



National Parks Conservation Association
Northern Rockies Regional Office
321 E Main St. Suite 424
Bozeman, Montana 59715

January 16, 2019

William O'Donnell, Grasslands Supervisor
Attn: Oil and Gas Development SEIS
2000 Miriam Circle
Bismarck ND 58501

RE: Oil and Gas Leasing Draft Supplemental Environmental Impact Statement (DSEIS), Northern Great Plains Management Plans Revision

Dear Grasslands Supervisor O'Donnell,

On behalf of the National Parks Conservation Association (NPCA), thank you for considering these comments on the above referenced DSEIS. Formed in 1919, NPCA's mission is to protect and enhance America's National Park System now and for future generations; we along with our more than 1.3 million members and supporters nationwide, continue to fulfill this mission by working to connect our national parks with their surrounding landscapes.

NPCA has two major concerns regarding the DSEIS. The first concern is that the public process for the DSEIS was not adequate to thoroughly provide for stakeholder input. Further, the government shut-down impeded the public's ability to obtain the DSEIS documents and to interact with United States Forest Service (USFS) staff during the comment period.

Our second and major concern is that the alternatives provided by the USFS do not provide adequate solutions for the resource management needs of Little Missouri National Grasslands (LMNG) and the three units of Theodore Roosevelt National Park (THRO) that are within the administrative boundary of the LMNG. We respectfully request that the USFS develop a more nuanced and complete alternative that includes comprehensive analysis and planning as required by the National Environmental Policy Act (NEPA).

Extended Comment Period

While we very much appreciate the 30-day extension to the original 45-day comment period, we continue to believe that the comment period remains too short for an effective response from stakeholders. We particularly support the statements of Greg Link, Chief of the Conservation and Communication Division of North Dakota Game and Fish, in his letter to you dated December 11, 2018, and request an additional extension of time to comment on the DSEIS.

Due to the government shut-down, USFS staff have been unavailable to answer questions from the public regarding the DSEIS. For several days during the shutdown, the website link provided to the public to access the DSEIS and related documents, www.fs.usda.gov/project/?project=40652, has had the following message: “Forest Service Website is Currently Unavailable.” The message states that “until the site is available again, we encourage you to contact your local Forest Service office for the information you need.” Considering that the public was unable to access critical information needed to comment on the DSEIS during the public comment period and that there were no USFS staff members available to contact, it is imperative the comment period be extended to allow for meaningful public comment opportunities, as is legally required under NEPA.

DSEIS Alternatives

NPCA believes that the three alternatives offered in the DSEIS are all problematical, as discussed below. We oppose Alternative 1 and ask the USFS take a more comprehensive approach under our proposed alternative that combines elements of Alternative 2 and 3.

Alternative 1 – Continuing leasing with current stipulations

NPCA opposes this alternative as it does not adequately protect the LMNG or THRO.

Alternative 2 – No new leasing

In any other circumstance no new leasing would be our preferred alternative, as the multiple-use management of LMRG is not balanced with 845,500 acres available for leasing out of 893,200 and only 47,700 acres not administratively available. It would be common sense that the 216,300 acres of the 845,500 acres that have not yet been leased remain open to other uses. In the unique circumstance of the LMNG’s checker-board landownership, however, we are concerned that no new leasing on USFS lands will simply push leasing onto private lands within the LMNG and will exacerbate over-development issues on surface lands in the badlands.

The LMNG’s one-million-plus acres of national grasslands are positioned within a two-million-plus acre administrative boundary resulting in a complete intermingling of federal public lands with State of North Dakota school trust lands and private lands. The situation is further complicated by a significant acreage of split estates. See DSEIS pp. 3 – 4. Should the USFS adopt the No New Leasing Alternative, it would be certain to push new oil and gas development onto adjacent state and private lands. While Alternative 2 would accomplish the stated objective of reducing future emissions from oil and gas leasing of minerals under USFS land, see DSEIS pp. 7, it would most likely cause increased environmental damage to the overall surface of the LMNG by limiting the choice of location of well pads, tank farms, and roads for the private development, which will certainly continue unabated.

Alternative 3

A. Use of Stipulations

While Alternative 3 makes some improvements to the stipulation requirements from the previous management plan, it does not go far enough to ensure comprehensive management. More

fundamentally, as a general matter NPCA opposes any BLM process that uses lease stipulations or notices as the primary mitigation solution for adverse environmental effects. The Application for Permit to Drill (APD) stage, where lease stipulations and notices are enforced, provides for little or no public input. Moreover, mitigation measures such as lease stipulations are insufficient to resolve potential adverse effects on the site for a number of reasons, including that they only apply within the four-corners of the leased parcels and therefore do nothing to address or mitigate other impacts.

Critically, postponing decisions that could result in adverse environmental or public health impacts to the APD stage means that the scope of development will be shaped *after* the lease is held by an oil and gas operator, and *after* BLM has agreed to the development of resources. This in effect constitutes an “irretrievable commitment of resources” on the part of the BLM, when the agency issues a lease without reserving the right to later prohibit development. *See New Mexico ex rel. Richardson*, 565 F.3d at 718 (holding that BLM must evaluate the “reasonably foreseeable” site-specific impacts of oil and gas leasing *prior to* making an “irretrievable commitment of resources”); *see also Sierra Club v. Peterson*, 717 F.2d 1409, 1411 (D.C. Cir. 1983) (“[o]n land leased without a No Surface Occupancy Stipulation the Department cannot deny the permit to drill; it can only impose ‘reasonable’ conditions which are designed to mitigate the environmental impacts of the drilling operations”).

Lastly, while the DSEIS includes new stipulations for no surface occupancy (NSO) for recreation sites, rare plants, and roadless areas, the inadequate time and information provided during the public process for leasing greatly impedes meaningful public review and opportunities for feedback on the issue of stipulations.

B. Cumulative Impacts to Air Quality and Climate

Alternative 3 continues to address oil and gas development in the LMNG at the individual lease level. Such an approach almost guarantees that the impacts of each individual lease will be reviewed piecemeal and the cumulative impact of all the development resulting from individual leases will be inadequately assessed, if it is considered at all.

Cumulative impacts to air quality and climate change are not fully addressed in Alternative 3. The DSEIS concedes that “Under Alternative 1 Little Missouri National Grasslands oil and gas development and production emissions would reduce visibility and exceed nitrogen and sulfur deposition analysis thresholds at several Class I and Class II areas”. See DSEIS pp. 46. This includes visibility decreases at Theodore Roosevelt National Park. See DSEIS pp. 47. The DSEIS does not state if the stipulation changes in Alternative 3 are sufficient to mitigate these impacts.

NPCA also urges the USFS to fully account for the potential climate change impacts from new leasing in Alternative 3. Dr. Robert Frost, former Associate Director of Natural Resource Stewardship and Science for the National Park Service, noted in a field hearing in Colorado that “[c]limate change is potentially the most far-reaching and consequential challenge to our mission

than any previously encountered in the entire history of the NPS.”¹ NPCA shares this concern and urges the USFS to fully account for the potential acceleration of climate change in the LMNG and THRO as a result of new leasing.

In sum, alternative 3 does not go far enough to provide a comprehensive review of all remaining leasing. It continues to address oil and gas development in the badlands on a lease-by-lease basis, which does not satisfy NEPA’s requirement to consider the direct, indirect, and cumulative impacts of a proposed action. For this reason and those discussed above, NPCA believes that the USFS’s preferred alternative, Alternative 3, is unacceptable and requests a more robust preferred alternative that is fully compliant with the requirements of NEPA.

Proposed Alternative

NPCA’s preferred alternative would withdraw all unleased LMNG land from oil and gas development as a first step, then engage in a comprehensive inter-agency, multi-jurisdictional planning process that considers the overall impact on the environment of ongoing private and state oil and gas development.

The USFS needs to engage with stakeholders on a plan that includes a robust assessment of the LMNG and identifies areas of high cultural, natural, and recreational value. Creation of a detailed map analogous to the North Dakota Industrial Commission’s Areas of Interest map² would be key to this process.

For the DSEIS to be a comprehensive management plan, the following issues must be taken into consideration, analyzed, and adequately mitigated prior to leasing:

Theodore Roosevelt National Park has been inundated by oil and gas development in the LMNG. Well pads, pump jacks and flaring can currently be seen in all three units of the park. Protections must be secured to ensure there is no further damage to the park – including its viewsheds – from leasing. Any available leases near the three units of THRO should be extensively reviewed and any impacts to park air quality, viewshed, noise, and night skies should be mitigated prior to leasing. The Elkhorn unit of the park is of specific concern, as it is the smallest unit of the park and is engulfed by oil and gas development. The USFS should do more analysis on potential mineral withdrawals and exchanges in lands surrounding the Elkhorn to effectively protect this national treasure.

Wildlife management is one of the “many uses” for which the USFS is required to manage its lands. In the past two years, the Recovering America’s Wildlife Act has been introduced into both houses of Congress (H.R.4647 In 2017 and S.3223 in 2018). Both versions are gaining bipartisan support. If passed, the Act will more than double funding for state wildlife management agencies and will allow for more proactive solutions to declining wildlife across the

¹ <https://www.govinfo.gov/content/pkg/CHRG-111shrg52524/html/CHRG-111shrg52524.htm>

²North Dakota Industrial Commission Area of Interest map. <http://www.nd.gov/ndic/ic-press/dmr-areaai-map5-19.pdf> May 19, 2014.

country.³ North Dakota's Game and Fish Department has never had sufficient funding to do the kind of comprehensive analysis that would be required to fully understand the impacts of oil and gas development to wildlife in the Little Missouri River corridor. The proposed alternative would allow additional time for that work to occur.

Wilderness areas, also part of the USFS mandate, need a comprehensive review. The areas within the LMNG administratively managed as "suitable for wilderness" are quite modest in size. Should they all end up ringed by well pads, tank farms, and dusty gravel roads, their value as potential Wilderness will be much diminished. Each one of the Wilderness areas within the project area would benefit from an inter-agency and inter-jurisdictional process. If nothing else, several sections of minerals under land controlled by the North Dakota Trust Lands Department could be exchanged for federal minerals elsewhere and the surface could be added to the 'suitable for wilderness' blocks. In addition, land that separates two 'suitable for wilderness' areas should in particular be removed from leasing, e.g., the river valley between Bullion Butte and Kendley Plateau.

Air Quality, as mention above, is negatively and cumulatively impacted by oil and gas development, and the cumulative impacts of oil and gas leasing must be more thoroughly reviewed by the USFS. Visitors to national parks and wilderness areas consistently rate visibility and clear scenic vistas as one of the most important aspects of their experience. Clean air enhances the color and contrast of landscape features, allows visitors to see great distances, and safeguards ecosystem, visitor, and public health. Particulate matter (PM), nitrogen oxides (NO_x), sulfur dioxide (SO₂) and volatile organic compounds (VOCs), which are emitted by activities associated with oil and gas extraction, are haze-causing pollutants that obscure scenic vistas in national parks by impairing a viewer's ability to see long distances, color and geologic formation. They also contribute to the formation of ozone, a pollutant that causes adverse impacts to the environment and public health. Therefore, to adequately protect air quality, the USFS must comprehensively assess the cumulative impacts from oil and gas development in the LMNG prior leasing.

Groundwater Quality is negatively and cumulatively impacted by spills caused by oil and gas production, including especially spills of "produced water," a highly saline product that can sterilize soil and can kill livestock and wildlife if consumed. This fact is lightly acknowledged in the document relative to both Alternatives 1 and 3. See DSEIS pp. 66. However, the analysis concludes that, "because spills and failures in safeguards are unpredictable events, effects to groundwater as a result of these types of events are not able to be assessed." See DSEIS pp 66.

This analysis is inadequate, particularly given that the North Dakota Department of Health has maintained a public website for several years that tracks and reports on spill events across the Bakken, and that the Department of Mineral Resources maintains a database of gathering and disposal pipelines. In the same way that traffic fatalities can be measured per million miles of

³ *America's declining wildlife requires a proactive solution, report says.* The Wildlife Society. March 29, 2018. <http://wildlife.org/americas-declining-wildlife-requires-a-proactive-solution-report-says/>

driving, so spills can now be quantified as volume of oil or produced water per miles of pipeline or average volume per well site, based on years of experience.

Rare plants exist in a very fragile environment in the badlands. The DSEIS makes a clear case that at least 10 sensitive plant species are at high local risk for extirpation in North Dakota. See DSEIS pp. 86 – 90. That situation, combined with the negative impacts of invasive species, cannot be over-stated in such an arid environment.

Agency resources are limited in the LMNG field offices for both the USFS and BLM. Agency staff, time and resources need to be analyzed to ensure leases can be properly managed. The USFS should not lease more than the limited staff can effectively manage.

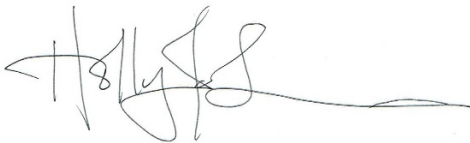
Conclusion

In summary, NPCA's position is that the USFS's current preferred alternative does not address comprehensive planning and does not comply with NEPA. The USFS must develop an alternative that satisfies the requirements of NEPA – including allowing for adequate notice and public comment – and that engages stakeholders in a robust management planning process for oil and gas in the LMNG.

The unique and fragile habitat of the badlands and Theodore Roosevelt National Park must be spared further degradation. A comprehensive planning process will ascertain where the natural, cultural, and recreational lands of the LMNG are most fragile and in need of protection, as well as where future leasing could occur with minimal impact.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Holly J Sandbo', followed by a long horizontal flourish.

Holly J Sandbo
Northern Rockies Senior Program Coordinator

cc: Wendy Ross, Theodore Roosevelt National Park Superintendent