



United States Department of the Interior



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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

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PROTEST AFFIRMED IN PART PROTEST DISMISSED IN PART

I. INTRODUCTION

On July 20, 2016, the BLM Montana State Office posted a Lease Sale Notice for the Montana Statewide, October 18, 2016, Competitive Oil and Gas Lease Sale, which initiated a 30-day protest period. At the same time, we posted the HiLine District Oil and Gas Leasing Environmental Assessment (EA) and Miles City Field Office (MCFO) Determination of NEPA Adequacy (DNA), updated after a 30-day public comment period.

In a letter to the Bureau of Land Management (BLM) received August 19, 2016, the Center for Biological Diversity (CBD), in coordination with Great Old Broads for Wilderness, Montana Natural Resources Defense Council, and Montana Sierra Club, submitted a timely protest to the inclusion of 91 lease parcels located in the HiLine District and Miles City Field Office (MCFO) planning areas. See Enclosure 3 for parcel descriptions and the stipulations to be applied.

II. BACKGROUND

We conducted public scoping for this lease sale from March 22 to April 6, 2016, and advertised this scoping period on the BLM Montana State Office (MSO) website. The HiLine District and MCFO also posted National Environmental Policy Act (NEPA) notification logs, reference numbers DOI-BLM-MT-M040-2016-0006-EA and DOI-BLM-MT-C020-2016-0071-DNA. 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 and DNA being prepared for the parcels. The HiLine District received scoping comments regarding split estate and mineral ownership. The MCFO received scoping comments regarding the leasing process, maps, greater sage-grouse and surface management jurisdiction.

On May 16, 2016, the BLM Montana/Dakotas released the HiLine EA and MCFO DNA for a 30-day public comment period. The EA and DNA analyzed the potential impacts from offering 91 nominated lease parcels in Montana containing 19,785.06 acres of Federal minerals in the October 18, 2016, Competitive Oil and Gas Lease Sale. We addressed relevant public comments received during this process in the EA, as appropriate. The HiLine District received 35 public comments regarding NEPA, wildlife, human safety, hydraulic fracturing, air quality, climate change and cultural resources. The MCFO received 18 public comments regarding NEPA, air quality, climate change, social cost of carbon, hydraulic fracturing, greater sage-grouse, land use, and the Clean Water Act. The CBD submitted several comments at that time. We updated and posted the EA and DNA, along with the competitive sale lists, and a press release, on July 20, 2016, on the BLM's Montana/Dakotas website, and on the ePlanning NEPA Register for a 30-day protest period.

After a review of relevant environmental concerns presented in the EA, DNA, and the public comments, the HiLine District Manager and MCFO Field Manager recommended that a total of 91 nominated lease parcels (19,785.06 acres of Federal minerals) be offered for lease at the Montana Statewide, October 18, 2016, Competitive Oil and Gas Sale. The BLM will apply 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 letter on August 19, 2016, to the inclusion of 91 parcels on the Montana Statewide, October 18, 2016, Competitive Oil and Gas Lease Sale. See Enclosure 3 for parcel descriptions and the stipulations to be applied.

PROTEST CONTENTIONS AND BLM RESPONSE

1. BLM failed to provide the public with consistent and accurate information and notice in violation of the National Environmental Policy Act and BLM's leasing regulations.

BLM Response: The protestor (CBD) is referring to the posted HiLine shapefile data. The HiLine District Office posted the final sale notice and shapefile data in ePlanning for the

October 18, 2016, lease sale on July 20, 2016, initiating the 30-day protest period, which ended on August 19. Two days before the end of the protest period on August 17, the CBD emailed the HiLine District Office requesting shapefile data for only the parcels being offered versus the posted complete shapefile data that reflected all parcels, including those being deferred from the sale. The CBD also suggested a possible extension of the protest period. On August 17, the HiLine District declined to extend the 30-day protest period in an email that was copied to the MSO. On August 18, the MSO emailed a zip file to the CBD with shapefile data that included only the parcels being offered, and confirmed the decision to not extend the protest period. Washington Office Instruction Memorandum 2010-117 Oil and Gas Leasing Reform- Land Use Planning and Lease Parcel Reviews states the following, “A 30-day protest period will begin the day the sale notice is posted.”

The EA, maps and final sale notice all correctly displayed the final parcels to be offered. The posted shapefile data were for all nominated parcels, including those being deferred. The actual parcels being offered were included in the shapefile data and could easily have been cross referenced with the maps and final sale notice parcel numbers. The BLM has no requirement under NEPA or BLM’s leasing regulations to post shapefile data with Oil and Gas Lease Sale NEPA. The BLM Montana/Dakotas posts the associated shapefile data as a courtesy to the public.

For the reasons stated above, we dismiss this portion of the CBD protest.

2. The EA fails to take a “hard look” at direct, indirect and cumulative environmental and climate change impacts that would result from new leasing in the Montana HiLine region.

BLM Response: The HiLine District Oil and Gas Lease Sale EA tiers to and incorporates by reference all potential climate change impacts analyzed in the 2015 HiLine Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS). This analysis includes potential direct, indirect, and cumulative impacts to climate change from oil and gas leasing in the HiLine District planning area. In addition, the BLM conducts another detailed site-specific analysis and mitigation of activities associated with any particular lease when a lease holder submits an application for permit to drill (APD).

For the reasons stated above, we dismiss this portion of the CBD protest.

3. The EA fails to analyze air quality impacts that would result from new leasing in the Montana HiLine region. These impacts include increased air pollution, the sources and types of air emissions, as well as a recommendation for air modeling.

BLM Response: The HiLine District Oil and Gas Lease Sale EA tiers to and incorporates by reference all potential air quality impacts from the 2015 HiLine RMP and FEIS. This analysis includes an estimate of potential air emissions for oil and gas development and includes a near field air modeling assessment. In addition, the RMP incorporates a Controlled Surface Use stipulation, CSU 12-23, which requires the use of Tier IV engines for drilling and completion, and includes Lease Notice LN 14-18, which states that additional air quality analysis may be required with an APD.

For the reasons stated above, we dismiss this portion of the CBD protest.

4. The EA fails to analyze water quality impacts that would result from new leasing in the Montana HiLine region. These impacts include those to surface water, groundwater, watersheds, wetlands, aquatic life and habitat, as well as increased stormwater runoff and water depletion.

BLM Response: The HiLine District Oil and Gas Lease Sale EA tiers to and incorporates by reference all potential water quality impacts from the 2015 HiLine RMP and FEIS. This analysis includes a disclosure of potential water quality impacts from oil and gas development and mitigation measures to be applied.

As stated in the HiLine leasing EA in section 4.2.6.2, page 52,

Measures would be taken to prevent, minimize, or mitigate impacts to fish and wildlife animal species from exploration and development activities. Prior to authorization, activities would be evaluated on a case-by-case basis, and the project would be subject to mitigation measures. Mitigation could include rapid revegetation, project relocation, or pre-disturbance wildlife species surveying.

In addition, the RMP incorporates a Controlled Surface Use stipulation, CSU 12-25, for the protection of riparian and wetland areas, and includes No Surface Occupancy stipulation, NSO 11-70, which prohibits surface occupancy and use within stream, lakes, ponds, reservoirs, 100-year floodplains, wetlands and riparian areas.

The potential impacts identified in the protest (pages 15-25) are already analyzed in the leasing EA, to the extent possible at this time, or are beyond the scope of the analysis. Direct effects of leasing are the creations of valid existing rights and those related to the revenue generated by the lease sale receipts. Therefore, most of the impacts listed in this EA are potential indirect impacts that may result from leasing the parcels. Any potential impacts on resources from the sale of leases would occur during lease exploration and development activities, which would be subject to future BLM decision-making and NEPA analysis upon receipt of an APD or Sundry Notice (SN), and be tiered to the overall impact analysis in the 2015 HiLine RMP and FEIS.

As stated in the HiLine leasing EA in section 4.2, page 45,

It is speculative to make assumptions about whether a particular lease parcel would be sold and, even if so, it is speculative to assume when, where, how, or if future surface disturbing activities associated with oil and gas exploration and development such as well sites, roads, facilities, and associated infrastructure would be proposed. It is also not known how many wells, if any, would be drilled and/or completed, the types of technologies and equipment would be used and the types of infrastructure needed for production of oil and gas. Thus, the types, magnitude and duration of potential impacts cannot be precisely quantified at this time, and would vary according to many factors.

The scope and specificity of the water resource analysis is commensurate with the proposed action, utilizes the best available data, and include potential impacts from reasonably foreseeable development to water resources directly in the HiLine leasing EA (pages 41-59), as well as through reference on page 48 to the 2015 HiLine FEIS (pages 692-716).

Future applications for ground disturbing activities (i.e., APDs) provide the requisite details for site and project specific impacts analysis, which will therefore be analyzed and mitigated at that time (see section 4.1, page 43 for details). For example, controlling stormwater runoff is a Required Design Feature in an APD Surface Use Plan of Operations, but is not relevant at the leasing stage. The highly detailed and site specific analysis that is requested by the protestor under item 2, pages 15-25, is not feasible at the current lease sale stage and not required by NEPA because it is highly speculative, especially with respect to: (1) natural resources in the geographic vicinity of the potential future ground disturbing actions, and (2) the plan of operations associated with potential future actions.

As stated in the HiLine leasing EA in section 4.1, page 43:

Upon receipt of an APD, the BLM would initiate a more site-specific NEPA analysis to more fully analyze and disclose site-specific effects of specifically identified activities. In all potential exploration and development scenarios, the BLM would require the use of BMPs documented in “Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development” (USDI and USDA, 2007 [The Gold Book]).

Through the onsite and NEPA process, the BLM regularly identifies conditions of approval (COA), based on site-specific analysis, which could include moving the well location, restrict timing of the project, or require other reasonable measures to minimize adverse impacts (43 CFR §3101.1-2 Surface use rights; Lease Form 3100-11, Section 6). These COAs are designed to protect sensitive resources, and to ensure compliance with laws, regulations, and land use plans.

For the reasons stated above, we dismiss this portion of the CBD protest.

5. The EA fails to address greenhouse gas emissions and climate change impacts that would result from new leasing in the Montana HiLine region.

BLM Response: The HiLine District Oil and Gas Lease Sale EA tiers to and incorporates by reference all greenhouse gas (GHG) and climate change impacts from the 2015 HiLine RMP and FEIS. This analysis includes an estimate of potential air emissions including GHG for oil and gas development. We estimated the emissions 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. The lack of scientific tools designed to assess impacts to climate change limits the ability to predict a single proposed action’s impact on

climate change at a regional or local scale or to assess its effect on global climate change. Based on the analysis for this EA, we would apply lease stipulations CSU 12-23 and LN 14-18 for the protection of air resources. We would refine emission estimates when actual operations are proposed on an issued lease through an APD or SN, and as a result of the NEPA process.

In addition, both the 2015 HiLine FEIS and the October 18, 2016 HiLine 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 GHG emissions from oil and gas leasing through 2028.

For the reasons stated above, we dismiss this portion of the CBD protest.

6. The EA improperly tiers to the final Montana HiLine and Miles City Resource Management Plans Federal Environmental Impact Statements.

BLM Response: The HiLine EA and MCFO DNA tier to the existing Field Office/District Office RMPs and their respective FEISs, in accordance with 40 CFR §1502.20- Tiering:

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action), the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.

At the leasing stage, we do not know whether or not the parcels offered for lease will be developed, and if so, at what specific locations. We will analyze any APDs in future NEPA documents. The leasing EA tiers to the RMP, and uses the Reasonably Foreseeable Development (RFD) in the RMP to discuss impacts.

The Protestor further states, “Given that the Miles City lease parcels at issue here tier to the RMP FEIS, which is being challenged for failure to conduct proper NEPA review, demonstrates that there is a clear lack of site-specific analysis by improperly tiering to a likewise deficient NEPA document.”

The MCFO RMP is not a “likewise deficient NEPA document” because it is being litigated. The RMP not been litigated in the courts yet, and no “stay” has been issued in the litigation. In this case, the BLM implements the RMP as normal (i.e., versus reverting back to the previous RMP).

For the reasons stated above, we dismiss this portion of the CBD protest.

7. BLM should have conducted an EIS instead of an EA and FONSI for the Montana HiLine lease sale. Reasons for an EIS include that the effects on the human environment will be highly controversial, the lease sale presents highly uncertain or unknown risks, poses threats to public health and safety, and will adversely affect candidate and agency sensitive species and their habitat.

BLM Response: The HiLine District Oil and Gas Lease Sale EA tiers to and incorporates by reference all impacts from the 2015 Hiline RMP and FEIS. No additional analysis is required at this time. We analyzed and disclosed the potential direct, indirect, and cumulative impacts from reasonably foreseeable oil and gas development in the 2015 HiLine RMPs and FEIS. The BLM completes an EA and if the decision maker can reach a FONSI, then there is no need for an EIS. In addition, we would conduct a detailed site-specific analysis and mitigation of activities associated with any particular lease when a lease holder submits an APD.

After a lease has been issued, no drilling operations or related surface disturbance can occur until the leaseholder submits an APD to the BLM. The BLM will then perform a detailed site-specific analysis and provide COA for the activity that reflect necessary mitigation measures to comply with federal laws such as NEPA and ESA. We will analyze and mitigate any potential threats to public health and safety and any potential impacts to candidate and agency sensitive species and their habitat at the APD or SN stage. BLM will conduct onsite inspections to ensure full compliance with the COA after an APD has been approved. In addition, we require a bond of no less than \$10,000 to ensure that the operator performs all obligations of the lease contract including plugging, surface reclamation, and cleanup of abandoned operations.

For the reasons stated above, we dismiss this portion of the CBD protest.

8. The BLM has violated the Endangered Species Act by failure to consult with the Fish and Wildlife Service regarding effects to listed species, which include potential effects to pallid sturgeon from leasing parcels MTM 102757-QL and MTM 102757-QM.

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."

For the development of the approved 2015 HiLine and MCFO RMPs and FEISs, we consulted with the U.S. Fish and Wildlife Service (USFWS) for threatened and endangered species within the HiLine District and MCFO RMP planning areas. The USFWS concurred with the HiLine RMP Biological Assessment on May 27, 2015 (Appendix K, HiLine RMP). The USFWS concurred with the MCFO RMP Biological Assessment on July 10, 2015 (Appendix Q, MCFO RMP).

After consulting with Montana Fish Wildlife and Parks Region 6 fisheries biologist, the BLM concludes that there has been an increase over the past 5 years in pallid sturgeon use of the Milk River downstream of Vandalia Dam. After consulting with the USFWS about potential impacts to Milk River pallid sturgeon habitat from oil and gas development, we will defer lease parcels MTM 102757-QL and MTM 102757-QM.

For the reasons stated above, we affirm this portion of the CBD protest.

9.a. BLM has failed to evaluate and/or mitigate effects on sensitive species and their habitat. Habitat for greater sage-grouse could be affected by leasing parcels 102757-G4, 102757-G6, 102757-GW, 102757-J7, 102757-J9, 102757-KB, 102757-KE, 102757-QJ, 102757-QK, 102757-QL, 102757-QM, 102757-QN, and 105431-Q3.

BLM Response: A lease sale protest is not another opportunity to challenge the recent RMP decisions made by the BLM. That opportunity has passed and we find that offering the parcels being protested conforms to the 2015 HiLine and MCFO RMP revisions. As such, the lease sale EA and DNA correctly tier to the associated FEISs that analyzed and disclosed potential impacts to greater sage-grouse and their habitats.

The BLM Montana/Dakotas is implementing the mitigation strategy for greater sage-grouse outlined in the September 2015 Rocky Mountain Record of Decision. The BLM is not offering any lease parcels located within Priority Habitat Management Areas (PHMA) or General Habitat Management Areas (GHMA) in the October 18, 2016, Montana Statewide, Competitive Oil and Gas Lease Sale.

The Protestor states, "It appears that BLM has erroneously failed to defer parcel MTM 102757-GW, substantial portions of which overlap Sage-Grouse Priority Habitat Management Area." The BLM agrees and will defer this parcel from the October 18, 2016 lease sale.

Regarding the Valley County Connectivity Area, the BLM did not designate the connectivity area in the HiLine RMP as greater sage-grouse habitat. Therefore, the parcels do not occur in any BLM-designated habitat. The BLM does recognize that the parcels are located within the Valley County Connectivity Area as designated by the State of Montana, and the BLM did confer with the Montana Sage Grouse Habitat Conservation Program prior to offering lease parcels in that area for this sale. The BLM recognizes that State of Montana Executive Order 2012-015, *Executive Order Amending and Providing for Implementation the Montana Sage Grouse Conservation Strategy*, states on page 30, "The Valley County Connectivity Area shall be subject to the stipulations for General Habitat." For the reasons stated above, we did not defer the parcels in question because they are in State of Montana designated Connectivity Area.

The BLM is taking proactive measures at the leasing stage to provide for the protection and conservation of habitats and populations. We recommend parcels for the lease sale with lease stipulations and notices from the approved RMPs that provide for further conservation of the species. Impacts to the species are possible from subsequent oil and gas development activities permitted at the APD stage. We would conduct detailed site-specific analysis and mitigation of activities associated with any particular lease, as detailed in the approved RMPs, 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 to be applied as COA for the conservation and protection of all natural resources, including wildlife habitat and species.

For the reasons stated above, we dismiss in part and affirm in part this portion of the CBD protest on the contention that MTM 102757-GW is partially located within PHMA. Due to BLM implementation guidance on the September 2015 HiLine RMP, we will defer this lease parcel.

9.b. Habitat for Sprague’s pipit and grassland birds could also be affected

BLM Response: The BLM determined that the act of issuing the 91 analyzed lease parcels 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. We would conduct a detailed site-specific analysis and mitigation of activities associated with any particular lease 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 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. We recommend the parcels with lease stipulations and notices that provide for further conservation of the species.

In addition to meeting the requirements of the Migratory Bird Treaty Act, we identified all parcels within habitat for Sprague's pipit and will apply lease stipulations TL 13-47 in the HiLine District and LN 14-27 in the MCFO planning area for the protection of Sprague’s pipit habitat.

The USFWS 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.”

We analyzed the direct, indirect, and cumulative impacts from oil and gas development on wildlife resources in Chapter 4 of the 2015 MCFO FEIS (pages 4-105 through 4-179). and incorporated this analysis by reference into the MCFO DNA. We analyzed the direct, indirect and cumulative impacts from oil and gas development on wildlife resources in Chapter 4 of the 2015 HiLine FEIS (pages 731 through 760), and incorporated this analysis by reference into the HiLine 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 lease stipulations would provide for the conservation of wildlife resources such as big game, sharp-tailed grouse, special status species, and migratory birds, which include Sprague’s pipit and grassland birds.

Regarding conservation measures for grassland birds, Chapter 3 of the 2015 HiLine FEIS on page 429 states the following:

A number of management plans related to birds have been developed. The North American Waterfowl Management Plan (NAWMP) was developed in 1988 because of the decline of waterfowl production in the United States and Canada. The

NAWMP plan has been divided into various joint ventures for implementation, with the Prairie Pothole Joint Venture (PPJV) encompassing most of the planning area. A number of bird-associated projects related to waterfowl have been implemented with this joint venture. The BLM is a partner in the PPJV Implementation Plan (PPJV 2005). This plan addresses the conservation needs of four species groups: waterfowl, shorebirds, waterbirds, and landbirds (each with their own national level plan); and outlines goals and objectives for bird conservation that the BLM can integrate into programmatic and site-specific management decisions.

Chapter 3 of the 2015 HiLine FEIS on page 438 states the following:

Areas containing substantial and high quality grasslands that support large populations of a suite of special status grassland bird species. This suite of species includes the following species of concern: Sprague's pipit, chestnut-collared longspur, McCown's longspur, Baird's sparrow, and long-billed curlew. Management actions would emphasize the conservation and enhancement of sustainable grassland bird habitats. Areas are delineated by using survey results, predictive models of species distributions, and land ownership patterns.

Chapter 3 of the 2015 MCFO FEIS on page 3-49 states the following:

For the conservation of migratory birds, the BLM entered into an MOU with the USFWS in 2010. In addition to the MOU, Executive Order 13186, 66 Fed. Reg. 3853, (January 17, 2001), entitled "Responsibilities of Federal Agencies to Protect Migratory Birds, directs agencies to take actions to further implement the migratory bird conventions, the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA) and other pertinent statutes. The combination of the executive order and the MOU provides the frameworks for BLM's habitat management for migratory birds.

For the reasons stated above, we dismiss this portion of the CBD protest.

10.a. BLM must end all new fossil fuel leasing and hydraulic fracturing because of the dangers of hydraulic fracking and horizontal drilling. BLM must consider a ban on new oil and gas leasing and fracking in a programmatic review and halt all new leasing and fracking in the meantime.

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 various laws, including the Mineral Leasing Act of 1920 and the Federal Land Policy and Management Act of 1976 (FLPMA). The Federal Onshore Oil and Gas Leasing Reform Act of 1987 Sec. 5102(a)(b)(1)(A) directs the BLM to conduct quarterly oil and gas lease sales in each state whenever eligible lands are available for leasing.

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 request for a programmatic review on a ban of new oil and gas leasing and fracking is outside the scope of the October 18, 2016 lease sale analysis.

The HiLine District Oil and Gas Lease Sale EA and MCFO DNA tier to and incorporate by reference all leasing and hydraulic fracturing impacts from the 2015 Hiline and MCFO RMPs and FEISs. Page 3-105 of the 2015 MCFO 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.

Page 697 of the 2015 HiLine FEIS describes the following requirements to mitigate impacts from hydraulic fracturing.

Oil and gas operations must attempt to uphold water resource integrity through conduct that minimizes adverse effects to surface and subsurface resources, prevents unnecessary surface disturbance, and conforms with currently available technology and practice. Oil and gas operators cannot commence either drilling operations or preliminary construction activities before the BLM’s approval of the Application for Permit to Drill (APD). A copy of the approved APD and any Conditions of Approval must be available for review at the drill site and all operators, contractors, and subcontractors must comply with the requirements of the approved APD and/or Surface Use Plan of Operations. Unless it is otherwise provided in an approved Surface Use Plan of Operations, the operator must not conduct operations in riparian

areas, floodplains, playas, lakeshores, wetlands, and/or areas subject to severe erosion and mass soil movement.

For the reasons stated above, we dismiss this portion of the CBD protest.

10.b. BLM must limit greenhouse gas emissions by keeping federal fossil fuels in the ground. Fossil fuel development will exacerbate climate change. BLM must fully analyze greenhouse gas emissions of oil and gas operations including the sources of greenhouse gases and the effects of climate change.

BLM Response: For the reasons stated above in sections 5 and 10, we dismiss this portion of the CBD protest.

10.c. Oil and gas development harms sensitive species and wildlife through habitat loss, water depletions, water contamination, invasive species, climate change and population-level impacts.

BLM Response: For the reasons stated above in sections 2, 4, 5 and 9, we dismiss this portion of the CBD protest.

11. Unconventional extraction techniques and underground wastewater disposal pose seismic risks and other geologic hazards.

BLM Response: We discussed above in section 10.a the analysis of potential impacts from hydraulic fracturing and RMP required mitigation.

Waste water injection and waste water wells are under the jurisdiction of the Department of Natural Resources and Conservation (DNRC) and Montana Board of Oil and Gas UIC (Underground Injection Control) program. We included analysis from hydraulic fracturing and oil and gas development in the 2015 HiLine and MCFO RMPs and FEISs and incorporated it by reference in the EA and DNA. We would conduct a detailed site-specific analysis and mitigation of activities associated with any particular lease when a lease holder submits an application for permit to drill (APD).

For the reasons stated above, we dismiss this portion of the CBD protest.

12. Oil and gas development poses significant human health and safety risks.

BLM Response: Surface disturbance and on-the-ground development are not part of the proposed action. In addition, at the time of this review, it is unknown whether or not a particular parcel will be sold and a lease issued. It is also unknown when, where, or if future well sites, roads, and facilities might be proposed. If development were to occur, additional mitigation would be included as COA on the APD or SN. Detailed site-specific analysis and mitigation of activities associated with any particular lease would occur when a lease holder submits an APD. This would include re-evaluating impacts to human health and safety in respect to the proposed action.

For the reasons stated above, we dismiss this portion of the CBD protest.

13. Fossil fuel development will impact land use.

BLM Response: A lease sale protest is not another opportunity to challenge the recent RMP decisions made by the BLM. That opportunity has passed and we find that offering the parcels being protested conforms to the 2015 HiLine and MCFO RMP revisions. As such, the lease sale EA and DNA correctly tier to the associated RMPs and FEISs that analyzed and disclosed potential impacts from land use allocations.

For the reasons stated above, we dismiss this portion of the CBD protest.

14. BLM must ensure that the Federal Land Policy and management Act and the Mineral Leasing Act are not violated.

BLM Response: We considered and complied with all applicable laws and regulations in the drafting of the September 2015 HiLine and MCFO RMPs, FEISs and associated Rocky Mountain Record of Decision. For leasing and development of fluid minerals, these include, but are not limited to, the NEPA, the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act, the National Historic Preservation Act, the 2005 Energy Policy Act, the Mineral Leasing Act, and the regulations at 43 CFR §3100 and §3160.

For the reasons state above, we dismiss this portion of the CBD protest.

IV. CONCLUSION

In conclusion, the Protestor requested that the BLM defer inclusion of 91 parcels in the October 18, 2016, Competitive Oil and Gas Lease Sale. The Protestor suggested that the BLM failed to consult with the USFWS and State of Montana, failed to properly tier the NEPA to RMPs/FEISs, and that there is not proper analysis of potential impacts to climate change, GHG, Sprague's pipit, grassland birds, greater sage-grouse, water quality, and health and human safety from oil and gas leasing and hydraulic fracturing.

For the reasons stated above, the BLM affirms in part and dismisses in part 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 88 of the 91 parcels receiving competitive bids or non-competitive offers included on the October 18, 2016, Competitive Oil and Gas Lease Sale Notice. We will defer parcel MTM 102757-GW due to implementation guidance on the 2015 HiLine RMP and FEIS. We will defer parcels MTM 102757-QL and MTM 102757-QM to mitigate potential impacts to pallid sturgeon habitat. We dismiss the protest of the other 88 lease parcels for the reasons stated above. See Enclosure 3 for parcels descriptions and the stipulations to be applied.

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. §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/ Jamie E. Connell

Jamie E. Connell
State Director

4 Enclosures

- 1-Protest letter dated August 18, 2016 (110 pp)
- 2-Form 1842-1 (2 pp)
- 3- Description of parcels (41 pp)
- 4- Map of parcels (1 p)