

NGP Oil and Gas Leasing SEIS – Dakota Prairie Grasslands

Objection Review Responses

Issue 1: NEPA

Contention 1-1: Changes between Draft and Final are Significant

Objectors contend that the changes made to the proposed action between the Draft SEIS (DSEIS) and Final SEIS (FSEIS) are significant, are inconsistent with the Purpose and Need, and require an additional comment period.

Objector(s): NDWF, NDBHA

Response: The objectors contend that the revised stipulation regarding allowing controlled surface use (CSU) within .25 miles of an existing road within inventoried roadless areas is significant new information, requiring a new supplemental environmental impact statement to be circulated for public comment.

40 CFR 1502.09(c) (2003) states that agencies shall prepare supplements to either draft or final EIS if an agency makes substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

40 CFR 1503.4 (a) describes that possible responses to comments include modifying alternatives or developing and evaluating alternatives not previously given serious consideration by the agency.

The purpose and need for the analysis are to determine whether stipulations are providing adequate protection to resources on the Little Missouri National Grassland.

The 2001 Roadless Rule (36 CFR 294) does not preclude the construction of well pads adjacent to existing roads.

The stipulation, while modified from the draft Supplemental Environmental Impact Statement, does not constitute a substantial change bearing on impacts in a significant way. As included in the response to comments on the DSEIS (FSEIS, p. 277), the original Alternative 3 would not comply with the 2001 Roadless Rule, therefore Alternative 3B was included as a slight variation of Alternative 3 (pp. 9, 21-22). This variation is fully described on page iv of the FSEIS. It increases no surface occupancy (NSO) acres overall by 10,700 acres (p. vi). The rationale for the stipulations in Inventoried Roadless Areas (IRA) is documented in the draft Record of Decision (DROD, p. 10). Effects of Alternative 3B are considered throughout the FSEIS and are not substantially different in terms of environmental impacts nor are they a substantial change in the proposed action.

The FSEIS at pages 140 and 147 states well pads in IRA will void any future wilderness designation; however, none of the areas available for leasing are identified as suitable for wilderness in the Dakota Prairie Grasslands Land and Resource Management Plan (LRMP), as explicitly stated on page 2 of the draft Record of Decision (ROD). Further, any future well pads would be directly adjacent to an existing road, therefore also influencing potential for wilderness designation. Rehabilitation after production may help to restore the natural character of the area. See also response to Issue 3.

The variations provided in Alternative 3B are not inconsistent with the purpose and need to provide adequate resource protection. The Roadless Rule defines protections for IRAs, and Alternative 3B is consistent with the Roadless Rule.

The pre-decisional objection process at 36 CFR 218.26 provides the public the opportunity to provide input on Alternative 3B and the draft ROD, and this response is provided to the objectors.

I find Alternative 3B is not a significant change warranting circulation of a supplemental EIS for public comment.

Contention 1-2: Failure to follow Secretary Perdue's Memo and Proposed Oil and Gas Regulations

Objectors contend that the proposed decision doesn't conform to guidance in a memorandum issued by USDA Secretary Perdue in June 2020. Objectors contend that the proposed decision does not conform to oil and gas regulations or to proposed oil and gas regulations released in September 2020.

Objector(s): WEA

Response: Secretary Perdue's memo dated June 12, 2020 states, as it pertains to this DROD, that the Forest Service will streamline processes and identify new opportunities to increase America's energy dominance and reduce reliance on foreign countries for critical minerals. The DROD for the Northern Great Plains was published in August 2020. The National Forests and Grasslands are managed under a multiple use and sustained yield mandate. Potential effects to all resources must be considered. The draft Decision defines the stipulations to protect certain natural resources on grounds open to oil and gas leasing. The draft Decision does not conflict with the Secretary's memo.

Proposed regulations are not currently in effect. The analysis and draft decision follow current oil and gas leasing regulations at 36 CFR 228.102.

Issue 2: Roadless Rule

Contention 2-1: Road Construction in Roadless Areas

Objectors contend that the proposed decision would violate the 2001 RACR by allowing road construction to access well pads.

Objector(s): BCA/NPCA, NDBHA, NDTWS

Response: The objectors question how equipment would be transported from the existing road to the well pad in the preferred alternative without requiring road construction or reconstruction in the context of the 2001 Roadless Rule. Both the FSEIS and draft ROD state that the space between the pad and the road cannot be greater than 100 feet, and the longitudinal axis must be parallel to the road (FSEIS, p. 157; draft ROD, p. 10). Additionally, the FSEIS on page 157 states no new roads may be built, while the draft ROD states similarly that the Roadless Rule prohibits new road construction (p. 10).

Documentation could not be located during this review to explain why a 100-foot maximum distance between the existing road and the well pad was identified. To reiterate compliance with the 2001 Roadless Rule, the responsible official will clarify that well pad construction shall be directly adjacent to the existing road right-of-way and the long axis of the well pad shall be parallel to the existing road right-of-way.

Objectors also question how the preferred alternative complies with the Roadless Rule related to the 0.25 mile of buffer for well pad placement along existing roads. The FSEIS states on page 157, “The 2001 Roadless rule allows well pads and other oil and gas infrastructure to be built adjacent to existing roads.” This is correct, the 2001 Roadless Rule does not prohibit this management activity in an inventoried roadless area.

I conclude that the proposed action is in compliance with the 2001 Roadless Rule. Compliance will be clarified by the responsible official.

Contention 2-2: Roadless Area Modifications Require Plan Amendment

Objectors contend that modifications to Roadless Areas should be documented through a Grasslands Plan Amendment or Plan Revision.

Objector(s): NDWF, NDBHA

Response: A plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area (including management areas or geographic areas) (36 CFR 219.13(a)). The responsible official considered the changed pattern of oil and gas development that has occurred, and is anticipated to continue to occur, on lands available for lease of federally owned minerals on the Little Missouri National Grassland unit of the Dakota Prairie Grasslands in North Dakota. (FSEIS, p. 1). The purpose of the analysis documented in the SEIS was to determine whether current oil and gas lease stipulations and lease notices are providing adequate protection to resources on the Little Missouri National Grassland while allowing oil and gas development on those lands previously determined to be administratively available for leasing (FSEIS, p. 5). A LRMP amendment or revision is not required to update the leasing stipulations because they are not plan components, rather they must be consistent with the LRMP components (FSEIS, pp. 201, 233; Recreation and Related Resources Report, p. 27). Since there will be no addition, modification or removal of one or more plan component nor a change to how or where one or more plan components are applied to all or part of the plan area, a trigger for an amendment has not occurred.

Although oil and gas leasing availability analyses are occasionally conducted concurrently with land management plan revisions, as was done with the 2002 LRMP revision, leasing availability analyses differ in scope (a portion of the plan area) and statutory and regulatory authority (36 CFR 228 102 (c) and 43 CFR 3100) from plan revision (NFMA and 36 CFR 219). As such, the 2002 LRMP decision approved plan components to guide the development of oil and gas where applicable in the plan area (Recreation and Related Resources Report, p. 6), and the oil and gas leasing decision was approved jointly by the Forest Service and BLM in 2003 subsequent to, and in compliance with, the 2002 LRMP decision. The current stipulations applied to oil and gas leases were designed to be consistent with LRMP standards and guidelines, and were formalized in the 2003 Dakota Prairie Grasslands Oil and Gas Leasing Record of Decision, as mandated by the oil and gas regulations found in 36 CFR 228 102 (c)(1)(ii). (Recreation and Related Resources report page 24, second paragraph)

I conclude that the proposed action does not require a plan amendment or revision. The responsible official complied with NEPA and NFMA.

Issue 3: Suitable for Wilderness

Contention 3-1: Inadequate Protection for SWA

Objectors contend that Alternative 3B would impact the character of areas designated as Suitable for Wilderness.

Objector(s): BCA/NPCA, NDWF, NDBHA

Response: Roadless areas on the Dakota Prairie Grasslands were evaluated for wilderness designation for the Dakota Prairie Grasslands Land and Resource Management Plan (LRMP, 2001). Those roadless areas determined to be suitable for wilderness were allocated to Management Area (MA) 1.2A *Suitable for Wilderness* and are not available for leasing (LRMP, p. 3-3). The SEIS is consistent with Forest Plan direction by maintaining the designation in these lands (FSEIS, p. 3).

Roadless areas not determined to be suitable for wilderness in the Forest Plan were allocated to other management areas. Of the 71,300 acres of IRAs in unleased parcels analyzed for potential leasing (SEIS, p.141) approximately 64,800 acres would have No Surface Occupancy (NSO) stipulations applied and the remainder, roughly 6,800 acres, would have Controlled Surface Use (CSU) stipulations (project file, Scenery Report, p. 141). The effects of the proposed action on roadless characteristics and wilderness attributes of these roadless areas are described in the FSEIS (pp. 137-141). The Recreation Specialist Report discloses that authorizing development in roadless areas where CSU applies would have long term effects on the wilderness attributes and associated roadless characteristics of the potentially impacted IRAs (project file, Recreation Report, pp. 40-43). In the draft Record of Decision, the responsible official states that the objective of the CSU stipulation is to prevent landscape fragmentation and preserve roadless area values and characteristics while providing for energy development needs (DROD, p. 11). Please see also response to Contentions 1-1 and 2-2.

I find that the responsible official appropriately disclosed the effects to wilderness attributes and roadless characteristics of roadless areas in the analysis area.

Issue 4: Wildlife

Contention 4-1: Greater Sage Grouse

Objectors contend that additional stipulations related to providing protections for the Greater Sage Grouse are excessive and won't align with future management plan amendments.

Objector(s): Western Energy Alliance

Response: A stipulation of no surface occupancy in priority habitat management areas is consistent with sage-grouse stipulations from the Bureau of Land Management and recommendations from North Dakota Game and Fish Department (NDGFD) which provides for a collaborative approach to develop range-wide conservation objectives for the sage-grouse. These collaborative conservation objectives have been used by US Fish and Wildlife Service to determine that sage-grouse would not be listed under the Endangered Species Act (Wildlife Specialist Report, p.18). To provide for range-wide conservation of sage grouse, it is important to be consistent and coordinate efforts with the BLM and NDGFD (SFEIS, p. 9).

Since much of the known sage-grouse lek habitat on the National Grassland has been unoccupied, the Forest Service did add waivers, exceptions, and modification for the sage-grouse stipulations to allow for flexibility with the intention to protect sage-grouse priority habitat by encouraging development in the least favorable habitat (SEIS, p. 21; DROD pp. 9, 26).

The objector contends that the Forest Service is finalizing its management plan for sage-grouse and this SEIS won't align with future plans. There are no plans for the Forest Service to amend the sage-grouse management plan in the near future.

I conclude that the responsible official did include the appropriate stipulations for sage-grouse.

Issue 5: Fluid Minerals

Contention 5-1: Incorrect Statement of Authority

Objectors contend that the Forest Service's role and authority in oil and gas development are misrepresented in the FSEIS and Draft ROD.

Objector(s): NP

Response: The Forest Service has authority provided by the Mineral Leasing Act of 1920, Mineral Leasing Act for Acquired Lands of 1947, the Federal Onshore Oil and Gas Leasing Reform Act of 1987, and the Energy Policy Act of 2005 to authorize the Bureau of Land Management (BLM) to offer oil and gas leases on the Little Missouri National Grassland of the Dakota Prairie Grasslands in accordance with 36 CFR 228.102(e) and 43 CFR 3101.7. Prior to that authorization, the Forest Service shall verify that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document and is consistent with the Forest land and resource management plan. If effects have not been adequately addressed, or if there is

significant new information or circumstances as defined by 40 CFR 1502.9 requiring further environmental analysis, additional analysis shall occur before a leasing decision for specific lands will be made. If there is inconsistency with the relevant land and resource management plan, no authorization for leasing shall be given unless the plan is amended or revised. The responsible official should ensure that conditions of surface occupancy identified in 36 CFR 228.102(c)(1) are properly included as stipulations in resulting leases and determine that operations and development can be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy.

I conclude the responsible official accurately portrayed the Forest Service's role in authorizing the BLM to offer oil and gas leases; except in a few locations in the document(s). The responsible official will clarify the Forest Service's authority in the FSEIS and/or ROD.

Contention 5-2: Insufficient Justification for New Stipulations

Objectors contend that there is inadequate justification provided in the FSEIS for changes in stipulations between Draft and Final SEIS. They further contend that the additional stipulations will not have the desired outcome.

Objector(s): NP, NDBHA

Response: A few new and revised stipulations were combined with existing ones to comprise a new Alternative (3B) between Draft and Final SEIS based on recommendations present by the interdisciplinary team to resolve key issues identified from comments received on the Draft SEIS. The revised stipulations found in Alternative 3B are limited to the following four resource areas: Sage-Grouse, Bighorn Sheep, Inventoried Roadless Areas, and Air Quality. The potential environmental effects of Alternative 3B, for these resource areas are adequately disclosed throughout the FSEIS. Further analysis and justification were included for bighorn sheep in the FSEIS (pg. 94 – 95) and wildlife specialists report (pg. 21-22). In regards to sage-grouse, please see response to contention 4-1.

I conclude the responsible official adequately disclosed rationale for changes in stipulations between the draft and final SEIS.

Contention 5-3: Inadequate RFDS

Objectors contend that the Reasonably Foreseeable Development Scenario (RFD) is inadequate to support the purpose and need and proposed decision.

Objector(s): NP, NDWF, WEA

Response: The purpose of the FSEIS analysis was to determine whether current oil and gas lease stipulations and lease notices are providing adequate protection to resources on the Little Missouri National Grassland on lands previously determined to be administratively available for leasing in light of significant new information or circumstances as defined by 40 CFR 1502.9 and consistent with 36 CFR 228.102(e)(1).

The FSEIS states, "The action is needed because the pattern of development and type of operations have changed since the final environmental impact statement was written and since

the most recent review in 2008. Other changes include the listing of the Dakota skipper and northern long-eared bat as threatened species under the Endangered Species Act.” (FSEIS, p. i).

Changes in the pattern of future oil and gas development were addressed in an updated RFD that addressed the geology, past drilling trends, recent technological advances, and equipment availability projecting future oil and gas development (project file, DPG RFD 2017 Update). The RFD did not discuss potential effects from future oil and gas development. It is important to be cognizant of the fact the RFD is not the only new information that drove this supplemental analysis as the objector contends.

The RFD was used as a tool by the interdisciplinary team to assess the potential effects of proposed leasing (FSEIS, p. i). The RFD helped the interdisciplinary team estimate acres of disturbance based on the projected number of wells per year; however, as discussed in the FSEIS, effects are not limited to acres of disturbance and the RFD is only an estimate. It states, “I am predicting that average number of wells drilled per year will be midway between BLM’s 105 wells per year and the 19 wells per year at a 62 wells per year average over the time period 2015 – 2034” (DPG RFG 2017 Update, p. 16). There could be more or less acres of disturbance resulting from leasing in a given year, but this is the responsible official’s best estimate based on known factors discussed in the RFD and disclosed in the FSEIS.

I conclude that the revised RFD is reasonable and was used appropriately in the FSEIS.

Issue 6: Air Quality

Contention 6-1: New Air Quality Requirements Based on Modeling with Incorrect Assumptions

Objectors contend that requirements for Tier 4 engines or additional modeling are improper because modeling and monitoring used in the analysis were based on incorrect assumptions.

Objector(s): NP

Response: The objector states, “NP objects to the new requirement that Tier 4 diesel-fueled non-road engines must be used on new leases during drilling and completion activities or the lessee must conduct additional analysis and near-field air quality monitoring to demonstrate compliance with National Ambient Air Quality Standards (“NAAQS”) and potentially conduct additional project-specific control measures.” Appendix A of the SEIS describes the new air quality lease notice referred to by objectors on pages 214-215. However, the responsible official points out in the Draft Record of Decision that “The selected combination of stipulations and lease notices best meets our responsibility to provide for oil and gas extraction, while protecting the environment, consistent with the Grasslands Plan, and complying with laws, regulations, and policy.” (p. 6) Tables 1 and 2 in the DROD display the stipulations and lease notices included in the draft decision (pp. 7-8) followed by rationale for including them. The air quality lease notice is not included in the DROD.

Issue 7: Travel Management Rule

Contention 7-1: Failure to Demonstrate Compliance with the Travel Management Rule

Objectors contend that the Forest Service has failed to demonstrate compliance with 2005 Travel Management Rule.

Objector(s): NDBHA

Response: This concern was not raised previously by the objector during an opportunity to comment, therefore this issue is set aside from review in accordance with 36 CFR 218.10 (a)(4).