

Office of the Governor

February 2, 2009

Don Simpson, State Director
Bureau of Land Management
P.O. Box 1828
Cheyenne, WY 82003

RE: February 3, 2009 Competitive Oil & Gas Lease Sale

Dear Mr. Simpson:

I write to request the deferral of eight parcels that are proposed for lease in the February 3, 2009 Competitive Oil & Gas Lease Sale. Three of the parcels are within the Cody Field Office and adjacent to the Shoshone National Forest: WY-0902-124, -125 and -126 (Cody Parcels). The remaining five parcels are within the Rock Springs Field Office and are either within or directly adjacent to the Jack Morrow Hills Coordinated Activity Plan boundary: WY-0902-108, -109, -110, -111, and -112 (JMH Parcels).

Cody Parcels

The last revision of the Cody Resource Management Plan (RMP) was completed in 1990. Since that time, the Bighorn Basin Resource Area has experienced significant change. Grizzly bear populations have increased substantially, resulting in the bear's removal from the endangered species list and a return to full state management of the species. Gray wolves were reintroduced into Yellowstone National Park and have experienced significant population increases and dispersed widely throughout the Greater Yellowstone Area. Increasing grizzly bear and wolf populations have affected elk, moose and mule deer populations, and in turn, have complicated the already tenuous allocation of forage between livestock and wildlife. Beyond forage concerns, increasing wolf and grizzly bear numbers have resulted in greater livestock depredation and considerably altered livestock operations. The proliferation of the pine beetle has significantly impacted white bark and other species of pine trees, which has the potential to affect grizzly bear populations and other consumptive uses of the BLM's forest resources. The area has also seen noteworthy increases in off highway vehicle and other recreational uses and – as evidenced by the February 2009 Lease Sale - oil and gas development has seen significantly renewed interest. Change, it seems, is the only constant.

The Cody Parcels are seemingly at the crossroads of the changed physical and social landscape in the BLM's Bighorn Basin Resource Area. According to the Wyoming Game and Fish

Don Simpson, State Director

February 2, 2009

Page 2

Department – who apparently was only given the opportunity to review parcels -124 and -125 - the three Cody Parcels are used by grizzly bears in the Spring, have been regularly frequented by at least one wolf pack, represent crucial habitat for elk, moose and mule deer, encompass elk and moose parturition areas, contain sage grouse wintering habitat and at least one of the parcels is used by bighorn sheep and potentially peregrine falcons, which were only recently removed from the endangered species list.

Traditionally, I have been cautious to only request lease deferrals in instances where there is legal or practical justification for such a remedy. Here, BLM Instruction Memorandum (IM) 2004-110 Change 1 vests discretion in the State Director to “consider temporarily deferring oil, gas and geothermal leasing on federal lands with land use plans that are currently being revised or amended.” This IM functionally gives the BLM the latitude to ensure that a full range of alternatives is available to it during the RMP revision process – as the leasing of oil and gas resources has the potential to irretrievably commit lands to a certain use and significantly impact allocations for other resources - and is an extension of the Council on Environmental Quality’s view that no action should be taken that would limit the choice of reasonable alternatives until a final Record of Decision is issued. 40 C.F.R. § 1506.1.

Given the increasing value of the Cody Parcels to wildlife and recreational users and the changed circumstances that have arisen with increasing populations of wolves (which arguably did not exist on the parcels in 1990) and grizzly bears, I am concerned that the existing management prescriptions set forth in the 1990 Cody RMP – for oil and gas and seemingly every other resource – are antiquated and in need of alteration through the RMP revision process. This is especially true to protect historic uses like livestock grazing on these and adjacent allotments. Therefore, in consideration of IM 2004-110 and 40 C.F.R. § 1506.1, respectfully request that the Cody Parcels be deferred until the Final Environmental Impact Statement for the Bighorn Basin RMP has been completed and the Record of Decision has been issued.

JMH Parcels

Since the signing of the JMH Record of Decision nearly three years ago, I have been adamant that BLM aggressively engage its responsibility to fully implement the decision. In the context of the JMH Record of Decision, such implementation is almost wholly dependent on monitoring and sound adaptive management principles, especially for oil and gas leasing and development in “Area 2.”

On two separate occasions, I have requested that certain lease parcels with high habitat values for sage grouse be deferred from leasing until the JMH Coordinated Activity Plan Working Group was established and monitoring data was available to support additional leasing in the area. Because these parcels were located in “Area 1,” which is the least restricted area for oil and gas leasing and development, the leasing was allowed to proceed. Given the fact that the

Don Simpson, State Director

February 2, 2009

Page 3

JMH Parcels in the February 2009 Lease Sale are located in "Area 2" and the reality that the JMH Working Group has only held two very preliminary meetings, with no discernable monitoring plan or data having been collected to date – deferral of the JMH Parcels seems not only justified, but required.

I have frequently expressed my concerns that adaptive management would only work with robust monitoring and data collection – not only in the context of oil and gas development, but other resource allocations as well. To date, the express requirements and the strongly worded suggestions for monitoring and data collection outlined in the JMH Record of Decision have resulted in limited results. In the absence of a monitoring plan and even initial datasets, the concept of adaptive management seems to have ground to a halt. Consequently, the allocation of resources must also be slowed – including decisions to affect very sensitive surface resources through oil and gas leasing and eventual development – until the necessary planning and data are available to demonstrate the appropriateness of such actions. As mentioned previously, this is especially true in "Area 2," which has express adaptive management driven requirements that must be in place before oil and gas leasing and development are authorized – namely the Working Group and actual data.

Beyond the adaptive management sections of the JMH Record of Decisions, the JMH Parcels also suffer other infirmities. It appears that the required protections for steep slopes are not attached to the JMH Parcels. Further, the protections outlined for overlapping sensitive resources also appear to be lacking for the JMH Parcels, along with specific stipulations to protect sage grouse.

Taken collectively, there are significant issues that clearly point the BLM in the direction of precluding oil and gas leasing on the JMH Parcels at this time. As such, in consideration of the express requirements of the JMH Record of Decision I respectfully request that the BLM defer the JMH Parcels from oil and gas leasing until the necessary prerequisites for functional adaptive management are in place and the appropriate lease terms have been added to the parcels to protect sensitive resources within the JMH.

Thank you for your time and attention to this important matter.

Best regards,

A handwritten signature in black ink, appearing to read "Dave Freudenthal", written in a cursive style.

Dave Freudenthal
Governor

DF:RL:pjb