



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>

February 12, 2009

In Reply Refer To:

3100 (MT922.JB)

MTM 98728, MTM 98729, MTM 98730, MTM 98731,
MTM 98732, MTM 98733, MTM 98734, MTM 98736,
MTM 98737, MTM 98738, MTM 98744, MTM 98745,
MTM 98748

January 27, 2009 Competitive Oil & Gas Lease Sale

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Decision

Michael Gibson
Outreach Director, Montana Trout Unlimited
P.O. Box 7186
Missoula, Montana 59807-7186

Protest Dismissed

On January 12, 2009, we received your protest filed on behalf of Montana Trout Unlimited (TU) (Enclosure 1). You protested the January 27, 2009, competitive oil and gas lease sale of the following parcels: MT 01-09-01 through 07, MT 01-09-09 through 11, MT 01-09-17, MT 01-09-18, and MT 01-09-21.

Parcels MT 01-09-17, MT 01-09-18, and MT 01-09-21 are located in the Dillon Field Office (FO). Leasing decisions for those parcels are found in the Record of Decision (ROD) and Approved Dillon Resource Management Plan (RMP) signed on February 7, 2006. Parcels MT 01-09-01 through 07 and MT 01-09-09 through 11 are located within the boundaries of the Billings FO. Leasing decisions for those parcels are found in the Miles City District Oil and Gas RMP/Environmental Impact Statement (EIS) Amendment ROD approved in February 1994.

The protests are addressed below on a FO basis.

Protest - Dillon FO: The protest states:

“According to the sale notice and list, CSU stipulation 12-13, a stipulation for the protection of lands within ½ mile of the center line of streams with Westslope cutthroat trout with genetic purity between 90-99% is only applied to leases 1-09-19 and 1-09-20. This stipulation should also be applied to leases 1-09-17,

2/16/09
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C.D.
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2-10-09

1-09-18, and 1-09-21. These leases are all located within ½ mile of Cabin Creek, a stream that supports Westslope cutthroat trout with a genetic purity of 98% according to genetic sampling conducted on 6/20/2000. If stipulation CSU 12-13 is not applied, or there are any remaining questions about the genetic purity of these populations of Westslope cutthroat Trout, MTU requests that these leases be deferred.”

Response: The Bureau of Land Management (BLM) has determined that lease parcels MT 01-09-17, MT 01-09-19, and MT 01-09-21 are correctly stipulated. Cabin Creek is a Westslope cutthroat trout fishery only in the headwaters over 6 miles upstream from these lease parcels. The headwaters are on United States Forest Service (USFS) and BLM lands; downstream Cabin Creek is diverted for irrigation and is dry during the summer. The stretch of Cabin Creek downstream from BLM land in T. 14 S., R. 12 W, Section 1, is dry, and not a fishery. Therefore, CSU stipulation 12-13 is not appropriate for these leases.

Protest – Dillon FO: The protest notes:

“...the sale list had applied stipulation NSO 11-20 to leases 1-09-17, 1-09-19, and 1-09-20. However this stipulation is for Blue Ribbon Trout Streams and MTU believes that this stipulation has been applied in error to these leases. The closest Blue Ribbon Trout Stream is the Beaverhead River, located over ten miles away. While this is not necessarily a protest point MTU wanted to take this opportunity to notify the BLM of this discrepancy.”

Response: The BLM appreciates this information. After review, we have deleted the stipulation in question from these parcels.

Protest – Billings FO: The protest notes that:

“...the only lease stipulations that would be beneficial for coldwater fisheries are CSU 12-1 for slopes over 30%; NSO 11-2 for riparian areas and 100-year floodplains; and NSO 11-5 for designated reservoirs with fisheries which affects one lease, 1-09-14. In effect, this would allow development in many drainages that currently contain Yellowstone cutthroat trout (YCT) or have the potential for restoration and reintroduction of this species listed as ‘Sensitive’ by the BLM. Also at risk would be the designated Blue Ribbon Trout Streams in the Field Office, specifically the Yellowstone and Boulder Rivers. When comparing the stipulations that have been applied to these contested leases to similar stipulations that other BLM Field Offices have developed for these same resources native cutthroat trout and Blue Ribbon Trout Streams it is clear the stipulations for the Billings Field Office fall far short of what have been deemed necessary and prudent levels of protection elsewhere.”

The protest further requests that:

"Because the BLM has not applied any protections specific to Yellowstone cutthroat trout of Blue Ribbon Fisheries, MTU requests that at a minimum, the sale of these leases be deferred until the release of the new Billings RMP, for which draft alternatives are currently being developed. Additionally, we request that the Billings RMP adequately identify YCT populations, habitat conditions, restoration potential in drainages within the planning area, cumulative impacts and develop effective stipulations, as has already occurred in the Dillon and Butte Field Offices."

Response: The BLM acknowledges that available lease stipulations for the Billings FO are different from those recently adopted for the Dillon RMP and under final consideration for the Butte RMP. Oil and gas lease stipulations for the Billings FO were developed in the Miles City District Oil and Gas Amendment approved in the 1994 ROD which contains oil and gas leasing decisions for the FO. Applicable stipulations from this plan amendment were applied to all the lease parcels on the January sale.

As you noted, the BLM is working on a revised Resource Management Plan (RMP) for the Billings FO. The start date for the new Billings RMP was in 2008 with a tentative completion date in 2011. In the interim, during plan preparation, the BLM is leasing in areas that the FO determines available for leasing following a determination of compliance with the National Environmental Policy Act (NEPA) and other applicable statutes. This is in line with BLM policy established in Washington Office Instruction Memorandum IM No. 2004-110 (Enclosure 2). As noted in that IM, it is our policy to follow current land use allocations and existing land use plan decisions for oil and gas and related energy actions during preparation of land use plan amendments or revisions. Oil and gas leasing allocations are made at the planning stage and the EIS associated with the RMP is intended to meet the NEPA requirements in support of leasing decisions.

General policy for all resources and resource uses is found in our planning handbook (BLM Handbook, H-1601-1 - Land Use Planning Handbook). The Handbook points out that "existing land use plan decisions remain in effect during an amendment or revision until the amendment or revision is completed and approved." Finally, the Handbook notes:

"...a decision to temporarily defer an action could be made where a different land use or allocation is currently being considered in the preferred alternative of a draft or proposed RMP revision or amendment. These decisions would be specific to individual projects or activities and must not lead to an area-wide moratorium on certain activities during the planning process."

The BLM provided additional clarification to IM No. 2004-110 in the form of IM No. 2004-110, Change 1 (Enclosure 3), in August 2004. That change to the original memorandum provides additional guidance when the BLM has developed alternatives and has released a draft RMP/EIS for public review. The IM also reemphasizes the importance of considering temporary deferral of oil and gas leasing in those areas with active land use planning activities. This IM was intended to provide flexibility, and to reemphasize the discretionary authority of the State Director to temporarily defer leasing of specific tracts of land when there are legitimate BLM recognized resource concerns identified in a draft or proposed final RMP. The Billings RMP revision is in a very early stage and a draft RMP with a preferred alternative has not been developed for the revision. We did defer a small portion of parcel MT 01-09-11 because of its proximity to the river and also a portion of parcel MT 01-09-22 due to the presence of a rural subdivision. You have not provided any significant new circumstances or information bearing on the environmental consequences of leasing which were not within the broad scope analyzed previously in the governing RMPs to support deferring leasing of the remaining parcels. All required stipulations for steep slopes, riparian areas, flood plains, and designated reservoirs with fisheries adopted in the Miles City Oil and Gas Amendment were applied to the protested parcels in the Billings FO.

Decision: For the reasons stated above, your protest is dismissed. 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 4) and the enclosed Form 1842-1 (Enclosure 5). 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 leases for the lands included in the protested parcel as they received offers to lease at the sale or after the sale. In case of appeal, the adverse parties to be served are:

Contex Energy, 621 17th Street, Suite 1020, Denver, CO 80293-2501
CP Energy Inc., 341 Doucet Rd, Lafayette, LA 70503-3443
Herco, P.O. Box 486, Billings, MT 59103-0486
Liberty Petroleum Corporation, 185 Candlewood Path, Dix Hills, NY 11746-5336
Pacer Energy Acquisitions LLC, 310 S. Miller Ave, Suite A, Gillette, WY 82716-3944
Renegade Oil and Gas Company, LLC, P.O. Box 80992, Billings, MT 59108-0992
Schlickeisen Ranch LLC, 201 W Rosemont Avenue, Alexandria, VA 22301-2627
TC Craighead, P.O. Box 576, Ardmore OK, 73402-0576

/s/ Gene R. Terland

Gene R. Terland
State Director

5 Enclosures

- 1-Letter of January 12, 2009 (7 pp)
- 2-IM WO 2004-110 (4 pp)
- 3-IM WO 2004-110, Change 1 (3 pp)
- 4-Form 1842-1 (1 p)
- 5-43 CFR 4.21(a) (2 pp)

cc: (w/encls.)

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Field Manager, Billings Field Office
Field Manager, Dillon Field Office

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