



June 28, 2013

Draft Billings and Pompeys Pillar National Monument RMP/EIS
Billings Field Office. Bureau of Land Management
Attn. RMP Team Lead, Carolyn Sherve-Bybee
5001 Southgate Drive
Billings, Montana 59101

Submitted electronically to Billings_PompeysPillar_RMP@blm.gov

RE: Billings and Pompeys Pillar National Monument RMP Revision

Dear Ms. Sherve-Bybee,

Thank you for the opportunity to provide comments on the draft EIS for the Bureau of Land Management (BLM) Billings and Pompeys Pillar National Monument RMP Revision. Trout Unlimited is a private, non-profit coldwater conservation organization that has more than 140,000 members nationwide. In Montana, Montana Trout Unlimited (MTU) represents the over 3,600 members and 13 chapters, with a mission to conserve, protect and restore coldwater fisheries and their watersheds.

MTU is not against oil and gas leasing and drilling on public lands. Instead, we advocate for development that does not make oil and gas activities 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. Many of our members fish in streams located on, or that flow from, BLM lands administered by the Billings Field Office and have a passion for the conservation of these watersheds and the coldwater fisheries they support.

D) General Comments

MTU's primary interest and the focus of our comments center around oil and gas development, specifically where leasing and subsequent development will occur and what restrictions will be required for the protection of water resources and coldwater fisheries. The impacts of oil and gas development can range from minor to catastrophic, with incidents such as the Silvertip pipeline spill on the Yellowstone River showcasing the high degree of risk presented by the development, production and transportation of oil

and gas. Both spills and increased erosion and sedimentation caused by surface disturbances are impacts that need to be accounted for and mitigated. MTU views risk management as a critical component of any oil and gas development, with avoiding of sensitive resources as the preferred method of mitigating impacts. Many of our comments and suggestions reflect this approach – by providing spatial separation through the application of no surface occupancy (NSO) stipulations between development and sensitive resources, the risk of spills or sedimentation affecting fisheries are minimized and in some cases avoided altogether.

II) Specific Comments

1) Support for portions of the Preferred Alternative

MTU supports several of the oil and gas leasing stipulations included in the Preferred Alternative and it is refreshing to see the consideration that the BLM has afforded coldwater fisheries. The components of the preferred Alternative that MTU supports include:

- *½ mile NSO buffer for Yellowstone cutthroat trout*

Conservation Populations of Yellowstone cutthroat trout are present in several streams in the planning area. The importance of conserving and restoring Yellowstone cutthroat trout cannot be overstated. The specie is listed as a Species of Concern by the State of Montana, Sensitive Species by the U.S. Forest Service (USFS) and Montana Department of Natural Resources and Conservation (DNRC), Special Status Species by the Bureau of Land Management (BLM), and Species of Special Concern by the Crow Tribe, and was previously reviewed by the U.S. Fish and Wildlife Service (USFWS) for potential listing under the Endangered Species Act (ESA), although listing was not found to be warranted at that time. In an effort to reduce threats to Yellowstone cutthroat trout, the Memorandum of Understanding and Conservation Agreement for Westslope and Yellowstone Cutthroat Trout Montana (2007) was developed to guide conservation and restoration of this specie. This agreement was developed by a wide consortium of stakeholders, including American Wildlands, Blackfeet Tribe, Crow Tribe, Confederated Salish and Kootenai Tribes, Federation of Fly-Fishers (FFF), Glacier National Park, Greater Yellowstone Coalition, Montana Chapter of the American Fisheries Society, DNRC, Montana Farm Bureau, Montana Fish, Wildlife & Parks (FWP), Montana Stockgrowers Association, Montana Trout Unlimited, Montana Wildlife Federation, Natural Resource Conservation Service (NRCS), Plum Creek, private landowners, BLM, USFWS, USFS, and Yellowstone National Park (YNP). This cooperative effort among resource agencies, conservation and industry organizations, tribes, resource users, and private landowners shows how valuable the conservation of this native trout is to Montanans.

Central to the Memorandum of Understanding and Conservation Agreement for Westslope and Yellowstone Cutthroat Trout Montana (Cutthroat Agreement) is the

protection of Conservation Populations of cutthroat trout. Objective 1 of the Cutthroat Agreement is to “Maintain, secure, and/or enhance all cutthroat trout populations in Montana designated as conservation populations, especially the genetically pure components.” The agreement goes on to state that “This objective is the key to long-term conservation of cutthroat trout in Montana.” The application of a ½ mile NSO buffer affords a reasonable level of protection that will help the BLM to meet this objective.

- *½ mile NSO buffer for Blue Ribbon Fisheries*

Blue Ribbon Streams, also known as Class I Fisheries, are based on a quantitative classifications system developed by Montana Fish Wildlife and Parks called the Montana Rivers Information System (MRIS). The criterion upon which streams include two categories upon which streams are scored: 1) Habitat and Species Values (e.g. habitat quality and specie occurrence), and 2) Sport Fishery Value (e.g. esthetics and angling pressure). Those streams that score highly in both categories are classified as a Blue Ribbon Stream. Stipulations intended to protect both categories are necessary in order to conserve this resources; a ½ mile NSO buffer helps to accomplish this. Given the importance that the MRIS places on esthetics (esthetics is one of four criterion of Sports Fishery Value) MTU also recommends that a lands within the line of sight for Blue Ribbon Fisheries be designated as a Class II Visual Resource Management (VRM) objective and that VRM controlled surface use (CSU) stipulation that is included in the Preferred Alternative be applied for Blue Ribbon Fisheries.

Lastly, the exception, modification and waiver language only speaks to these biological values. The purpose of the stipulation needs to be modified to include the protection of esthetic and recreational values, and any exception, modification or waiver needs to ensure that these values, in addition to healthy aquatic habitat, will not be adversely affected.

- *NSO for State Lands*

MTU supports an NSO stipulation for Wildlife Management Areas, Game Ranges, Fishing Access Sites, and State Parks. Precluding surface occupancy on these lands will ensure that the recreation and habitat values on these lands are not compromised by oil and gas development.

- *½ mile NSO buffer for Wild and Scenic Rivers*

MTU supports measures designed to preserve resource values on eligible of Wild and Scenic River segments.

2) Additional protections not included in the Preferred Alternative

In addition to the items above that we support in the Preferred Alternative, MTU feels that there are several measures that would improve it and ensure a prudent degree of risk management. Some of these stipulations are included in Alternatives.

- *½ mile NSO for suitable Yellowstone cutthroat trout streams*

As discussed above, the conservation and recovery of cutthroat trout in Montana is a collaborative effort that numerous entities have agreed to Memorandum of Understanding and Conservation Agreement for Westslope and Yellowstone Cutthroat Trout Montana. Protecting existing Conservation Populations is only one aspect of cutthroat trout recovery; simply maintaining the status quo leaves this sensitive resource at risk. The recovery of cutthroat trout population through the expansion and reintroduction of populations is critical to achieving the goals set forth in the cutthroat agreement. For this reason, Objective 3 of the Cutthroat Agreement states “Seek collaborative opportunities to restore and/or expand each cutthroat trout subspecies into selected suitable habitats within their respective historical ranges.”

Protecting suitable habitats so as not to preclude future restoration opportunities is critical in order to meet this objective. Impacts from oil and gas development (e.g. sedimentation, water contamination) could compromise the long-term suitability of streams for reintroductions, thereby limiting the ability to meet Objective 3 of the Cutthroat Agreement. For this reason, MTU requests that the BLM include a ½ mile NSO buffer for streams suitable for Yellowstone cutthroat trout reintroductions; this stipulation is included in Alternative B.

Recognizing the need to protect both existing cutthroat populations and also restoration opportunities, the neighboring Butte Field office adopted a ½ mile NSO in their RMP (2009) for streams suitable for cutthroat trout reintroductions. It should be noted that the BLM’s Instruction Memorandum 2010-117 - Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews, speaks to the need for stipulation consistency for like resources across planning areas boundaries. Specifically, IM 2010-117 states, “ The IDCR Teams will work with the field offices within their state(s) and across state administrative boundaries to ensure lease stipulations edge-match appropriately across BLM administrative boundaries and other appropriate units such as a species range or an ecoregion.

Given the Cutthroat Agreement’s objective of reintroducing cutthroat trout into suitable habitats, and that doing so necessitates maintaining water and habitat quality in those streams that are suitable until reintroductions can occur, including a ½ mile NSO buffer for these streams is a measure that MTU requests. Moreover, this will ensure consistent management across administrative boundaries between the Butte and Billings Field Offices.

Lastly, MTU recognizes that current data identifying “suitable habitat” (Map 28, YCT Suitable Recovery Habitat) is a coarse scale and upon field truthing, it is likely that some of the streams identified as suitable would not be considered suitable for reintroductions due to water quality/quantity issues, feasibility of removing non-native species or other factors. However, given that this is an RMP scale planning, not site-specific, it is appropriate to utilize this coarse scale and reserve site-specific determinations on the suitability for YCT reintroductions until a development project is proposed and a site-specific analysis is initiated. If, at the time of a site-specific analysis for either a lease sale or an application to drill (APD), it is determined that a given stream is not suitable for YCT introductions, the ½ mile NSO stipulation could then be waived. However, it is important to include the ½ mile NSO set-back stipulation at the time of leasing so as to preserve management options within the 10-year term of a lease due to the fact that suitability determinations and local circumstances could change within that period of time. Utilizing this approach will ensure that a determination of suitability, and applicability of this stipulation will occur on a lease by lease basis, using the best available information at the time that a lease is nominated and considered for sale by the BLM or that an APD is submitted.

- *½ mile NSO buffer for Red Ribbon Streams*

As discussed, above, the MRIS is a ranking system used to quantify fisheries values. In the planning area, Red Ribbon (Class II) streams include Rosebud Creek including both the East and West forks, Rock Creek and the Yellowstone River downstream of the Blue Ribbon portion. While not as high of value as Blue Ribbon Streams, these are still very important fisheries that require protections in order to ensure that oil and gas development does not impair either the habitat or recreational values that are evaluated to determine stream classifications. Additionally, Rosebud Creek is the largest tributary to the Stillwater River, a Blue Ribbon Stream; protecting Rosebud Creek will help to ensure the integrity of the Stillwater River. For these reasons MTU urges the BLM to adopt a ½ mile NSO buffer for Red Ribbon streams.

- *¼ mile NSO buffer for Riparian, Waters and Fisheries*

MTU supports a ¼ mile NSO buffer from all perennial streams, as included in Alternative B. Doing so would protect those streams that serve as spawning areas for Blue and Red Ribbon streams. Additionally, the effects of oil and gas development along tributaries stream can be just as harmful as the effects of development directly along a designated stream section – after all, sediment and spills flow downhill. The only way to truly protect a fishery is to protect the entire fishery, tributaries and all. By applying a ¼ mile set-back for all perennial streams, this would be achieved. Moreover, there are important warm water fisheries that might not be significant recreationally, but that have biological importance (besides YCT) that would not have any significant degree of protection without a ¼ mile set-back for all perennial streams.

3) Additional Comments

In addition to the stipulations recommended above, MTU offers the following comments for consideration as BLM prepares the FEIS and proposed RMP:

- *Montana Fish Wildlife and Parks concurrence needed for stipulation exceptions, modifications or waivers.*

MTU is concerned with the exceptions, modifications or waivers (EMW) language that is included in resource stipulations; specifically, MTU feels that not just consultation with Montana Fish Wildlife and Parks (FWP) needs to occur, but that there needs to be concurrence with Montana FWP biologists before a stipulation for fisheries or wildlife protection is waived, modified or excepted. For example, as written the ½ mile buffer for YCT conservation populations may be waived “if the authorized officer determines that the entire leasehold can be occupied without adversely affecting Yellowstone cutthroat trout populations and Yellowstone cutthroat trout habitat.” (Appendix C-181) At Appendix H-22, the proposed RMP specifies that exceptions and waivers require FWP “consultation” but not concurrence. More concerning is that lease modifications (e.g. shrinking and NSO buffer from ½ mile to ¼ mile) does not require any consultation with FWP. Given that BLM is the land manager, but throughout the DEIS states that FWP manages the resources, it is imperative that the agency responsible for managing the resource concur with any determination that a lease exception, modification, or waiver will not adversely affect that resource.

- *Impacts analysis needs to consider both sedimentation and spills*

The impacts analysis only considers the effects of sedimentation, see 4-303: “These NSO stipulations and consistent surface disturbing management actions would protect fisheries resources by minimizing potential habitat degradation resulting from surface disturbance; erosion and sedimentation, weed infestation, direct habitat alteration.” While this is true, it is important to note that there are two potential sources of impacts from oil and gas development, 1) surface disturbances and associated erosion and sedimentation, and 2) contamination from spills and other accidental releases of chemicals and wastes associated with drilling and production and activities. Any development within the watershed of a fish bearing stream introduces the risk of a spill and the resultant impacts to aquatic habitat and fisheries; these impacts can range from minimal to catastrophic depending on the severity or a given spill. These impacts need to be analyzed and a risk assessment provided in the EIS. Moreover, the dual nature of oil and gas impacts emphasize the need for ½ mile NSO buffers for sensitive coldwater fisheries – the greater the spatial separation between oil and gas development and surface waters, the less chance that a spill will reach and impact a given water body.

Contamination events associated with oil and gas development have resulted in local extirpation of trout populations, as noted the Riley Ridge Natural Gas Project EIS (BLM, 1983):

For the Riley Ridge Project, the probability of a spill cannot be quantified, but is probably low. However, the resultant effects of a spill would be significant if it occurred in a stream containing Colorado River cutthroat trout since these trout are a unique resource in the region. In 1972 Pine Grove Creek was contaminated by an uncontrolled salt water flow encountered during drilling of an oil well; as a result most of the 1,159 cutthroat trout stocked in the river were killed.

Elsewhere, land management agencies have recognized that spills are a reality in oil gas development, even with environmental protection measures. The Dixie National Forest's Oil and Gas Leasing EIS (2010) stated:

There is at least some indefinable probability that spills or failures in environmental protection measures could occur, with consequent impacts to water resources ranging from negligible to major. The history of oil and gas activities throughout the country indicates that even though improvements have been made in procedures, chemicals used, and environmental protection; unforeseen spills, ruptures, and leaks, can occur. The recent track record of oil and gas companies may be quite good, but it is not perfect – nor can it be expected to be perfect in the future.

Moreover, spills have been shown to travel up to a mile¹ before reaching surface waters. Given that there is no way to completely abate the risk of a spill, the fact that a single incident could wipe out a population of trout, it is important to include this in the impacts analysis.

- *Impacts analysis should consider the cumulative effects of climate change*

At 4-290, the draft EIS states that “Local climate patterns of historic record and related conditions for plant growth would continue during the analysis period.” We feel that it is important to not assume impacts based upon historic climate patterns, but rather to base impacts on climate patterns predicted by the best available climate change modeling. Increasing periods of drought, winter flooding, increased severity and occurrence of wildfire, and increasing summer temperatures are all compounding factors associated with climate change that will exacerbate aquatic habitat impacts associated with land use activities. Reducing the effects of land use activities (e.g. applying a ½ mile NSO set-back versus a ¼ mile NSO set-back) will help to offset the effects of climate change by increasing the resiliency of watersheds that support coldwater fisheries. Conversely, management decisions that result in a higher degree of impacts will intensify the effects of climate change, especially on coldwater fisheries.

¹ A spill on July 12, 2011 on the Blackfeet Reservation, MT traveled nearly a mile down a ravine before reaching Cutbank Creek http://billingsgazette.com/news/state-and-regional/montana/oil-spill-cleanup-on-blackfeet-reservation-finished-after-weeks/article_411cacd4-cd8a-11e0-8f44-001cc4c03286.html

TU completed a coarse scale analysis (Haak et al. 2010)² that analyzed four risk factors with direct implications for coldwater fisheries: summer temperature, persistent drought, increased wildfire, and increased winter flooding. Our assessment used a 3°C increase in air temperature, which is consistent with higher end Global Climate Model projections for the western United States by 2050 (Climate Impacts Group, 2004), to determine the risk to trout populations. The results were summarized by specie (including Yellowstone cutthroat trout) and analyzed to determine the likelihood of population persistence based on information drawn from the literature on relationships between persistence and fish abundance, habitat connectivity and patch size for each taxon. The results of this analysis were combined with the results of the coarse filter evaluation to provide a spatially explicit characterization of extirpation risk to native trout populations. Applying this kind of modeling to the Billings Resource Area would allow the BLM to scientifically analyze the effects of climate change on coldwater fisheries, as well as the cumulative effects that would result from additional stressors on the environment caused by land use activities authorized by the BLM. If the planning team has any questions or would like more information about TU's climate change assessment and modeling, please contact us.

- *As warranted, apply lease stipulations to existing leases as conditions of approval to existing leases*

MTU recognizes that the BLM cannot categorically apply new stipulations or restriction on valid existing leases. However, BLM can impose (as conditions of approval (COA)) reasonable measures to minimize adverse impacts on other resource values, including restricting the siting or timing of lease activities.³ It is important note that these restrictions as necessary and justified by the BLM in order to prevent adverse impacts. Because the stipulation to be brought forward will have undergone rigorous review by the BLM cooperating agencies and the public, they will be reasonable and if applicable should be considered as COA for existing leases. MTU recommends that the revised RMP specify that 1) the BLM has the authority to apply COA that, if warranted, can be more restrictive than existing stipulations on a lease, and that 2) the stipulations approved in the revised RMP will be considered as COA for APDs. That is not to say that the new stipulations will automatically be applied to all leases at the APD stage, but that the BLM will consider and evaluate the reasonability of applying the stipulations brought forward in the revised RMP as COA.

- *Update references to the Cutthroat Agreement*

At 1.5.2, the DEIS lists the Conservation Agreement for Yellowstone Cutthroat Trout (1999) under State Plans; the more current Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout and Yellowstone Cutthroat Trout in Montana (2007) incorporates and updates the 1999 Conservation Agreement and

² <http://www.tu.org/sites/www.tu.org/files/documents/OF10-1236.pdf>

³ *Yates Petroleum Corp.* 176 IBLA at 146 <http://www.oha.doi.gov/IBLA/Ibladecisions/176IBLA/176IBLA144%20YATES%20PETROLEUM%20CORPORATION%209-30-2008.pdf>

should replace the 1999 agreement in this section. Additionally at 3.5.8.3, the Affected Environment discussion should incorporate the Cutthroat Agreement by discussing the BLM's commitments as a signatory and also include the goal and objectives of the MOU and agreement. Doing so will provide context and rationale for the stipulations developed to protect both existing YCT populations and streams suitable for YCT reintroductions.

- *Specify that resource protection stipulations will apply to all of the BLM administered mineral estate.*

In Table 2-1, for many of the stipulations listed - including Fisheries - the table specifies that the acres affected only BLM surface. Does this mean that the BLM intends for resource protection stipulations to only apply to BLM surface lands and not the entire BLM administered federal mineral estate (including split-estate)? It is imperative that resources protection measures developed for BLM authorized activities - such as oil and gas development - include protective stipulations, regardless of surface ownership. The BLM has the authority to apply resource protection stipulations to split estate lands, as noted in the DEIS:

In summary, while the BLM does not have the legal authority in split estate situations to regulate how a surface owner manages his or her property, the agency does have the statutory authority to take reasonable measures to avoid or minimize adverse environmental impacts that may result from federally authorized mineral lease activity. (DEIS, Appendix G)

Moreover, in order to meet the consistency requirements of FLPMA the BLM is legally required to apply the same standard of environmental protection to split estate lands as to federal surface. Lastly, the FEIS for the Butte Field Office specifies that stipulation will apply all public domain minerals (chapter 5, p. 761) Given the BLM's authority and legal responsibility to apply resource protection stipulations to all BLM administered federal minerals including split estate, this should be clarified in the EIS and the acreages affected by stipulations should be revised.

- *Maximizing fisheries protection will have a negligible effect on opportunities for oil and gas development*

When considered in the context of the scale of the decision areas, the acres affected by fisheries stipulations are minimal; under Alt. B, the "Conservation Alternative", all of the fisheries stipulations added together (not accounting for stipulation overlap) amounts to 65,245 acres, or 9.6% of the Federal fluid mineral estate in the planning area.

Additionally, these acres are linear along water bodies, meaning that using directional drilling (1/2 mile is easily achievable using today's technology), all of these NSO acres will still be developable for oil and gas. By selecting the fisheries protections included in Alternative B, the BLM can minimize risk to sensitive coldwater fisheries, without compromising the ability of the industry to access oil and gas resources.

III) Conclusion

Thank you for the consideration of our comments. We hope that the planning team will find them useful and we look forward to working with the Billings Field Office throughout remainder of the RMP revision process.

Sincerely,



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