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Title: Chairman, Commissioner, District 3

Comments: Billings County submits the following comments on the United States Forest Service's ("USFS") Draft Northern Great Plains Management Plans Revision Supplement Environmental Impact Statement ("SEIS") for Oil and Gas Leasing. Billings County participated in the 2002 Northern Great Plains Management Plans Revision FEIS and the resulting Revised Dakota Prairie Grasslands Land and Resource Management Plan and the 2003 Dakota Prairie Grasslands Record of Decision for Oil and Gas Leasing on the Little Missouri and Cedar National Grasslands. Billings County was also a cooperating agency for the North Billings EIS, which was reluctantly granted by the USFS. Billings County has requested cooperating agency status for this plan revision but has only heard from the District Ranger from Medora Ranger District, Shannon Boehm, that the County should be getting a response soon. CEQ rules and legal direction required federal agencies to offer cooperating agency status. Remarkably, the USFS did not contact Billings County. The County has not received a response on its cooperating agency request and, therefore, continues its request for cooperating agency status.

Billings County opposes Alternative 2, which would allow no new oil and gas leasing on the lands that are currently available for leasing but are unleased. There is no basis to withdraw all 216,300 acres of land that are currently available for leasing. The rest of the County's comments focus on the Proposed Alternative 3.

#### 1. Economic Impact Analysis

The Socioeconomic Specialist Report misrepresents the economic impact of oil and gas leasing in ND by stating:

In fiscal year 2016, the 699,600 acres of total federally leased land on the Little Missouri National Grassland yielded a total of \$414,189,240 in oil and gas sales, a total of \$47,386,258 in royalty revenue, and a total of \$321,113 in rent revenue (ONRR 2016). Twenty-five percent of these royalties and rent payments, totaling \$11,846,565, were then returned to the state of North Dakota by the Forest Service for use towards public schools and roads (Hoover 2015). These royalties make up 0.18% of the FY16 North Dakota State Government Budget (North Dakota State Government 2017).

SEIS at 34.

This paragraph of the socioeconomic report implies that the federal funds received for the use of schools and roads are insignificant and are a mere drop in the bucket of public funding in North Dakota. While the calculation of 0.18% may be true, the conclusion is completely misleading and false. The 25% royalty and rent payments do not go to the State of North Dakota, the payments are made directly to the counties as part of the Bankhead-Jones land utilization payments. These funds are a significant portion of Billings County's budget and the other county budgets within the Little Missouri National Grasslands. For example, in 2016, Billings County received \$4,641,618, of this \$350,000 was distributed to the Billings County School District and \$4,291,618 was retained for county roads. The federal payment was 35% of Billings County's Road and Bridge budget. The percentage of funding that the Bankhead-Jones payments contribute to the county road and bridge needs fluctuates from year to year, but it ranges anywhere from 33% to 95%. The average contribution from 2002 to 2017 was 53%.

The County requests that the SEIS include this information in the SEIS to correctly identify the impacts oil and gas development has on the local government budgets, not just the State's budget.

#### 1. Inclusion of Privately-Owned Surface Lands

Privately-owned surface lands are included on the USFS Map 3. Stacey Swanson and Juliana Hammerstrom

attended the public meeting held in Dickinson on December 12, 2018 for the SEIS and at this meeting the Dakota Prairie Grasslands had maps of each Alternative displayed on the walls. A request was made for the GIS data for the maps. Billings County has not received the data, but the USFS uploaded digital copies of the maps under supporting documents on the project's website at: <https://www.fs.usda.gov/project/?project=40652>.

The pdf copy of Alternative 3 was georeferenced by the county to analyze the USFS parcels that would be affected by the stipulations proposed in the preferred alternative ([https://www.fs.usda.gov/nfs/11558/www/nepa/92388\\_FSPLT3\\_4525449.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/92388_FSPLT3_4525449.pdf)). The County Determined that several private land parcels in Billings County have been included in the acreage for the SEIS (see Attached Map) - this is contrary to what the USFS told the public at the public meeting and within the SEIS documents. See SEIS at 5; 10 (The decision would only apply to operations on lands with federally owned minerals within National Forest System surface ownership.). The 216,300 of "available and unleased" acres (see id. at 8) have been repeatedly stated as being federal surface over federal minerals. Id. at 5, 10. We found 79 private land parcels for a total of 16,387 acres in Billings County that may be wrongfully included in the SEIS analysis. The amount of federal and private mineral estates (split estates) in these parcels is unknown and not readily calculated in the time available.

The USFS must revise its maps and total acres subject to the proposed amendments to reflect only those lands that contain federally owned minerals within National Forest System surface ownership. The SEIS must also revise its analysis to correct the ownership calculations. The USFS has no right to regulate surface uses on private lands, even if there is an underlying mineral estate.

#### \* NSO Stipulations for Inventoried Roadless Areas

The 2001 Roadless Area Conservation Rule did not prohibit oil and gas development. The final Rule provided that a "multitude of activities", including oil and gas development, will continue to occur in inventoried roadless areas when new roads are not required. 66 Fed. Reg. 3244, 3249 (Jan. 12, 2001). Although development may be limited when new construction of roads is restricted, it does not mean that development is completely prohibited from occurring. During litigation that challenged the 2001 Roadless Area Conservation Rule and the Off-Highway Vehicle Decision, the Planning Staff Officer, Steve Williams, for the DPG signed a declaration stating that the Roadless Rule "does not preclude new oil and gas leasing or use of existing roads and trails in IRAs." He also stated that the Rule does not restrict access to private or state land or minerals because the USFS is required by law to provide such access.

Under the Dakota Prairie Grasslands Land and Resource Management Plan ("DPG LRMP"), only about 41,520 acres of inventoried roadless areas (four areas found suitable for wilderness) are "not administratively available" for oil and gas leasing. DPG ROD at 18, 21-22, 37; DPG LRMP at 2-11, 2-18. About 140,000 acres of roadless areas (50 percent of the total roadless areas) are protected by prohibiting future construction of new roads, with exception for outstanding and existing rights. DGP ROD at 9, 21, 37. Many of the inventoried roadless areas were assigned to management areas where oil and gas development could occur. Id. at 21.

The SEIS states that by providing a no surface occupancy ("NSO") stipulation for inventory roadless areas, the USFS is acknowledging the priorities of protecting these areas from disturbance as found in the DPG LRMP and in compliance with the 2001 Roadless Area Conservation Rule. SEIS at 7. However, as discussed above, this is not consistent with the Roadless Rule or the DPG LRMP, which allows oil and gas development to occur in all but four inventoried roadless areas. Further, only half of the roadless areas are restricted from the construction of new roads under the DPG LRMP, but this does not limit the use of existing roads for oil and gas development.

The proposed NSO stipulation (SEIS at 18, 113) could completely prohibit oil and gas development if the resources cannot be reached by horizontal drilling due to restrictions on neighboring lands and topography. The SEIS recognizes this potential impact by stating that the NSO stipulation will "increase the development on land

adjacent to no surface occupancy or diminish the recovery of mineral resources." Id. at 27. Further, The reach associated with directional drilling in this area is two miles, which would result in some resource recovery for the additional acres constrained by surface occupancy. This alternative would likely result in the economic recovery of the mineral estate, but even with directional drilling and emerging technologies some loss, or at least a diminished recovery of mineral resources, is likely.

Id. (emphasis added).

There are also several inventoried roadless areas in North Dakota that contain County roads and do not qualify as "roadless." Billings County, as well as other western North Dakota counties, have long opposed the roadless designations and have requested the USFS to conduct another inventory of these lands with the involvement of the State and local governments.

For these reasons, Billings County does not support the NSO stipulation for inventoried roadless areas.

#### 1. Management for Sage Grouse and Sage-Grouse Habitat

The SEIS proposes stipulations for timing limitations and controlled surface use for operations near sage grouse leks and in PHMAs based on the management approaches from the Sage Grouse Conservation Strategy (2006). SEIS at 8, 18. The SEIS then states that the stipulations proposed under Alternative 3 are "inconsistent with stipulations that have been identified for nearby land under different agency management and do not reflect recommendations from [hellip] North Dakota Game and Fish and other literature supported recommendations." Id. at 85.

In 2015, the United State Bureau of Land Management ("BLM") and USFS amended their land management plans to incorporate conservation measures to support the continued existence of sage grouse. The Dakota Prairie Grasslands was excluded from these amendments as there was only about 66,500 acres of priority habitat and 29,800 acres of general habitat identified on USFS lands. The USFS did propose to amend the DPG LRMP in 2014 to protect sage-grouse habitat in-line with the other BLM and USFS amendments, but this proposed revision never went past the scoping stages.

In 2017, the Secretary of the Interior issued three Secretarial Orders (SO) 3349, 3353, and 3360. SO 3349 ordered BLM to review agency actions that unnecessarily burden the development of energy resources and support actions to suspend, revise, or rescind such agency actions. SO 3360 rescinded authorities that were inconsistent with SO 3349, including the mitigation policies of the Department of the Interior. SO 3353 was issued with the purpose of reviewing the 2015 Sage-Grouse Plan Amendments and enhancing cooperation with the 11 western states in conserving sage grouse. The Forest Service Chief directed Regions 1, 2, and 4 to cooperate in the review. The decision of the Interior Review Team was to modify the 2015 Sage-Grouse Plans to better align with the individual state plans, and the USFS agreed with this direction. The BLM and USFS are currently working on the revisions. The DPG did not propose any changes.

Like the revisions occurring on other BLM and USFS lands, the protections for sage grouse and their habitat should be consistent with State plans. The SEIS admits that the proposed stipulations are inconsistent with other agency management of sage grouse and their habitat, as well as inconsistent with the recommendations from North Dakota Game and Fish. SEIS at 85. Although the DPG has not made specific LRMP amendments to protect sage grouse and their habitat, the DPG is still required to follow the direction of the USFS to cooperate with the review and modify its plan to align with North Dakota's plan as set out by North Dakota Game and Fish.

Also, there is very little sage-grouse habitat within the DPG and possibly no active leks within the DPG. The Northern Great Plains Management Plans Revision FEIS, which covered North Dakota, South Dakota, Nebraska, and Wyoming, only identified about 26 active sage grouse display grounds that had been documented over the

years on "private and public lands within the administrative boundary of the [LMNG]." Northern Great Plains Management Plans Revision FEIS at Append. H, H-170 (2001). At the time the FEIS was completed, the estimate of potential sage grouse habitat and current levels of habitat suitability was incomplete and unknown for the LMNG. Id. at 3-267.

The SEIS states that there is about 197,016 acres of primary sage-grouse habitat within the "administrative boundary" for the DPG, but only about 35,052 acres is under Forest Service ownership and is available for leasing. SEIS at 81. Also, only about 52 leks have been historically documented in North Dakota, and only about nine of these leks were on or within one-half mile of National Forest System lands. Id. Only four of these leks had activity in the past five years. Id. The SEIS also state "[i]f sage-grouse were to occur on the Little Missouri National Grasslands [hellip]." Id. at 82.

The USFS cannot provide stipulations for oil and gas leasing to protect possible future habitat for sage grouse that currently does not exist on the National Forest System lands in North Dakota. See *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361, 368-69 (2018) (Unoccupied habitat cannot be designated as critical habitat for a species because critical habitat must also be habitat.).

Billings County appreciates the USFS consideration of these comments and would like to continue working with the USFS on the SEIS as a cooperating agency. The County also reserves the right to provide additional comments once it has access to the GIS data requested.

Sincerely,

Billings County Commission

Attachment: Alternative 3 Map