



United States Department of the Interior



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

In Reply Refer To:
3100 (MT922.AG)

July 9, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

Lance D. Gaebe
North Dakota Department of Trust Lands
P.O. Box 5523
1707 North 9th Street
Bismarck, ND 58506-5523

Todd Sando
Office of the State Engineer
900 East Boulevard Avenue
Bismarck, ND 58505-0850

PROTEST DISMISSED

I. INTRODUCTION

On April 15, 2015, a Lease Sale Notice for the July 14, 2015, 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 letter to the Bureau of Land Management (BLM) dated May 13, 2015, the North Dakota Department of Trust Lands and the North Dakota Office of the State Engineer (Protestors) submitted a timely protest to the inclusion of one (1) parcel located in Williams County, North Dakota, and is identified as Parcel Number NDM 97300-7K. This parcel is located in the North Dakota Field Office (NDFO) planning area in Section 23. Township 152 North, Range 104 West. 5th P.M. See Table 1 below for a parcel description.

II. BACKGROUND

Public scoping for this lease sale was conducted from December 15 through December 30, 2014. This scoping period was advertised on the BLM Montana State Office website and posted on the North Dakota Field Office website. This BLM Field Office also posted a National Environmental Policy Act (NEPA) notification log, reference number DOI-BLM-MT-C030-2015-085-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 letters

requested written comments regarding any issues or concerns that should be addressed in the EA being prepared for the parcels.

The North Dakota Field Office received five (5) scoping comments regarding lease stipulations, cultural surveys, visual resources and the Lewis and Clark National Historic Trail. No comments were received from the DTL or OSE at that time.

On February 9, 2015, the BLM Montana/Dakotas released the North Dakota Field Office Oil and Gas Leasing EA and unsigned FONSI for a 30-day public comment period. The EA analyzed the potential effects from offering eight (8) nominated lease parcels in North Dakota containing 1164.26 acres of Federal Mineral Estate in the July 14, 2015, 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, on April 15, 2015, on the BLM's Montana/Dakota website for a 30-day protest period.

After a review of potential environmental impacts presented in the EA and the public comments, the North Dakota Field Manager recommended that the lease sale be reduced by one parcel (NDM 97300-6J) pending greater sage-grouse analysis in the current NDFO Resource Management Plan (RMP) amendment. As a result of the Decision Record, a total of seven (7) nominated lease parcels (1124.24 acres of Federal minerals) would be offered for lease at the July 14, 2015, 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 North Dakota Department of Trust Lands (DTL) and the North Dakota Office of the State Engineer (OSE) submitted a timely protest (via letter) dated May 13, 2015, to the inclusion of one (1) parcel identified as Parcel Number NDM 97300-7K in the July 14, 2015, Competitive Oil and Gas Lease Sale.

Protest Contentions and BLM Response:

A. The Protestors contend that the lease parcel in question lies entirely below the Ordinary High Water Mark (OHWM) of the Missouri River, and is therefore sovereign land of the State of North Dakota.

BLM Response: The United States Code (U.S.C.) Title 30 § 223 Mineral Lands and Mining Leases; amount and survey of land; terms of lease; royalties and annual rental states the following:

The area to be selected by the permittee, shall be in reasonably compact form and, if surveyed, to be described by the legal subdivisions of the public-land survey; if un-surveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be described by

the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys.

The BLM last conducted an official Public Lands Survey of the area including the lease parcel in question on December 8, 1902. The results of the survey generated the official Oil and Gas (OG) Title Plat being utilized to offer the lease parcel for sale. The Federal interests as depicted on these plats are binding until superseded by a later officially filed plat.

Therefore, the protest is dismissed on the contention that the parcel in question lies below the OHWM of the Missouri River. Due to BLM resurvey activity of this subject area scheduled for the summer of 2015, this lease parcel will be deferred.

IV. CONCLUSION

The Protestors requested that the BLM withdraw one (1) parcel identified as NDM 97300-7K, in the July 14, 2015, Competitive Oil and Gas Lease Sale. The Protestors suggested that the parcel is sovereign land of the State of North Dakota and that the mineral interests under said parcel do not belong in the Public Domain. Due to BLM resurvey activity of this subject area scheduled for the summer of 2015, this lease parcel will be deferred. The BLM, in accordance with existing regulations and policies, will defer leasing actions and not include the lands shown in Table 1 on the July 14, 2015, Competitive Oil and Gas Lease Sale.

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.

Table 1- Lease Parcel Description

NDM 97300-7K Defer T. 152 N, R. 104 W, 5 th PM, ND SEC. 23 Lot 1 SEC. 24 Lots 2,3 WILLIAMS COUNTY 49.36 AC PD
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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 CFR Part 4 (Enclosure 3) and the enclosed Form 1842-1 (Enclosure 4). 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 pursuant to 43 CFR Part 4, Subpart B § 4.21, 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. 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.



Jamie E. Connell
State Director

4 Enclosures

- 1-Protest Letter Dated May 13, 2015 (2 pp)
- 2-Official OG Plat (2 pp)
- 3-43 CFR 4.21(a) (2 pp)
- 4-Form 1842-1 (2 pp)