



May 14, 2007

By Fax

Gene Terland
Montana State Director
Bureau of Land Management
5001 Southgate Drive
Billings, Montana 59101-4669
Fax (406) 896-5292

Re: Notice of Competitive Oil and Gas Lease Sale – May 30, 2007

Dear Director Terland:

Introduction:

Trout Unlimited (TU) is America's leading trout and salmon conservation organization with over 152,000 members nationwide, including Montana Trout Unlimited which represents the 3,200 members and 13 chapters of TU in Montana. Our mission is to conserve, protect and restore the nation's coldwater fisheries and their watersheds. Trout Unlimited is not against oil and gas leasing on public lands. Instead, we advocate for development that does not make oil and gas the dominant land use while setting aside special areas and ensuring lease stipulations, environmental mitigation, and enforcement are effective to guarantee protection of fish and wildlife and their habitats. Given the pace and scope of harmful oil and gas development we have witnessed in Wyoming, we are concerned similar impacts could occur to Montana's world renowned coldwater fisheries. Oil and gas development in Montana should occur only if – *before leasing* – it is demonstrated that existing uses of our public lands and the fish, wildlife and the quality of life Montanans associate with healthy public lands will not be harmed by oil and gas activities.

General Protest Concerns:

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

The underlying Resource Management Plans covering the management areas where these leases are located provide a general analysis and leasing decision, however, the identification of site-specific lease parcels represents changed circumstances that need to be analyzed in a supplement to that leasing decision. Because specific lease parcels have never been analyzed in a NEPA document, this needs to occur before they can be offered for sale.

Up until the sale notice, the public was unaware of the location of specific lease parcels to be sold. Because the public has been unaware as to where specific lease parcels would be sold, identification of specific lease parcels represent changed circumstances upon which the public has not been able to comment or review site-specific NEPA analysis. The Federal Lands Policy Management Act (FLPMA) requires that BLM “shall allow an opportunity for public involvement and . . . shall establish procedures . . . to give . . . the public adequate notice and an opportunity to comment on and participate in the formulation of . . . programs relating to the management of the public lands.” 43 U.S.C. § 1712(f). While the public had the opportunity to comment on the underlying land use plan, that right has not been made available regarding the specific leases 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.

2.) Failure to Properly Map Lease Parcels

Given the documents provided in the Competitive Lease Sale Notice, the public cannot determine the relationship between the lease parcel for sale and current leases. Therefore, the public cannot ascertain the scope of development rights BLM has sold or issued within an area because the map provided only shows the lease parcels *currently* for sale, not those issued or sold and awaiting protest resolution. As a result, it is extremely difficult for the public to offer meaningful public comment and analysis (had an opportunity besides protest been offered) based upon the scale of previous leasing and the development for which the right through leasing has already been extended. We believe that this constitutes a violation of the Federal Onshore Oil and Gas Leasing reform Act (FOOGLRA) that requires: “Such 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) (emphasis added.).

We appreciate that maps were provided for the May 30, 2007 sale. However, the maps still fall short of FOOGLRA requirements and need to depict previously sold leases in the area.

3.) Climate Change

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 Clarks 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.

Lease Specific Protest Items:

1.) Lease MT 05-07-21

Trout Unlimited protests the inclusion of lease parcel MT 05-07-21 in the Clark Fork of the Yellowstone watershed. The Clark Fork of the Yellowstone supports coldwater fisheries including brook trout, brown trout, rainbow trout, and Yellowstone cutthroat trout. The *Draft Supplement to the Montana Statewide Oil and Gas Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plans* (Draft SEIS) has yet to be completed, and until a Record of Decision (ROD) is finalized for that planning document, offering a lease within the planning area would result in BLM making an irretrievable commitment of resources without adequately identifying and evaluating environmental concerns and resource impacts, including the impacts to coldwater fisheries. The current Draft SEIS has produced significant new information including reasonable foreseeable development scenarios and cumulative impacts that have gone unanalyzed in any previous leasing decision by the BLM, therefore offering a lease in the planning area without supplementing the previous leasing decision or finalizing the SEIS would violate NEPA's supplemental analysis requirement 40 C.F.R. § 1502.9(c).

This concern is perpetuated by lack of understanding regarding the impacts to coldwater fisheries from CBNG, as the Draft SEIS reveals: "*There is considerable uncertainty regarding the specific effects of CBNG development activities on aquatic resources because of limited data, unknown influences of other environmental factors (e.g., drought conditions and other land use activities), and the variability and uncertainty concerning baseline (predevelopment) conditions.*"(4-297) Given that lease MT 05-07-21 is located on a coal field estimated to contain gas content per ton similar to that of the Powder River coals, this lease will likely be targeted for CBNG development. 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.

Under the lease terms that this lease is being offered, the only stipulation in place designed to protect watersheds and fisheries is a CSU 12-1 that would require prior to surface disturbance on slopes over 30 percent, an engineering/reclamation plan be approved by the authorized officer. Such a 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.

While this is appropriate for a lease-wide stipulation – and in fact should be included as a lease-wide CSU stipulation in the lease terms offered – on slopes over 30% 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. Poor land management decisions quite literally flow down hill and the only responsible land management decision for oil and gas development on slopes over 30% is no development.

2.) Lease MT 05-07-15

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) nevertheless, the restoration potential needs to be taken into account before offering this lease.

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.

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.

Conclusion:

While Trout Unlimited does not oppose oil and gas drilling in principle, we strongly urge the BLM to reconsider selling leases on parcels that abut or that may affect native trout streams and watersheds. The BLM has no legal obligation to lease the disputed parcels and is required to withdraw them until the agencies have complied with applicable law. We further urge the BLM to consult with conservation groups like Trout Unlimited and offer public input before offering leases in watersheds that support important trout fisheries. Doing so will go a long ways toward reducing conflict over the management of public lands, and will save time, effort, and expense on all sides.

Thank you for your consideration, and please let us know if you would like to discuss these concerns in greater detail.

Sincerely,

Michael Gibson
Outreach Director
Montana Trout Unlimited
PO Box 7186
Missoula, MT 59807
Phone: 406-543-0054
Fax: 406-543-6080
michael@montanatu.org

CC:

Brian Schweitzer, Governor
State of Montana

John Tester, Senator
United States Senate

Max Baucus, Senator
United States Senate

Denny Rehberg, Representative
United States House of Representatives

