

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
LITTLE SNAKE FIELD OFFICE**

**Response to 30 Day Public Comments
February 2015 Oil and Gas Lease Sale
DOI-BLM-CON010-2014-0031EA
Attachment F**

Responses to Rocky Mountain Wild

Greater Sage-Grouse

Comment:

Parcels 7054 and 7060 are within important greater sage-grouse linkage areas. These areas are important as they connect populations and help promote genetic diversity and seasonal movement. Parcel 7054 contains no stipulations aimed at protecting the grouse.

Recommendation: BLM should defer these two parcels to ensure connectivity between populations is maintained and not disturbed by oil and gas development. At a minimum, increased stipulations should be attached to these parcels to ensure uninterrupted seasonal movement.

BLM Response: LS-107, which is designed to prevent fragmentation of sagebrush habitat, has been attached to Parcels 7054 and 7060. This stipulation would help maintain habitat that may be used for movement between occupied sage-grouse habitat.

Comment:

Many parcels are within designated Preliminary General Habitat (PGH) under the Northwest Colorado Sage-grouse RMP Amendment DEIS preferred alternative including Parcels 7017, 7018, 7036, 7041, 7052, and 7063 according to our GIS screen. All portions of these parcels falling within PGH should be deferred as well, in order to retain the decision space for “no leasing” or No Surface Occupancy for Preliminary General Habitats under the sage grouse-related RMP revisions and amendments currently underway, which provide the only legally sufficient EIS underpinning to allow leasing in the habitat of a Candidate Species. Parcels 7018 and 7036 fail to have any protective stipulations aimed at protecting this important sage-grouse habitat.

Recommendation: BLM should defer all parcels in PGH or at a minimum add stipulations aimed at protecting the important sage-grouse habitat on these parcels.

BLM Response: In accordance with BLM CO IM 2012-043, all parcels in PPH were deferred from leasing. Seven of the offered parcels are located in PGH. Based on the most recent CPW data, none of the parcels in PGH are located within four miles of an active lek and are not in nesting, brood-rearing or winter habitat. LS-107, which is designed to prevent fragmentation of sagebrush habitat, has been attached to all parcels that are located in PGH. This stipulation would help maintain sage-grouse habitat in PGH.

Comment:

Parcels 6950, 6951, 6954, 6955, 6969, 6970, 6973, 6974, 6976, 6977, 6981, 6982, 7009, 7013, 7014, 7015, 7016, 7017, 7018, 7019, 7027, 7036, 7041, 7052, 7060, 7063, 7068, and 7121 are within 4 miles of a greater sage-grouse lek. The lands within 4 miles of active leks are typically used for nesting, a sensitive life history period when sage grouse are sensitive to disturbance from oil and gas drilling and production activities. The current standard sage grouse stipulations

that apply outside Core Areas are biologically inadequate, and their effectiveness has not been established by BLM. Indeed, scientific studies demonstrate that these mitigation measures fail to maintain sage grouse populations in the face of full-field development, and significant impacts in terms of displacement of sage grouse from otherwise suitable habitat as well as significant population declines have been documented.

Recommendation: BLM should defer these parcels at the lease sale stage or at a minimum, increase protective stipulations to ensure this sensitive habitat is protected from the impacts of oil and gas development.

BLM Response: Only eight (6973, 6974, 7009, 7013, 7014, 7015, 7016 and 7027) of the above listed parcels are within four miles of an active greater sage-grouse lek. However, all eight of these parcels are outside of occupied sage-grouse habitat. None of the parcels are mapped as nesting, brood-rearing, winter or overall habitat. Additional NEPA would occur when an APD is processed. Even though the above parcels are not in sage-grouse habitat, if any impacts were to occur based on the location of the well, sage-grouse would be considered and appropriate conditions of approval would be developed if necessary.

Columbian Sharp Tailed Grouse

Comment:

Parcels 6950, 6951, 6954, 6955, 6956, 6957, 6965, 6969, 6970, 6971, 6973, 6974, 6976, 6977, 6978, 6981, 6982, 6983, 6984, 7009, 7010, 7013, 7014, 7015, 7016, 7017, 7018, 7019, 7027, 7031, 7036, 7040, 7041, 7052, 7053, 7060, 7063, 7068, 7121, 7121, contain Columbian sharp-tailed grouse winter habitat, lek sites, and production areas.⁶ These parcels do not have adequate stipulations attached to protect this habitat. The Colorado Division of Wildlife (CDOW) has issued best management practices (BMP) for oil and gas development aimed at protecting this species. One BMP states, “Where oil and gas activities must occur within mapped Columbian sharp-tailed grouse winter habitat, conduct these activities outside the period between December 1 and March 15.”⁷ BLM should attach a timing limitation stipulation to the leases that is consistent with this BMP. CDOW has also advised to implement a 1.25 mile buffer around leks.

Recommendation: BLM should attach a timing and surface use limitation stipulation to all lease parcels that are consistent with CDOW’s BMP for Columbian sharp-tailed grouse.

BLM Response: The alternatives analyzed and environmental impacts addressed in the LSFO RMP (October 2011) adequately address potential impacts to special status species, including Columbian sharp-tailed grouse. Mitigation measures, including a no surface occupancy and timing limitations were developed during the RMP revision process to protect this species. Timing limitations to protect nesting sharp-tailed grouse have already been attached to leases based on the latest CPW data. Timing limitations to protect winter sharp-tailed grouse habitat were added to the appropriate leases after public comment review. In addition, controlled surface use stipulations (5% disturbance thresholds) designed to reduce fragmentation in sage-

grouse and big game habitat will reduce habitat fragmentation potential in sharp-tailed grouse habitat associated with several parcels.

Additional Alternatives

Comment:

The Draft EA contains only two alternatives: a “proposed action” alternative and “no action” alternative. Draft EA at 10-11. This range of alternatives is not consistent with the National Environmental Policy Act (NEPA), however, which requires BLM to “[r]igorously explore and objectively evaluate all reasonable alternatives” to proposed federal actions. 40 C.F.R. § 1502.14(a). Nor does it comply with Instruction Memorandum (IM) 2010-117, which directs BLM to develop “alternatives to the proposed action that may address unresolved resource conflicts.” IM 2010-117 at III.E; *see also* BLM NEPA Handbook at 6.6.1 (recommending that for “externally generated” actions, such as leasing proposed by the oil and gas industry, BLM evaluate a “proposed action” alternative, a “no action” alternative and an alternative that includes “changes BLM makes to the proponent’s proposal.”). Thus, in the Final EA, BLM must consider “alternatives to the proposed action that may address unresolved resource conflicts.”

Recommendation: In the Final EA, BLM should revise the “proposed action” alternative and include all of the proposed lease parcels that conform to the current RMP. BLM should also develop a third alternative to address “unresolved resource conflicts” associated with the proposed action. This alternative, which should be designated as the agency’s “preferred alternative,” should contain the proposed deferrals for high and medium priority sage grouse habitat, as well as any other measures that are necessary to resolve resource conflicts.

BLM Response: RMW citation of 40 CFR 1502.14(a) applies to environmental impact statements. For an EA level analysis, the appropriate citation is 40 CFR 1508.9(b), which states that EAs “shall include brief discussions...of alternatives as required by section 102(2)(E)...”. Section 102(2)(E) of the NEPA provides that agencies of the Federal Government shall “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”

The LSFO identified an additional alternative in Section 2.3.1, which would lease all nominated parcels that were in conformance with the RMP. As explained in this section, this alternative was eliminated from further analysis due to inconsistency with existing policy and connection to ongoing planning efforts.

While suggesting that the BLM consider “a third alternative to address “unresolved resource conflicts” associated with the proposed action and greater sage-grouse”, RMW did not provide any specific suggestions as to what they considered “unresolved resource conflicts”.

In making its decision as to what parcels to offer for competitive leasing, BLM is free to select elements from each of the alternatives. BLM analyzed a no-action alternative in which none of the parcels under consideration would be offered for lease. As this alternative subsumes possible alternatives in which any combination of the parcels under consideration might not be leased, BLM is not required to separately analyze alternatives that would exclude specific parcels from leasing. Biodiversity Conservation Alliance, 183 IBLA 97, 124-25 (2013).

Inadequate Analysis of Hydraulic Fracturing

Comment:

BLM has failed to analyze the cumulative impacts of hydraulic fracturing.

Recommendation: BLM must conduct a thorough analysis of hydraulic fracturing to comply with its NEPA responsibilities. The references to this practice does not fulfill the agencies duties to take a hard look at the impacts of its action. The analysis of hydraulic fracturing should require an Environmental Impact Statement due to its significant environmental impacts.

BLM Response: It is not known at this time what scale of development would occur on the proposed parcels, or if the parcels would be developed at all. The EA disclosed the potential impacts of eventual development. Approximately 95% of new wells in Colorado are fractured. This EA analyzes in Section 3.4.1.3, 3.4.1.6, and 3.4.3.2 the potential impacts ground water, soils and hazardous wastes that could occur in general from hydraulic fracturing.

If future proposed development includes completion activities such as hydraulic fracturing, the effects of the specific proposed development will be assessed through the NEPA process at the Application for Permit to Drill (APD) stage. A lessee must submit an APD (Form 3160-3) to the BLM for approval and must possess an approved APD (i.e. a drilling permit) prior to any surface disturbance in preparation for drilling. Based on the NEPA analysis done for the APD, the BLM may require certain Conditions of Approval (COA), beyond the minimum protection required by current regulations and law, to minimize potential adverse impacts to resources from hydraulic fracturing.

Responses to Trout Unlimited

Comment:

The EA should Consider Coldwater Fisheries in its Analysis.

Despite CRCT being present in watershed where leasing is proposed, and the BLM's commitment to conserving and restoring this important native trout species, the draft EA makes no mention of CRCT, omitting it from the Affected Environment, Environmental Effects and Cumulative Effects analysis.

Parcels 7019 and 7027 are located in the Elkhead Creek watershed along streams that contain current populations of CRCT. The streams in the upper Elkhead watershed have been altered and fragmented by decades of land use which has led to declines in both the distribution and abundance of cutthroat trout and other native species. Also, because bare and degraded stream banks are unstable, the upper Elkhead watershed delivers an excess amount of sediment to Elkhead Reservoir. Since 2011, TU has been implementing a plan to restore the upper Elkhead watershed by 1) rehabilitating and/or relocating degraded stream channels, 2) planting and stabilizing disturbed areas with native riparian vegetation (e.g., willows and sedges), and 3) constructing temporary fencing to protect newly restored areas from disturbances.

Parcel 7031 is located along Smith Creek in designated CRCT habitat.

Parcels 7016, 7060 and 7121 are located in the Trout and Middle Creek watersheds. Although these Parcels are located below segments containing CRCT, the streams 1) contain coldwater fisheries and 2) are important tributaries to recreational stretches of the Yampa River. TU has worked to restore CRCT habitat near these parcels in the Trout Creek watershed.

Controlled Surface Use Stipulation CO-28 is not Adequate to Protect Fisheries and Water Quality.

Stipulation CO-28 is a Controlled Surface Use stipulation – as opposed to No Surface Occupancy – that is not adequate to protect fisheries and water quality from the risks posed by oil and gas development.

BLM Response: Stipulation CO-28 will be applied to all recommended parcels (see Attachment C).

Comment:

The BLM Should Apply LS-105 to each of the Parcels Pursuant to the Little Snake RMP.

As stated above, the LSFO adopted LS-105 in its RMP revision, allowing the BLM to apply a No Surface Occupancy Stipulation on perennial waters for up to .25 mile based on the type and use of the water source, soil condition and slope. TU applauds the LSFO for including this Stipulation in its RMP, and we have encouraged other Field Offices to follow suit through the NEPA process for other RMP revisions. Based on the water quality characteristics, soil conditions and slopes present on the Parcels, we encourage the LSFO to apply LS-105 here.

BLM Response: Stipulation LS-105 will be applied to all recommended parcels (see Attachment C).

Comment:

The BLM should Apply CO-48 to the Parcels Pursuant to Executive Order 11988

The EA correctly notes that:

Development as a result of leasing within identified floodplains could result in the removal or compression of vegetation, as well as soil compaction, depending on moisture content of the soils at the time of disturbance. Prohibiting development activities within the 100-year floodplain boundaries may eliminate a very small amount of area that is proposed for exploration and development, but would also limit or prevent impacts to overall floodplain function.

EA at page 25. The EA also correctly states that these impacts can be mitigated by applying Lease Notice CO-48 to the Parcels. *Id.* (“No ground-disturbing activities or structure development will occur within FEMA-identified 100-year floodplain (per Executive Order 11988 on Floodplain Management).” However, CO-48 is not attached to the Parcels in the stipulations attached to the EA. The BLM should attach CO-48 to the Parcels to prohibit development in floodplains in the Sale Notice in order to preserve its ability to enforce the prohibition.

BLM Response: Stipulation CO-48 will be applied to all recommended parcels (see Attachment C).

Responses to Western Energy Alliance

Comment:

Western Energy Alliance wishes to express its support for Alternative B, the Preferred Alternative. We urge BLM to move forward with offering the remaining parcels and refrain from any further deferrals.

BLM originally received Expressions of Interest (EOI) for 112 parcels totaling 86,423.66 acres, of which 71 parcels totaling 55,198.26 acres were deferred due to BLM's determination of conflict with the Greater Sage-Grouse. 41 parcels totaling 31,225.4 acres or 36% of the original amount remain available for lease.

BLM has indicated that the Little Snake Resource Management Plan (RMP) is currently being amended to address Greater Sage-Grouse management. However, in accordance with BLM Handbook H-1601-1, which establishes that existing land use plan decisions are authoritative until such time as an amendment or revision is finalized, these parcels should not be deferred solely for the purpose of waiting for the completion of the new RMP.

BLM Response:

"Existing land use plans decisions remain in effect during an amendment or revision until the amendment or revisions is completed and approved...For example, if current land use plans have designated lands open for a particular use, they remain open for that use." (BLM Land Use Planning Handbook, H-1601-1, p. 47). Thus, lands which are open for leasing under an existing RMP may be leased during a revision process when BLM management determines that leasing will not constrain the choice of reasonable alternatives under consideration in the planning process.

Decisions for leasing in the Little Snake RMP are based on an environmental analysis of relevant resource values, and provide an appropriate level of protection for resource values by either: 1) making an area unavailable for oil and gas leasing, or 2) applying stipulations that protect the resource value while still allowing leasing and development to proceed. The analysis provided in this leasing EA allows for new information about a parcel to be analyzed more specifically in light of current conditions. Based on the analysis in the RMP and this EA, the BLM then determines if there is cause for a parcel to be deferred from the lease sale, and if appropriate stipulations have been applied.

The preferred alternative of proposing for lease 41 parcels and deferring 71 parcels is conformance with Washington Office Instruction Memorandum No. 2010-117 "Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews" which reaffirms the site-specific NEPA compliance for each proposed lease sale parcel and considering, in light of new information, the deferral of a lease parcel pending further evaluation of specified issues.

Responses to NEKO Enterprises, LLC

Comment:

Parcel no. 6978- the land in the N2SW, and a small strip in the S2SESE, Section 32 and a small strip in the S2S2SW of Section 33 underlies my surface. Please consider the following:

There are significant numbers of sharp tail grouse on this property. I have worked with the Colorado parks and wildlife in the management of these acres to ensure the best possible habitat for these birds. There should be a stipulation added to the lease that addresses the presence of these birds. Although inaccessibility to the area in the spring has prevented the location of any specific leks, since there are often mothers with chicks on the property, it should be assumed there are leks nearby. To protect the birds a No surface Occupancy Stipulation would probably be appropriate. At the very least, there should be restricted surface occupancy and a timing restriction.

BLM Response: All lands are subject to Exhibit LS-104 to protect wintering Columbian sharp-tailed grouse. CPW responded to questions regarding Columbian sharp-tailed grouse sharp-tail saying that there were no historic or new leks in the area. Any new information would be considered at the APD stage and could be incorporated into the Conditions of Approval if any additional stipulations if found to be necessary.

Comment:

I agree with the other stipulations you have recommended, especially the elk calving timing requirement. There are large amounts of elk on the property throughout the year and definitely during the spring when they are calving.

Comment:

I would like to have a requirement in the lease that there would be no open pits on any sited, but rather contained in mud tanks that can be removed from the site. This would make reclamation much faster, easier and more successful with less surface impacts.

BLM Response: Per IM2013-033, “all BLM field offices should encourage operators to use closed tanks and closed loop or semi-closed loop systems as an environmentally preferable alternative to the use of open pits and open-top tanks containing fluids.” This condition should also be address in the landowners surface use agreement.

Comment:

There are areas of these lands that exhibit very steep slopes. Building roads and drilling pads on the slope would be difficult, if not impossible, and the erosion potential would be extremely damaging. I definitely would want to see the steep slope stipulation with no surface occupancy included in any lease.

BLM Response: Both CO-26 and CO-27 stipulations (see Attachment D for full stipulation language) will be attached to Parcel No. 6978, as the environmental analysis identified steep slopes and fragile soils in this parcel.

Comment:

I realize my surface management will be addressed in the Surface Use Agreement, but I would like it noted that a significant portion of my annual income on the ranch is generated by a lease for grazing sheep from June through September. I have developed a rotational grazing plan that must be followed by the lessee. I will certainly want to ensure that any impacts to the grazing plan and my revenue are addressed in the Surface Use Agreement.

The other source of income from the ranching is hunting. This begins in August with bow season and continues through the last rifle season. Any drilling activity during this time would impact the elk movements and consequently my potential income. Please note that I will make sure this is addressed in the surface use agreement.

I would also like it noted that I am concerned about the impact of drilling on these lands would have on the value of the ranch. I have spent the last 15 plus years working with the NRCS, Colorado Parks and Wildlife, and the Colorado State Forest Service improving the wildlife habitat, overall conditions on the ranch, controlling weeds, and implementing a good rotational grazing plan. As part of the Surface Use Agreement I will seek input from an appraiser to determine the impact to value so that can be included. I will also work with the range specialist to ensure there is a sufficient bond including in the Agreement to cover reclamation and re-vegetation of the surface and sufficient liability coverage to protect my surface if there is a spill or other serious impact resulting from drilling activity.

I appreciate you noting my comments in the event there is an Application for a Permit to Drill and I cannot negotiate an acceptable Surface Use Agreement, I would ask that these concerns be a basis for the bond to be required from the operator.

BLM Response: The operator must make a good faith effort to notify the surface owner prior to entry for planning, staking and resource surveying purposes. The operator must certify in their APD that a good faith effort was made to notify the surface owner prior to entry, a good faith effort was made to reach a surface access agreement with the surface owner, whether an agreement was reached, and lastly a good faith effort was made to provide the SUPO to the surface owner of the well site location. If an agreement cannot be reached, the operator must submit to the BLM a surface owner protection bond.