC BY M&B (43.89 AC); <u>1/</u>; SEC. 2 LOTS 3,4 SEC. 2 NESE; SEC. 10 NWNE; SHERIDAN COUNTY 134.18 AC PD</p>	<p>05-16-05 MTM 108542 MTM 105431-KK Offer: T. 26 N, R.59 E, PMM, MT SEC. 9 LOT 5; ROOSEVELT COUNTY 13.19 AC PD</p>
<p>05-16-03 MTM 105840 MTM 102757-6X Offer: T. 36 N. R. 58 E, PMM, MT SEC. 8 NWSW, SESW; SHERIDAN COUNTY 80.00 AC PD</p>	<p>05-16-06 MTM 108543 MTM 105431-H5 T. 26 N, R. 59 E, PMM, MT SEC. 25 LOT 3 EXCL RR ROW (25.94 AC); <u>1/</u> SEC. 25 LOT 4 EXCL RR ROW (24.34 AC); <u>1/</u> SEC. 25 SWSW EXCL RR ROW (39.99 AC); <u>1/</u> SEC. 25 LOT 2; RICHLAND COUNTY 115.92 AC PD</p>

Administrative Review and Appeal

This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and Form 1842-1 (Enclosure 2). If an appeal is taken, the Notice of Appeal must be filed in the Montana State Office at the above address within 30 days from receipt of this Decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay of the effectiveness of this Decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for stay must be submitted to the Interior Board of Land Appeals and the appropriate Office of the Solicitor (see 43 C.F.R. §4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

/s/ Aden L. Seidlitz

Aden Seidlitz
Acting State Director

2 Enclosures

- 1-Protest Letter Dated March 7, 2016 (24 pp)
- 2-Form 1842-1 (2 p)

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