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BUREAU OF LAND MANAGEMENT
EASTERN STATES OFFICE

U.S. Department of the Interior
Bureau of Land Management
Eastern States Office
7450 Boston Boulevard
Springfield, VA 22153

RE: Protest for March 19, 2009 Pendleton County, West Virginia BLM Competitive Oil & Gas Lease Sale

Specific Protest to Parcel Numbers: ES-066-03/09 (WVES 55656 ACQ)

To Whom It May Concern:

Please accept the following protest on behalf of Trout Unlimited pursuant to the Bureau of Land Management's (referred to in the remaining document as "BLM") oil and gas lease sale offerings of certain parcels within the Monongahela National Forest in West Virginia, scheduled to be offered at the March 19, 2009 BLM Competitive Oil and Gas Lease Sale. Trout Unlimited (referred to in the remaining document as "TU") specifically protests the individual parcels identified above for the following reasons, with detailed discussion of these reasons further in the document:

- The proposed parcels for sale are located within crucial fisheries and wildlife habitats, and include populations of native Eastern brook trout, which are recognized as a Management Indicator Species (MIS) in the 2006 Monongahela Forest Plan (MFP).
- The process has failed to follow Forest Plan Implementation guidelines, particularly pertaining to site-specific planning as described within the MFP.
- The BLM and the U.S. Forest Service consider areas within and surrounding these lease parcels to be of high value to the outdoor recreation industry, which includes hunting, fishing, tourism, local communities, and the state of West Virginia. The BLM should not offer these lease parcels for sale until a full economic impact analysis be completed that addresses these impacts.
- There is no indication, primarily due to the lack of a recognized NEPA process, that consideration of the Clean Water Act provisions relating to Antidegradation have been recognized or addressed.
- The BLM and U.S. Forest Service have not completed a thorough analysis on the potential groundwater impacts and its associated relationship with surface water resources that can occur from drilling within these proposed lease parcels.

Interests of the Protesting Party

TU is a private, non-profit conservation organization that has more than 140,000 members nationwide dedicated to conserving, protecting and restoring North America's trout and salmon fisheries and their watersheds. Since 1959, TU has dedicated staff and volunteers toward the protection of sensitive ecological systems necessary to support robust native and wild trout and salmon populations in their respective range. TU recognizes that the value of public lands is unparalleled in providing habitat to coldwater fisheries, drinking water and wildlife habitat. TU's expanding conservation program includes a sportsmen's conservation project that recognizes the importance of protecting public lands for the survival and restoration of wildlife and fisheries. TU's sportsmen's conservation project is not limited to anglers; TU recognizes that many people who fish on public lands also hunt. TU believes that actions taken on public lands are ultimately reflected in the quality of fish and wildlife habitat and populations.

In West Virginia, TU has over 1,600 members and 8 state chapters whose members actively utilize and enjoy the resources of the many rivers and watersheds located on West Virginia's U.S. Forest Service lands. Attributes of these lands and watersheds include clean water, clean air, fishing, hunting, and wildlife viewing opportunities. TU members are active participants in a variety of outdoor recreational and business pursuits within and near the lease sale parcels. TU believes the impacts from the development and production of these oil and gas leases will adversely affect coldwater fisheries, our members, as well as other non-members who hunt, fish, recreate, and do business in and around these lease sale areas.

Potential Impacts and Influences not Duly Considered, Protests to Lease

Headwater areas such as Brushy Run are critical from a protection standpoint to downstream water supplies and overall watershed health. An important part of aquatic ecosystem management is the link between aquatic habitat conditions and watershed conditions. Even slight disturbances in an area as sensitive as Brushy Run can create compounded impacts further downstream, with increased sediment loading being of primary concern. Other concerns associated with land management activities are increased water temperatures, decreased habitat and habitat fragmentation. Additional roads and site disturbances could result in modified drainage patterns, increased sheet runoff increased erosion and sedimentation. Eighty-four percent of MNF lands in the North Fork of the South Branch Potomac, which is a fifth-level watershed containing Brushy Run, is classified as being highly erosive due to soil types and topography. Soil disturbances at the proposed lease areas have a potential to degrade the aquatic system and suppress the resident Eastern brook trout population. Headwater species, such as Eastern brook trout, are naturally in closer proximity to management actions and more susceptible to those actions resulting in a far greater influence on population viability. Current management of U.S. Forest Service lands has the greatest potential to influence wild trout populations by directly altering in-stream habitat conditions, by affecting natural watershed processes that indirectly influence in-stream habitat conditions, and by changing access to wild trout streams. These factors must be taken into consideration, but we see no indication that these issues have been addressed.

An additional influence affecting the resident Eastern brook trout population is the fact that this specific population is isolated from the mainstem of Seneca Creek for the largest part of the year due to downstream impacts. Illegal, and ill-advised, dredging of lower Brushy Run occurred after major flood events in 1985, and again in 1996. A large part of the lower stream segments were rendered both uninhabitable and impassable except under certain higher flow conditions. Any further stress factors on the remaining population could easily lead to the loss of Eastern brook trout in Brushy Run.

There is no evidence that buffer zone requirements within the MFP have been considered in the lease sale. The existing road into the MNF is an old logging road bed that closely parallels the mainstem of Brushy Run, with many portions of the road running within the 100' buffer zone exclusion area. Any attempts to upgrade this road to a level that could be used by large trucks would cause serious levels of disturbance and riparian vegetation removal to meet necessary standards. These types of activities would assuredly result in undesirable impacts to the aquatic habitat and riparian habitat and cause increased sediment and temperature impairments to the stream.

There is also a failure in any information made available addressing the withdrawal of water needed for the drilling operations. Water withdrawal from Brushy Run or Seneca Creek would be unacceptable due to flow conditions too low to significantly draw upon, and the strong possibility of pump failure and back flushing that could result in fish kills and water quality impairments in high quality streams. The closest location for acceptable water withdrawal would be in the Tygart River backpool near Elkins, West Virginia which would be slightly over one-hour away across high mountain roads.

Applicable Statutory, Regulatory, and Executive Requirements

A. NEPA Process

TU believes the BLM and the U.S. Forest Service have failed to consider important aspects of protecting the immediate vicinities of river and stream segments with the above identified parcels and requests that these parcels be withdrawn from the lease sale. TU has identified these parcels as occurring in Eastern brook trout habitat that contain viable populations. Recent studies on impacts to fish and wildlife populations further support the negative impacts that oil and gas drilling is having on critical habitat which supports fish and wildlife. When compared to other BLM and U.S. Forest Service leasing decisions that provide more protective stipulations, the lease specifications on the contested leases demonstrate a lack of adequate protection measures for fish and wildlife that further justify TU's concerns.

The 2006 MFP was created and approved under a very broad NEPA process with the intention of implementing the MFP on a broad, landscape scale. The understanding, as clearly expressed within the MFP, was that more specific NEPA processes and implementation plans would be carried out at more site specific levels as land management activities were presented. There is a failure to comply with that process in this case. There has been no indication of a NEPA process to consider these proposed leases.

Additionally, the 2006 MFP speaks directly to site specific planning involving Watershed Assessment, Inventory of Watershed Condition, NEPA Analysis, and planning for Monitoring

and Evaluation. TU can find no evidence that any of these requirements have been addressed or included in the decision to make these leases available for development.

B. Clean Water Act Compliance

The portion of Brushy Run located on MNF lands contains a native Eastern brook trout population, which results in this portion of the stream being classified as a Tier 3 designated stream under Antidegradation Rules of West Virginia, as required and described under the Federal Clean Water Act. The West Virginia Rule clearly states that, "Tier 3 waters, or Outstanding Natural Resource Waters (ONRW), are to be maintained, protected and improved where necessary. Any proposed new or expanded regulated activity that would degrade (result in a lowering of water quality) a water body that has been designated an ONRW, other than temporary lowering of water quality, is prohibited." The Tier 3 designation of Brushy Run has clearly not been taken into consideration in preparation of making the proposed leases available. The review of all activities that may affect the existing water quality must be evaluated to determine no significant impact prior to any further movement toward development.

Irretrievable Commitment of Resources at Leasing Phase

TU's leasing concerns discussed above are amplified by the BLM's practice of vesting development rights at the time of lease issuance, regardless of specific resource concerns that might arise between the time of leasing and the time of actual development. This practice can lead to situations where the agency is precluded from imposing necessary stipulations for protection of resources because such stipulations are perceived to infringe on the vested rights of the lessee.

Because of the practice of vesting development rights at the time of lease issuance, though, TU is concerned that should a site-by-site analysis reveal that a particular parcel is not appropriate for surface occupancy, or other types of impacts, that the BLM's hands would be tied, and the agency would be unable to effectively protect the resource. This process should not be allowed to move forward to that level of commitment at this time due to the lack of site-specific NEPA processes and other required and necessary information that is lacking or missing altogether.

A. New Significant Information Exists Concerning Impacts to Eastern Brook Trout

TU has completed these analyses across the entire range of Eastern brook trout and has found that more than 50 percent of the remaining habitat does not meet minimum supporting requirements for persistence. Of the habitat that does meet these minimum requirements, over 70 percent are at high or moderate risk from climate change impacts. When taken in light of the fact that less than 55 percent of the historic range is currently occupied, every remaining population is critical to the survival of the species.

These findings also make clear that if interested parties, including the BLM and U.S. Forest Service, are to maintain the Eastern brook trout as a viable native species, populations will need more habitat options than are currently available. One of the key points in the 2006 MFP Forest Plan Direction is to maintain or improve habitat for native Eastern brook trout. In other

words, we not only need to protect existing habitat, but we also need to restore other areas that have already been lost both in terms of populations and habitat. Given current habitat degradation and global warming-induced environmental change, sites that offer potential habitat for the future should not be further degraded or lost because connectivity between isolated populations of Eastern brook trout will be critical to future survival of the species. It will also be necessary for all Eastern brook trout populations to have access to thermal refugia and new habitats after fires and floods.

B. Lack of thorough Recognition of Groundwater Analysis and Relationship to Parcels being Offered

Springs from aquifers occur within these resource management areas where the BLM has parcels for sale. These springs supply important water to Eastern brook trout streams. The lack of groundwater analysis and understanding of the relationship between surface and groundwater systems by the BLM and the U.S. Forest Service is a significant challenge to the maintenance and long-term survival of Eastern brook trout populations. Within the U.S. Forest Service, little research has been allocated toward better understanding the groundwater and surface water relationships that supply water downstream to millions of Americans. There is also a lack of information for the relationship of groundwater spring systems in Pendleton County, West Virginia, but what is known is that the limestone system is vast, and can be easily degraded by uninformed land management decisions. However, that relationship is vital to the survival of fisheries and wildlife, and sustaining groundwater systems must be considered when federal agencies allow projects that require use of, or affect, these groundwater systems.

In summary, TU is extremely concerned with the prospect of oil and gas development in watersheds containing Eastern brook trout because of the outdated and inadequate groundwater analysis. New information exists requiring the BLM to undertake supplemental environmental analysis.

Failure to Accurately Depict the Location of Leases

Given the documents provided in the Competitive Lease Sale Notice, it is difficult at best for the public to understand where the leases are located. As a result, it is extremely difficult for the public to offer meaningful public comment and analysis. The map made available with the sale notice is only available in hard copy. In this era of online communications, providing a map online with the lease sale notice is practical and the U.S. Forest Service and BLM provide maps of lease parcels online elsewhere, particularly for lease sales in western states. Also, the description of lands given in the lease sale notice is of little value for determining the actual location of the tracts. Additionally maps are required to show the relation of leases to existing leases. TU believes that the failure to map and accurately describe the location of the lease constitutes a violation of the Federal Onshore Oil and Gas Leasing Reform Act (F00GLRA) which 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 lands to be leased, and of all leases already issued in the general area.*" 30 U.S.C. § 226f emphasis added.

Conclusion

The NEPA documents related to the 2006 MFP upon which the BLM has relied upon to offer public land for mineral development are not sufficient for site specific application. TU feels that the agencies' assessments and findings fail to acknowledge the significant commitment to development and production that arises upon issuance of a federal oil and gas lease. Absent comprehensive and complete analysis, the BLM will make irretrievable commitments of resources that are likely to harm fish and wildlife populations in West Virginia, air quality and water quality sources, as well as the members of the public who enjoy recreational and business opportunities on and around public lands.

TU respectfully requests the withdrawal of those identified lease parcels until adequate analysis of impacts associated with water quality, recreation, Eastern brook trout populations, air quality, climate change/drought, and the resource management plans are completed.

Sincerely,



Chris Shockey
Chairman, West Virginia Council of Trout Unlimited