



# United States Department of the Interior



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

In Reply Refer To:

3100 (922.JB)  
MTM 98728

February 12, 2009

January 27, 2009 Competitive Oil & Gas Lease Sale

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

## Decision

Stephen G. Reich  
1416 Tusca Trail  
Winter Springs, Florida 32708-3900

## Protest Dismissed

On January 12, 2009, we received your letter of protest (Enclosure 1) in which you and Mr. Russell Gordy protested the offering of parcel MT 01-09-01 on our January 27, 2009, competitive oil and gas lease sale. This parcel is located in Sweetgrass County within the boundaries of the Bureau of Land Management's (BLM) Billings Field Office.

In a phone conversation you had with Mr. John Bown, you specifically stated that your concerns are associated with a portion of the parcel described as the NW1/4NW1/4 of Section 32. For the purpose of this response, we assume that your letter also pertains only to these lands. You note that these lands are adjacent to known sacred sites and historic properties and contain a high potential for National Register eligible historic and cultural properties. You also note that the lands may contain a buffalo jump. You requested that this tract not be leased because of these values.

The BLM appreciates your concern for resources on your surface. We believe that we have addressed these concerns with the addition to the lease of several mitigating measures affecting how operations would be conducted on the lands, should development be proposed. As you note in your letter, the lands are covered by the following lease notice:

"Lease is located adjacent to known sacred sites and historic properties, and contains high potential for National Register eligible historic and cultural properties. Lessees are notified that archaeological resource inventory and mitigation costs may be high within this area. A cultural plan of operations will be developed in consultation with the Billings Field Office and must be approved before field development takes place. All surface use plans will be presented to the Billings Field Office archaeologist for approval."

JB  
2/5/09  
D. Reinken  
2/5/09  
C. [unclear]  
2/5/09  
JHA  
2-7-09

As a surface owner, you would be involved in development of the required plan. In addition to the notice that you cite, the parcel is also covered by a second lease notice found on page 24 of the sale notice that states in part:

“The Surface Management Agency is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures.”

Finally, the parcel would also be subject to the following stipulation found on page 22 of the sale notice:

“This lease may be found to contain historic properties and/or resources protected under the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, E.O. 13007, or other statutes and executive orders. The BLM will not approve any ground disturbing activities that may affect any such properties or resources until it completes its obligations under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration or development proposals to protect such properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated.”

We believe that these two lease notices and one lease stipulation provide adequate opportunities for protection for any cultural or historic resources that may be located on the portion of the lease parcel in question. If any development activity is proposed, the BLM and lessee/operator would work with you as a surface owner to try to protect cultural and heritage values.

Based on the information garnered from our analysis and in consideration of the points raised in your letter, there did not appear to be sufficient justification to exclude the 40 acres from the parcel to be offered.

**Decision:** For the reasons stated above, your protest is dismissed. If you wish, you may appeal this decision. This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 (Enclosure 2) and the enclosed Form 1842-1 (Enclosure 3). If an appeal is taken, the Notice of Appeal must be filed in the Montana State Office at the above address within 30 days from receipt of this Decision. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file a petition for a stay pursuant to 43 CFR Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the Notice of Appeal, Petition for Stay, and any statement of reasons, written arguments or briefs must also be submitted to the Office of the Solicitor at the address shown on Form 1842-1 at the same time the original documents are filed in this office.

We are issuing a lease for the lands included in the protested parcel as it received an offer to lease. In case of appeal, the adverse party to be served is:

Pacer Energy Acquisitions, LLC  
310 S Miller Ave., Suite A  
Gillette, Wyoming 82716-3944

If you have any questions, please feel free to call John Bown at (406) 896-5109.

/s/ Gene R. Terland

Gene R. Terland  
State Director

#### 3 Enclosures

- 1-Letter of January 12, 2009 (1 p)
- 2-Form 1842-1 (1 p)
- 3-43 CFR 4.21(a) (2 pp)

cc: Billings Field Office

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