



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Montana State Office  
5001 Southgate Drive  
Billings, Montana 59101-4669  
[www.blm.gov/mt](http://www.blm.gov/mt)

In Reply Refer To:  
3100 (MT922.AG)

October 7, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

## DECISION

Jeremy Nichols  
Climate and Energy Program Director  
WildEarth Guardians  
2590 Walnut Street  
Denver, CO 80205

### 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 October 18, 2016, Montana Statewide, Competitive Oil and Gas Lease Sale, which initiated a 30-day protest period. At the same time, we posted the HiLine 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, WildEarth Guardians (WEG) submitted a timely protest to the inclusion of 91 lease parcels located in in the HiLine District and Miles City Field Office (MCFO) planning areas. See Enclosure 3 for a description of the parcels 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 website. The HiLine District and MCFO also posted National Environmental Policy Act (NEPA) notification logs, reference numbers DOI-BLM-MTM-0020-2016-0006-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 35 scoping comments regarding NEPA, wildlife, human safety, hydraulic fracturing, air quality, climate change, and cultural resources. The MCFO received 18 scoping comments regarding NEPA, air quality, climate change, social cost of carbon, hydraulic fracturing, greater sage-grouse, land use, and the Clean Water Act. The WEG submitted several comments at that time. 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 effects 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. Relevant public comments received during this process were addressed in the EA, as appropriate. The HiLine District and MCFO 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 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 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:** WEG submitted a timely protest via letter on August 19, 2016, to the inclusion of 91 parcels on the October 18, 2016, Competitive Oil and Gas Lease Sale.

#### PROTEST CONTENTIONS AND BLM RESPONSE

##### **1. The BLM failed to fully analyze and assess the direct, indirect, and cumulative impacts of greenhouse gas emissions that would result from issuing the proposed lease parcels.**

BLM Response: The HiLine District Oil and Gas Lease Sale EA tiers to and incorporates by reference all impacts of greenhouse gas (GHG) emissions from the 2015 HiLine Resource Management Plan (RMP). The Miles City Oil and Gas Lease Sale DNA tiers to and incorporates by reference all impacts of GHG from the 2015 Miles City RMP. We analyzed and disclosed the potential direct, indirect and cumulative impacts to air resources from reasonably foreseeable developments in the two RMPs.

We included estimated emissions of air pollutants including GHG in the *Air Resource Technical Support Document for Emission Inventories and Near-Field Modeling* included in each RMP. 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 HiLine EA and MCFO DNA tier to the information and analysis and conform to the decisions contained in the September 2015 HiLine and MCFO Final Environmental Impact Statements (FEISs) and RMPs. 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 HiLine and MCFO RMPs. 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 HiLine District Manager and MCFO Field Manager determined that the leasing of the parcels being protested conforms to the 2015 HiLine and MCFO Approved RMPs.

Based on the analysis for this proposed action, lease stipulations CSU 12-23 and LN 14-18 would be implemented for the protection of air resources. We would refine emissions estimates if the parcels were sold, if the lessee or operator proposed drilling projects on the leases, if the BLM approved them, if the projects were initiated, if hydrocarbons were produced, and depending on the ultimate end use of the product. We could apply additional mitigation measures when actual operations are proposed on an issued lease through an Application for Permit to Drill (APD) or Sundry Notice (SN).

Both the 2015 HiLine and MCFO FEISs and the October 18, 2016, HiLine Leasing EA and MCFO DNA incorporate by reference the analysis contained in the 2010 BLM Climate Change Supplementary Information Report (SIR) for Montana, North Dakota and South Dakota. The SIR provides detailed information and quantification of anticipated greenhouse gas emissions from oil and gas leasing through 2028.

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 BLM is committed to reducing impacts from oil and gas development. 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).

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

**2. The BLM failed to analyze the costs of reasonably foreseeable carbon emissions using well-accepted, valid, credible, GAO-endorsed, interagency methods for assessing carbon costs that are supported by the White House.**

BLM Response: The BLM finds that including monetary estimates of the Social Cost of Carbon (SCC) in its NEPA analysis for this proposed action would be of limited use in analyzing and selecting between alternatives. A federal Interagency Working Group (IWG) convened by the Office of Management and Budget developed estimates of the SCC which reflect the monetary cost incurred by the emission of one additional metric ton of carbon dioxide. The SCC is used to estimate the monetized damages associated with an incremental increase in carbon emissions in a given year.

The NEPA analysis for this proposed action does not include monetary estimates of any benefits or costs. Unlike rulemaking, project-level NEPA analysis does not require a cost-benefit analysis, although CEQ NEPA regulations allow agencies to use it in NEPA analysis in certain circumstances (40 CFR §1502.23). The CEQ regulation states (in part), "...for the purposes of complying with the Act, the weighing of the merits and drawbacks of various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations."

Unlike a full cost-benefit analysis, the quantitative economic analyses presented in these NEPA documents are primarily regional economic impact analyses, which are used to estimate impacts on economic activity with a focus on potential fiscal impacts. In regional economic impact analyses, changes in economic activity are not considered benefits or costs (Watson, Wilson, Thilmany and Winter 2007). As contemplated in the CEQ regulations, the analysis recognizes that there are environmental impacts associated with the development and use of fossil fuels. The analysis also identifies impacts of oil and gas development to the local economy and tax base. The analysis appropriately weighs the merits and the drawbacks of the proposed action and alternatives, without reduction to an imprecise monetary or quantitative cost-benefit analysis. Without any other monetized benefits or costs reported, monetized estimates of the SCC would be presented in isolation, without any context for evaluating their significance. This limits their usefulness to the decision maker.

The BLM finds that using SCC in its NEPA analysis for this proposed action, which is not a rulemaking, would not be useful. As a Federal District Court in Oregon recently held in *League of Wilderness Defenders/Blue Mts. Biodiversity Project v. Connaughton*, 2014 U.S. Dist. LEXIS 170072 (D: Or. Dec. 9, 2014), a SCC analysis is not required to comply with NEPA where there is no clear way to quantify costs and benefits. The BLM also has acknowledged that climate science does not allow a precise connection between project-specific GHG emissions and specific environmental effects of climate change. This approach is consistent with that upheld when considering NEPA challenges to Federal coal leasing decisions. *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 n.5 (D.C. Cir. 2013); *WildEarth Guardians v. BLM*, 8 F. Supp. 3d 17; 34 (D.D.C. 2014). Some of the specific challenges involved in attempting to apply SCC to the analysis of this proposed action include the following:

- Given the global nature of climate change, estimating SCC of an individual project requires assessing the impact of the project on the global market for the commodity in question.
- NEPA does not require monetization of economic benefits and costs, and CEQ NEPA regulations state that "the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not when there are important qualitative considerations (40 CFR §1502.23)." Monetizing only certain effects can lead to an unbalanced assessment. A regional economic impact analysis is often used to estimate impacts on economic activity, expressed as projected changes in employment, personal income, or economic output. Such estimates are not benefits or costs, and are not part of a benefit cost analysis.
- The SCC estimates provided by the IWG are not applicable to non-CO2 emissions, such as methane (CH4). The absence of SCC estimates for GHG emissions other than CO2 represents an important gap in the context of project-specific monetization of SCC.

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

### **3. The BLM failed to appropriately analyze and assess impacts to Sage-Grouse.**

BLM Response: The BLM is implementing the mitigation strategy for greater sage-grouse outlined in the September 2015 Rocky Mountain Record of Decision and the approved HiLine RMP. 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.

In their protest of the lease sale parcels, the Protestor (WEG) states the following:

We further specifically protest Parcels MTM 102757-6K, G3, G4, G6, G7, GW, J7, J8, J9, KA, KB, KC, KE, Q3, QH, QJ, QM, QN, QQ, QU, and RM; MTM 105431- FL, FM, FN, FP, FQ, FT, FU, FV, FR, H3, and K4; and MTM 79010-7J, A2, B9, C1, FB, ZJ, ZR, and ZS, which appear to be completely or partially within sage grouse General Habitat Management Areas ("GHMAs") according to our map screening information.

The BLM refers the WEG to the September 2015 HiLine FEIS and RMP for BLM-designated areas of PHMA and GHMA. See Enclosure 4 for a map of the lease parcels. None of the parcels identified by WEG are located in GHMA as delineated in the HiLine RMP. However, one of the protested parcels, MTM-102757-GW is partially located in PHMA and will be deferred from this sale.

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 for lease sale with lease stipulations and notices from the approved RMP that provide for conservation of the species. Impacts to the species are possible from subsequent oil and gas development activities permitted

at the APD stage. Detailed site-specific analysis and mitigation requirements, as detailed in the approved RMP, would be addressed 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 conditions of approval to ensure the conservation and protection of all natural resources, including greater sage-grouse.

For the reasons stated above, we affirm in part and dismiss in part this part of the 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 properly analyze the impacts of GHG, the costs of carbon emissions, and the impacts to greater sage-grouse.

**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 90 of the 91 parcels receiving competitive bids or non-competitive offers included on the October 18, 2016, Competitive Oil and Gas Lease Sale Notice. Parcel MTM-102757-GW will be deferred. See Enclosure 3 for a description of the parcels 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/ Sandra S. Leach*

*For* Jamie E. Connell  
State Director

4 Enclosures

- 1- Protest Letter Dated August 19, 2016 (25 pp)
- 2- Form 1842-1 (2 p)
- 3- Description of Parcels (41 pp)
- 4- Map of Lease Parcels (1 p)

MT922: AGibbs: 9/26/16 X5099: Oct 18, 2016 WEG protest response 9-26-2016TKern\_ag.docx