



United States Department of the Interior



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

In Reply Refer To:

3100 (MT9220.JB)

February 1, 2010

CERTIFIED-RETURN RECEIPT REQUESTED

DECISION

Mr. Dyrck Van Hyning
P.O. Box 2931
Great Falls, Montana 59403-2931

PROTEST DISMISSED

On January 7, 2010, we received your protest dated on the same date (Enclosure 1). You protested the January 26, 2010, Bureau of Land Management (BLM) Montana-Dakotas Competitive Oil and Gas Lease Sale as to one parcel located within the Lewistown Field Office (FO). The protested parcel is described as MT-01-10-01, with the following description which is also depicted on Enclosure 2:

T. 22 N., R. 19 E., PMM, MT
sec. 5: Lot 1;
sec. 6: Lots 1, 2;
sec. 6: SWNE;
Fergus County 160.24 AC

You have provided five reasons for your protest which we will address in order as follows:

1. "This lease sale Section 6 Lot I & 2 and Section 6 SWNE parcel is bordering on the Monument. There are no roads in these parcels. Gas activity would by definition create roads."

The protest is correct in noting that portions of the parcel are located adjacent to the Upper Missouri River Breaks National Monument (Monument) lands. However, it is incorrect in asserting that there are no roads in or adjacent to the protested parcel. Several roads are identified in the area as part of the existing road system in the Monument Record of Decision (ROD) of December 2008, Map 4 - Side B East Half Transportation Map. One road goes directly through Lot 1 of Section 5, and one road is just on the corner common to Section 6 in Lots 1 and 2, and in the SWNE of Section 6. The data for this map in the ROD was derived from USGS digital and mylar 1:100,000 scale maps.

In addition, area roads were mapped during a 2009 intensive inventory for the Gallatin Rapids Prescribed Fire Projects utilizing GPS technology. Existing, well traveled roads are located in

Section 5 in Lots 1 through 4, W2SE, NENW, and Section 6 in the SW. This information is available from our Lewistown FO and depicted on Enclosure 2.

2. “There has never been gas discovered in this township. Of the 14 gas well drilled in T22N, R19E, there is no gas found. No producing gas well in the next township T22N - R18E.”

The protest is correct in stating that there are no producing gas wells in T. 22 N., R. 19 E. and in T. 22 N., R. 18 E. However, there is an existing producing gas well in the SESW of Section 31, T. 23 N., R. 19 E., that has produced 109,323 mcf of gas, and is expected to produce a total near 120,000 mcf. This well is located 990 feet north of Lot 2 of Section 6 which is part of the protested lease parcel. Detailed information on this well is also available at the following site:

<http://bogc.dnrc.state.mt.us/onlinedata.asp>

Also, there were another seven wells that produced commercial gas within 4 to 5 miles of the parcel in T. 23 N., R. 19 E.

The protest ignores these facts, and the fact that there is production in the vicinity of the lease parcel.

3. “This is in the prime Big Horn Sheep area and winter range for mule deer (UMRBNM Proposed Resource Management Plan and Final EIS Map H and Map J)”

This parcel is within the boundaries of the bighorn sheep distribution area in and around the Monument as mapped by the Montana Fish, Wildlife and Parks (FWP) as noted in the protest. As noted on the map, the data is intended for display or analysis of big horn overall distribution only. The map is on a relatively small scale. The lease parcel also is within the boundaries of mule deer winter range as mapped by the same agency. As noted on that map, the data is intended for display and broad-scale landscape analysis of mule deer seasonal ranges, distribution, habitat, and habitat limiting factors.

The Monument RMP identified the following mitigation for Bighorn Sheep Distribution areas in the Monument as follows:

“Resource: Wildlife – Bighorn Sheep Distribution

Condition of Approval: Surface-disturbing and disruptive activities are prohibited from December 1 to March 31 within bighorn sheep distribution areas. Travel on identified designated roads may include these timing restrictions or limited site visits.

Objective: To protect bighorn sheep during the winter use season, and to facilitate long-term maintenance of wildlife populations.

Exception: An exception to this condition may be granted by the authorized officer if the operator submits a plan which demonstrates that impacts from the proposed action are acceptable or can be adequately mitigated.

Modification: The boundaries of the affected area may be modified if the authorized officer determines that portions of the area no longer contain bighorn sheep. The dates for the timing restriction may be modified if new wildlife use information indicates that the December 1 to March 31 dates are not valid for the area.

Waiver: This condition may be waived if the authorized officer determines that the affected area no longer contains bighorn sheep distribution.” (Monument ROD, p. 148)

The Monument RMP also identified mitigation for Big Game Winter Range as follows:

“Resource: Wildlife – Big Game Winter Range

Condition of Approval: Surface-disturbing and disruptive activities are prohibited from December 1 to March 31 within winter range for mule deer, elk and antelope. Travel on identified designated roads may include these timing restrictions or limited site visits.

Objective: To protect mule deer, elk, and antelope winter range from disturbance during the winter use season, and to facilitate long-term maintenance of wildlife populations.

Exception: An exception to this condition may be granted by the authorized officer if the operator submits a plan which demonstrates that impacts from the proposed action are acceptable or can be adequately mitigated.

Modification: The boundaries of the affected area may be modified if the authorized officer determines that portions of the area no longer contain winter range for wildlife. The dates for the timing restriction may be modified if new wildlife use information indicates that the December 1 to March 31 dates are not valid for the area.

Waiver: This condition may be waived if the authorized officer determines that the affected area no longer contains winter range for wildlife.” (Monument ROD, p. 148)

Any new lease for this parcel, which is located outside of the Monument, would be issued with a stipulation package that includes the following language. This stipulation language is included for all leases issued within the boundaries of the Lewistown FO:

“Controlled or Limited Surface Use Stipulation – This stipulation may be modified by special stipulations which are hereto attached or when specifically approved in writing by the Bureau of Land Management with concurrence of the surface management agency. Distances and/or time periods may be made less restrictive depending on the actual onground conditions. The prospective lessee should contact the surface management

agency for more specific locations and information regarding the restrictive nature of this stipulation....

After the surface management agency has been advised of specific proposed surface use or occupancy on the leased lands, and on request of the lessee/operator, the Agency will furnish further data on any special areas which may include:

100 feet from the edge of the rights-of-way from highways, designated county roads and appropriate federally-owned or controlled roads and recreation trails.

500 feet, or when necessary, within the 25-year flood plain from reservoirs, lakes, and ponds and intermittent, ephemeral or small perennial streams; 1,000 feet, or when necessary, within the 100-year flood plain from larger perennial streams, rivers, and domestic water supplies.

500 feet from grouse strutting grounds. Special care to avoid nesting areas associated with strutting grounds will be necessary during the period from March 1 to June 30 1/4 mile from identified essential habitat of state and federal sensitive species. **Wildlife winter ranges during the period from December 1 to May 15** (emphasis added), and in elk calving areas, during the period from May 1 to June 30.”

As can be seen, the stipulation for the subject lease parcel includes a level of protection within the scope of protection determined appropriate for the bighorn sheep distribution areas and big game winter range within the Monument.

We have been notified that the Lewistown FO reviewed detailed wildlife habitat information compiled jointly by FWP and the BLM during their review of the parcel. In addition, the FWP Region 4 wildlife biologist reviewed the lease parcel for wildlife concerns. Based on the results of these reviews, it was determined that any potential impacts to wildlife or their habitat would be adequately mitigated by the leasing stipulations for the subject parcel or site specific Conditions of Approval applied as a result of NEPA analysis of a prospective APD.

4. “On January 6, 2010 Interior Secretary Ken Salazar announced new oil and gas leasing regulations and guidelines per our Great Falls Tribune January 8, 2010. Under new guidelines, the paper states, teams from several agencies will consult and officials will physically inspect the sites rather than making decisions from behind their desks, Director of BLM Bob Abbey stated.”

Secretary Salazar did not issue new oil and gas leasing regulations and guidelines on January 6, 2010 as stated in the protest. On that date, he issued a Secretarial Order addressing energy management reform in the Department of the Interior in a broad manner. That document established a high level energy reform team within the Office of the Assistant Secretary of Lands and Minerals in the Department of the Interior. It will include personnel from the BLM, Office of Surface Mining, and the Minerals Management Service. There were also two documents released by the BLM that addressed a proposed new oil and gas policy for the BLM and a side-by-side comparison of process changes contemplated under changes that might result from

leasing reform policy. The announcement early in January of this year identified new policy direction that is still being developed by the Department of the Interior and the BLM. The documents cited can be found at the following location on the internet:

http://www.doi.gov/news/doinews/BLM_energy_reform.cfm

Additionally, we are also providing copies of all three posted documents and the Department of Interior's press release for your convenience (Enclosures 3 through 6).

Your protest does not provide any information to indicate why it is necessary for the BLM to withhold parcels from leasing based on the policy initiatives announced on January 6, 2010.

5. "This parcel should be suspended for the above reasons that no official has inspected this proposed lease location."

Your statement that no official has inspected the proposed lease parcel is incorrect. This parcel has been inspected a number of times by the Lewistown FO during 2009 for inventories of surface resources. These inspections were conducted to prepare a proposed prescribed fire plan in the area. Information from these inspections was considered during the Lewistown FO's review of the parcel.

Decision: As noted earlier, 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 4.21(a) (Enclosure 7) and the enclosed Form 1842-1 (Enclosure 8). 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 CER 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 at the sale. In case of appeal, the adverse party to be served is:

Kykuit Resources, LLC
505 West Main Street, Suite 307
Lewistown, Montana 59457

/s/ Gene R. Terland

Gene R. Terland
State Director

8 Enclosures

- 1-Protest of June 1, 2009 (3 pp)
- 2-Parcel Map (1 p)
- 3-Secretarial Order (2 pp)
- 4-New Oil and Gas Policy Fact Sheet (2 pp)
- 5-Comparison of Process Changes Resulting from Leasing Reform Policy (1 p)
- 6-News Release of January 6, 2010 (2 pp)
- 7-43 CFR 4.21(a) (2 pp)
- 8-Form 1842-1 (2 pp)

cc: (w/encls.)

Field Manager, Lewistown Field Office

Kykuit Resources, LLC
505 W. Main St., Suite 307
Lewistown, MT 59457