

Data Submitted (UTC 11): 2/20/2019 11:00:00 AM

First name: Tripp

Last name: Parks

Organization: Western Energy Alliance

Title: Manager of Government Affairs

Comments: Dear Mr. O'Donnell:

Western Energy Alliance appreciates the opportunity to submit comments on the U.S. Forest Service's (USFS) draft supplemental environmental impact statement (SEIS) for oil and natural gas leasing in the Little Missouri National Grassland. We encourage USFS to finalize the SEIS expeditiously by proceeding with Alternative 1, which properly balances responsible oil and natural gas development with other resource protections in the planning area.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in North Dakota and across the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees.

The Alliance believes the current management prescriptions reflected in the draft SEIS's Alternative 1 have demonstrated the required balance between mineral development, conservation, and other needs pursuant to federal statutes and regulations, and we urge USFS to choose this alternative when finalizing revisions to the Northern Great Plains Management Plans. Alternatives 2 and 3 would impose overly burdensome restrictions on development that are unnecessary to achieve the stated goals of the SEIS and are contrary to the administration's Energy Dominance agenda, so we oppose their adoption in the final SEIS.

#### Regulatory Framework

On March 28, 2017 President Donald Trump issued Executive Order (EO) 13783, titled "Promoting Energy Independence and Economic Growth," which provides guidance to federal agencies to avoid taking actions that will unnecessarily burden domestic energy production.

Executive Order 13783 also requires federal agencies to review actions that potentially burden the development or use of domestically produced energy resources, including National Environmental Policy Act (NEPA) implementation. The Executive Order defines "burden" as "to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources."

USFS coordinates its management of oil and natural gas development on federal lands with the Department of the Interior (DOI) via the Bureau of Land Management (BLM). Since the release of EO 13783, DOI and BLM have taken numerous concrete steps to streamline NEPA via Secretarial Orders (SO) and instructional memoranda (IM), including the following:

[middot] SO 3354 - Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program

[middot] SO 3355 - Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects"

[middot] SO 3358 - Executive Committee for Expedited Permitting

[middot] WO PIM 2018-010 - NEPA Compliance for Oil and Gas Reinstatement Petitions

[middot] IM 2018-034 - Updating Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews

[middot] IB 2018-061 - NEPA Efficiencies for Oil and Gas Development

[middot] Deputy Secretary Memo - Standardized Intra-Department Procedures Replacing Individual Memoranda of Understanding for Bureaus Working as Cooperating Agencies

[middot] Deputy Secretary Memo - Additional Direction for Implementing Secretary's Order 3355 Regarding Environmental Assessments

We urge USFS to align the final SEIS with these directives, which will ensure consistent implementation of federal permitting requirements between the Service and BLM. Consistency between the two agencies will reduce confusion for the federal partners and ensure operators are not tasked with differing compliance requirements across the landscape.

As detailed below, however, Alternative 3 would impose numerous overly burdensome restrictions on development that would limit the streamlining of NEPA analysis and permitting of oil and natural gas projects. Alternative 2 would go even further and prohibit all new oil and natural gas leasing. As this alternative is clearly incompatible with the administration's priorities outlined above, and because it is not the preferred alternative as designated in the draft SEIS, the remainder of our comments will focus on Alternatives 1 and 3 only.

Furthermore, BLM's Manual on Land Use Planning specifically states that "[w]hen applying leasing restrictions, the least restrictive constraint to meet the resource protection objective should be used."<sup>1</sup>(1 BLM Handbook H-1601-1, App. C. II. H. at 24.) While USFS is not bound by a BLM manual, we nevertheless urge the agency to observe this regulatory guidance as it considers any stipulations for oil and natural gas leases, especially with regard to timing limitations, no surface occupancy (NSO) stipulations, and controlled surface use (CSU) restrictions. We note that the draft SEIS states numerous times that the effects of Alternatives 1 and 3 would be the same or substantially similar, and when that is the case the "least-restrictive" standard should lead to Alternative 1 being selected.

Finally, we note that the State of North Dakota and other federal agencies have primary authority to regulate numerous aspects of oil and natural gas development, including air quality and species protections. The final SEIS should only address issues over which USFS has jurisdiction.

#### Disturbance and Multiple Use

The draft SEIS does not persuasively explain USFS's purpose in revising current lease stipulations in the planning area, and in fact it ignores recent technological and operational improvements that would argue for fewer restrictions, rather than the increased stipulations reflected in Alternatives 3.

Each year, improvements in technology reduce the footprint of oil and natural gas development, and reclamation techniques continue to improve so that the impact to the land is small and temporary. More than fifteen years have elapsed since the 2001 Northern Great Plains Plan Revisions FEIS and subsequent 2003 Record of Decision for Oil and Gas Development were released in the planning area. In that time, oil and natural gas development has shifted from vertical wells with dense well-pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed. One horizontal well now takes the place of 8 to 16 vertical wells, leading to reductions in well pad disturbances, linear disturbances, and disturbances due to human activity.<sup>2</sup>(2 Oil & Gas Impacts on Wyoming's Sage- Grouse: Summarizing the Past & Predicting the Foreseeable Future, 8 Human-Wildlife Interactions, David H. Applegate &

Nicholas L. Owens, Fall 2014, 288.) In 2012, the disturbance reduction resulting from this dramatic shift in drilling technology may have approached approximately 70 percent.<sup>3</sup> (3 Id. at 289.)

After a well is drilled and completed, which usually takes just a few weeks to months, depending on how many wells are clustered on a pad, interim reclamation occurs and the surrounding land remains available for recreational and agricultural purposes. Once wells are plugged and abandoned and final reclamation occurs, the disturbance to the land is barely discernable, if at all. Ultimately, the impacts of developing vital energy resources are temporary.

As noted above, disturbance from oil and natural gas activities has substantially decreased since USFS last updated its management plans for the Northern Great Plains. As a result, any revisions in the final SEIS should reflect updated technological innovations and new knowledge regarding actual impacts from development, rather than merely assuming that greater restrictions are necessary to achieve the same results anticipated in 2001 and 2003.

#### Air Quality

The Clean Air Act (CAA) generally delegates primary authority for regulating air and water emissions to the states and not to USFS. While USFS will necessarily analyze and disclose impacts to air through the National Environmental Policy Act (NEPA) process for the Northern Great Plains Management Plans, USFS is not the regulating agency that ensures that oil and natural gas operations comply with the CAA.

NEPA is purely a procedural statute that requires the identification and analysis of a proposed action's impact to environmental resources.<sup>4</sup> (4 See, e.g., 42 U.S.C. [sect] 4332(2)(C) (agency is required to prepare a detailed statement on, inter alia, "any adverse environmental effects which cannot be avoided should the proposal be implemented"); 40 C.F.R. [sect] 1502.16 (same); *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 (1978).) It does not mandate that a certain outcome be achieved or prohibit any impacts to environmental resources, such as air quality.<sup>5</sup> (5 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).)

To "provide for" compliance with the CAA in a management plan, USFS simply has to provide lease stipulations or notices that ensure that site-specific project authorizations include a measure or condition of approval that a lessee must obtain all applicable air permits from the appropriate jurisdictional authority.<sup>6</sup> (6 Cf. *WildEarth Guardians v. Salazar*, 880 F. Supp. 2d 77, 93 (D.D.C. 2012), *aff'd*, 738 F.3d 298 (D.C. Cir. 2013) (stating that "neither the FLPMA nor the implementing regulations required BLM to analyze whether and to what degree the leasing of the[hellip]tracts would comply with national ozone, PM10, and NO2 standards"); *WildEarth Guardians v. BLM*, 8 F. Supp. 3d 17, 38 (D.D.C. 2014) (finding the same and concluding that BLM satisfied FLPMA by including clauses in the leases requiring compliance with air and water quality standards).)

Records of Decision for NEPA documents do not themselves authorize any activity capable of emitting air pollutants. Companies must obtain authorization from the appropriate air quality authorities before initiating any operations analyzed in a NEPA document and must comply with applicable regulations once operations commence. Permits are issued with conditions of approval (COAs) that require operators to comply with all applicable laws, but USFS is not legally authorized to regulate air quality standards. It is the responsibility of the State of North Dakota to issue air permits for oil and natural gas operations and to ensure that operators comply with those permits and the CAA.

Furthermore, as the Draft SEIS acknowledges, "overall air quality conditions are considered good by the NDDH." Draft SEIS at 41. Indeed, none of the actual monitored criteria pollutants, including nitrogen dioxide (NO<sub>2</sub>), exceed the applicable state or federal air quality health-based standards under the most recently available data, and, in fact, are not anywhere close to exceeding the National Ambient Air Quality Standards (NAAQS). DEIS at

The criteria pollutants typically associated with oil and natural gas development, including ozone, are well below federal health standards, and as the Draft EIS states "overall near field modeling found no estimated exceedances of the NAAQS," while "oil and gas emissions in the Williston Basin should be declining on a per well basis due to new regulations and requirements by the [EPA] and the State of North Dakota." DEIS at 48.

The proposed lease stipulations relating to mitigating air quality impacts must be placed in the context of these data and expected emissions decreases under the existing regulatory framework. The Draft SEIS, while acknowledging these issues, fails to adequately explain how Alternative 3 would improve air quality or why it is necessary to further mitigate air quality impacts from expected development.

In the face of the overwhelmingly strong air quality conditions in the planning area, and no real demonstration that air quality conditions are likely to deteriorate, any potential air quality impacts associated with future oil and natural gas development would be best dealt with on an individual, site-specific basis at the permitting stage.

According to the DEIS, Alternative 3 "prohibits surface use (including fracking) from occurring during the May 1

- December 1 timeframe for any recreation sites with a development scale of 3 through 5." DEIS at 50. The revised stipulation also purports to "limit surface use activities (such as fracking) that may impact air quality to distances greater than 0.25 miles from those developed recreation sites considered likely to have concentrated public use, in order to limit public exposure to unhealthy air pollution." DEIS at 50.

It is not clear from the Draft EIS what air quality problem these new and revised lease stipulations are intended to address (if any) or how they will be effective in doing so. The "Effects of Alternative 3" mentions an estimated "overall increase[] to criteria and hazardous air pollution and greenhouse gases and their affects to human health and the environment described in this report," DEIS at 50, but this statement contradicts others made in the record, including that oil and natural gas emissions are declining on a per well estimates of potential human health exposures or impacts that would tend to support the need for new or revised lease stipulations.

Similarly, the Draft EIS does not describe in any further detail how the timing and distance- based lease restrictions would mitigate any purported air quality impacts. For example, there is nothing in the record demonstrating either that the public is being exposed to unhealthy air pollution as the result of oil and natural gas operations across the relevant area or that a timing or distance-based lease stipulation is needed to limit such exposure (actual or anticipated). In fact, the record demonstrates precisely the reverse[mdash]the most recent data demonstrate there have been no exceedances of any health-based standards and monitored levels are not close to approaching the NAAQS.

The Draft SEIS's discussion of greenhouse gas (GHG) emissions is similarly lacking. The Draft EIS states that "GHG emissions per well are expected to decline as a result of . . . declining methane flaring as a percentage of production," and acknowledges that "large fluctuations in flared gas volume create uncertainty in making greenhouse gas emissions estimates from oil production sources." See DEIS at 50-51.

GHG emissions will continue to be further reduced through existing regulatory frameworks and consent decree requirements in North Dakota, including methane reduction co- benefits from Leak Detection and Repair Programs (LDAR) (required or implemented as BMPs), use of low- or no-bleed pneumatics, applicable closed vent system requirements, and increased control requirement on storage vessels, among others. Unfortunately, the Draft SEIS remains silent on these measures.

The Draft SEIS makes several references to a quarter-mile fence-line setback or "buffer" being necessary or appropriate to mitigate air quality (specifically nitrogen dioxide) impacts. See DEIS at 45. These statements are not supported by the record, and it is not appropriate for the USFS, an agency without technical expertise in air quality matters, to be suggesting an appropriate setback distance in an EIS.

Air quality experts across the country continue to vigorously debate this issue and the science is far from settled. As evidence, in the limited instances where regulators in Texas and Colorado have put in place setbacks, they have been extraordinarily careful to qualify the setbacks as politically necessary and not scientifically based. For example, in 2013, a paper published in Energy Policy examined urban gas drilling and distance ordinates in the Texas Barnett shale and found that "there is no uniform setback distance, distances have increased over time, and, rather than technically-based, setbacks are political compromises."<sup>7</sup> (7 Available at <https://ideas.repec.org/a/eee/enepol/v62y2013icp79-89.html>)

Similarly, the Colorado Oil and Gas Conservation Commission, in its 2013 Statement of Basis concerning location requirements for Oil and Gas Facilities (e.g., "Setback Rules"), explicitly states that "these Setback Rules are not intended to address potential human health impacts associated with air emissions related to oil and gas development" on the basis that "there are numerous data gaps related to oil and gas development's potential effect on human health and that such data gaps warrant further study" after consulting with the Colorado Department of Health and Environment (CDPHE).<sup>8</sup> (8 Available at [https://cogcc.state.co.us/documents/reg/Rules/2012/setback/Final\\_SetbackRules-StatementOfBasisAndPurpose.pdf](https://cogcc.state.co.us/documents/reg/Rules/2012/setback/Final_SetbackRules-StatementOfBasisAndPurpose.pdf).) A more recent report released in 2017 by CDPHE suggests the risk of harmful health effects is low for residents living at distances 500 feet or more from oil and natural gas operations and calls for more study, rather than immediate public health action.<sup>9</sup> (9 Available at <https://www.colorado.gov/pacific/cdphe/news/OG-health-study> or <https://drive.google.com/file/d/0B0tmPQ67k3NVVFc1TFg1eDhMMjQ/view>.) Notably, both Texas and Colorado were addressing oil and natural gas development in highly urbanized areas, which stands in stark contrast to the rural, sparsely populated planning area for the draft SEIS.

Any reference to an appropriate setback distance should be removed from the final SEIS, and the final EIS should continue to contain no setback or buffer requirements in its adopted lease stipulations.

Other recent USFS NEPA reviews have taken the type of flexible approach to air quality mitigation that is most appropriate here. In a recent Final EIS for oil and natural gas leasing in the White River National Forest in Colorado, the USFS declined to even conduct a near- field analysis "due to broad assumptions made regarding the siting or potential future oil and gas development."<sup>10</sup> (10 See White River National Forest Oil and Gas Leasing Final Environmental Impact Statement Section 3.2.7, available here [https://www.fs.usda.gov/nfs/11558/www/nepa/61875\\_FSPLT3\\_2395824.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/61875_FSPLT3_2395824.pdf).) There, USFS noted that "future oil and gas developments will include an air quality analysis of project-specific impacts as they are proposed," which would include near-field analysis where appropriate. *Id.*

Notably, USFS "determined that the authority provided by the Standard Terms and Conditions of a lease (Least Form 3100-11), Federal Onshore Oil and Gas orders and regulations . . . were sufficient to protect the [air] resource and a special stipulation was not needed to modify the terms of the lease." *Id.* at 3.2.7.1. Rather, "these authorities would be used during the submittal, review, and approval process of an [APD]" and that "mitigation needed at the time of development such as avoidance, timing, special inventories, or other requirements needed

to analyze and mitigate the effects would be implemented through the use of [COAs] without exceeding valid existing lease rights." Id.

This same type of flexible approach to air quality mitigation should be utilized here through the choice of Alternative 1 in the final SEIS. Indeed, putting in place rigid lease stipulations to programmatically mitigate estimated air quality impacts as proposed in Alternative 3 would be a significant departure from recent precedent and one which is hardly called for on this record.

As discussed above, there is no support for Alternative 3 from an air quality impact mitigation perspective. All relevant, actual air quality data in the planning area supports maintaining current conditions under Alternative 1. There simply is not a credible air quality concern from a public health or NAAQS perspective associated with future oil and natural gas development demonstrated on this record that would warrant the new or revised lease stipulations on an air-quality mitigation basis.

Similarly, it is inappropriate to suggest any setback or buffer distance is or would be appropriate. Experience in other parts of the country confirms that this issue is rapidly evolving, but currently without scientific consensus. Moreover, where setbacks have been put in place, they have been done so in highly urbanized areas out of political concerns (i.e., the City of Fort Worth and the Colorado Front Range). Adoption of Alternative 1 will still provide all necessary and available protections for future air quality concerns associated with development in the planning area

#### Wildlife Protections

The proposed restrictions related to the Greater Sage-Grouse (GrSG) in Alternative 3 are unnecessary and inappropriate at this time, and USFS should not adopt them in the final SEIS. USFS has proposed to amend its management plans for the GrSG in North Dakota and across the West, and the Alliance understands that the Service intends to issue a Record of Decision (ROD) for the amendments in 2019. In draft documents USFS has proposed to modify numerous oil and natural gas leasing stipulations set forth in the 2015 Approved ROD that the 2019 plans will revise. These proposed modifications will afford lessees flexibility in how they may conduct operations on leases in GrSG habitat.

Nevertheless, Alternative 3 proposes to attach stipulations from the 2015 ROD, including no surface occupancy, controlled surface use, and noise limitations in the general vicinity of identified GrSG leks. It makes little sense to require oil and natural gas lessees to adhere to lease stipulations that USFS determines are not warranted or should be modified, so we urge USFS not to implement these restrictions in the final document.

Furthermore, the stipulations analyzed under Alternative 3 are doubly unnecessary because USFS has determined they will not result in a substantially different result for the species as compared to Alternative 1. The draft SEIS states that both alternatives "will not likely contribute to a trend toward Federal listing or a loss of viability to the population or species." As discussed above, where two alternatives will achieve the same result, USFS should choose the least restrictive management prescriptions. In this case, current management actions as reflected in Alternative 1 have proven capable of protecting the GrSG and its habitat, and the increased restrictions analyzed in Alternative 3 are unnecessary and inappropriate.

The rationale for the new sage grouse-focused lease stipulations is deficient in other respects. For example, while sage grouse numbers have declined in North Dakota over the past decade, the supporting Wildlife Report acknowledges that this decline is not the result of oil and natural gas activity or development. See Wildlife Report and Biological Evaluation at 18 (listing the reasons for the decline, none of which relate to oil and gas development).

Moreover, as acknowledged on this record, GrSG were never widespread in North Dakota and are presently

confined to the southwestern portion of the state. See DEIS at 81.

Critically, there are "no leks on National Forest System lands [that] remain active" and it would only be after hypothetical reintroduction that it would even be theoretically possible for sage grouse to occur on the LMNG. See Wildlife Report at 31 ("If sage-grouse were to occur on the LMNG"); see also *Weyerhaeuser Co v. U.S. Fish and Wildlife Service*, 139 S.Ct. 361 (2018) (holding that an area is eligible for designation as a "critical habitat" under the ESA only if it is actually "habitat" for the species). Given these facts, it would be arbitrary and capricious to implement the new leasing restrictions being proposed under Alternative 3 to mitigate potential sage grouse impacts.

In addition, the Draft EIS selectively cites one study in passing reference and apparent justification for the lease stipulations directed at sage grouse mitigation. Specifically, the Draft EIS and the supporting Wildlife Report cite Manier et al (2014) and then briefly note that the "data suggest" that a buffer should be between 3.1 to 5 mile radius. DEIS at 81. The results of the Manier study, however, were called into question shortly after the study's release in a yet-unresolved Data Quality Act challenge filed by the Alliance over dissemination of information presented in the GrSG Buffer Report.

As described in our challenge, there is no evidence that this range of buffer distances will result in quantifiable population level benefits. These arbitrary distances also are based on erroneous assumptions regarding male lek attendance and ignore other factors driving population decline that are unrelated to human disturbance. The Draft SEIS does not acknowledge the controversy with the Manier et. al study, nor explain why such drastic buffer distances are necessary in an area where there aren't even active leks.

Curiously, the Wildlife Report states that the current stipulations "are inconsistent with stipulations that have been identified for nearby land under different agency management" and that "there is a discrepancy between the current no surface occupancy and that suggested in scientific literature." Wildlife Report at 31. Yet, neither the Draft EIS nor the Wildlife Report explain these statements any further, cite to the scientific literature referenced, or identify the other stipulations for "nearby land."

Cherry-picking one disputed scientific study without any further analysis or discussion does not constitute the "hard look" required by NEPA. See *Consol. Delta Smelt Cases*, 717 F. Supp. 2d 1021, 1061 (E.D. Cal. 2010), citation omitted (holding that an agency may not rely on "ambiguous studies as evidence" to support findings made under the ESA; see also, *Rock Creek Alliance v. U.S. Fish & Wildlife Service*, 390 F.Supp.2d 993 (D. Mont. 2005) (rejecting FWS's reliance on a disputed scientific report, which explicitly stated its analysis was not applicable to the small populations addressed in the challenged opinion). It should also be noted that within the draft document, none of the threatened, endangered, or sensitive species identified are experiencing adverse effects as the result of past oil and natural gas development.

In sum, the record does not support the new timing and NSO lease stipulations focused on sage grouse mitigation. It also does not explain why the current conditions are inadequate. The lack of active leks in the planning area, and the relatively sparse population in North Dakota writ large, supports the choice of Alternative 1 in the final SEIS. Common sense also counsels against adopting new or revised lease stipulations while the USFS and BLM are finalizing the agencies' sage grouse amendments.

## Recreation

Alternative 3 in the draft SEIS proposes three new or revised stipulations on oil and natural gas development based on potential impacts to recreational activities in the planning area. These stipulations include NSO, timing limitations and roadless areas, all of which will have a significant, negative impact on leasing while providing little or no benefit to recreational activities. These potential stipulations are based on potential future impacts to currently nonexistent resource uses, and the draft SEIS clearly states that current management prescriptions are

adequately protecting the recreation-based resources in question.

The following maps, which are drawn from publicly available information but are not in the record, depict the inventoried "Roadless Areas" in the Badlands (pink). The first is a higher-level look at the inventoried Roadless Areas in and amongst existing roads and oil and natural gas development. The second image shows the existing roads and well locations (blue diamonds) that are currently in inventoried Roadless Areas.

Maps in attachment

The recreation-based lease stipulations in Alternative 3 are based solely on general, speculative, and uncertain potential future development with little or no explanation in the record concerning why they are necessary or where the future impacts might occur. For example, the Recreation and Related Resources Report acknowledges that the new and revised lease stipulations would only insure mitigation "if, in the future, additional developed recreation sites are built" and when discussing noise pollution, notes "that this [recreation] analysis covers many areas and the exact location of proposed operations is unknown." See Recreation Report at 29, 4; see also *id.* at 23 ("The level of protection depends on the level of development of existing and future leases.").

In other places, the Recreation Report speaks broadly of future potential increases in recreational use of the planning area but provides no specificity regarding where or how these increases may interrelate with existing or future oil and gas development. While increased recreational use may be a consistent trend, the way it is framed in the Draft SEIS is too speculative and uncertain to support the significant new and revised lease stipulations, which will result in nearly a 20% increase in NSO-designated areas, placing almost 60% of federal mineral ownership into NSO designation. See Recreation Report at Table 17.

Moreover, the Recreation Report and the Draft EIS admit that the current lease stipulations (i.e., Alternative 1) combined with other site-specific NEPA-review processes are adequate to mitigate recreational impacts. The Recreation Report acknowledges that for Alternative 1, "the undeveloped character of the land would be largely protected" and that "[m]ost of the[] indirect effects would be mitigated through the current stipulations, lease notices, and the conditions of approval." Recreation Report at 23.

This same conclusion is repeated throughout the Recreation Report and is not contradicted by anything the Draft EIS. See e.g., Recreation Report at 24 ("Indirect effects would be minor due to the current stipulations, lease notices, and conditions of approval that would be developed at the time a plan of operations was submitted."); *id.* ("There are current stipulations and laws in place to protect recommended [sic] for wilderness area, as well as other special places that can provide experiences in a natural setting away from sights, noise, and sounds."); *id.* at 25 ("For sites that are not covered under a stipulation, at the time a proposal to drill is submitted, site-specific environmental analysis would be completed, therefore protection measures for these sites would be implemented or negotiated under the conditions of approval."); *id.* at 26 ("All proposals to drill must go through site-specific documentation to analyze the effects to the resources near the leased parcel.

These areas would be protected by several layers of law and best management practices.").

In contrast, the record concludes Alternative 3 might provide less indirect effects, but only if future recreational areas are developed. See Recreation Report at 33. This is the type of highly speculative mitigation measure that the courts disfavor, and particularly so in this case where the record so clearly shows that current lease stipulations and other measures are fully protective of the indirect resource impact.

The lack of clarity in the record regarding the scope of potential consequences of the new and revised recreation lease stipulations also prevents an accurate assessment of how impactful these restrictions will be to future development. Specifically, both the timing and the NSO stipulations extend to future recreation sites with a Development Scale 3-5. But there is nothing in the record that allows for an assessment of where these future

classifications might occur, how big they will be, or with what frequency they may come into existence.

Instead, the Recreation Report provides two rudimentary maps (see pages 14, 15), a description of what each development scale number means (page 12), and a list of current recreation site scale scores (page 13).

As with other aspects of Alternative 3, the recreation-based lease stipulations may harm more than help. NSO restrictions have the demonstrated effect of concentrating and pushing development onto adjacent landowners (private and state) that are not subject to the restrictions. This reality is not acknowledged nor accounted for in the Draft EIS. The Draft EIS claims that existing federal leases will not be affected by the new stipulations of Alternative 3. This is misleading in that it does not acknowledge the mechanism by which multiple leases are pooled together for horizontal well development and it also ignores the deleterious effect of federal stipulations on private and state minerals.

When the surface location of proposed development is on non-federal lands but includes federal minerals (a split estate as described in the Draft SEIS), BLM may still apply all stipulations on the federal mineral lease to the COAs for the permit, thereby impeding the reasonable development of private property. The following illustration of two drilling units shows how minority tracts of currently unleased federal minerals are: a) preventing the development of both leased federal and leased private minerals, as well as b) when leased, will impinge upon the currently leased mineral estate with conditions of approval that are based on stipulations considered in the DEIS.

Table/Graph in attachment

These examples demonstrate that the Draft EIS incorrectly concludes that the lease stipulations are limited only to administratively available leases with USFS surface, and reinforce that lease stipulations should be used sparingly as they are rigid and often carry unintended consequences.

#### Economic Impacts

The potential economic impacts from adopting the proposed restrictions in Alternative 3 are substantial, and would be felt by the federal, state, and local governments as well as potential lessees and the many industries and local businesses who indirectly benefit from increased energy development. The graphic below presents a conservative estimate of the full scale of development and economic activity that would be impacted by increased restrictions in just one specific zone of the planning area.

Table in Attachment: Dakota Grasslands Future Bakken Economic Activity Affected by Unleased Federal Minerals

These calculations include both wells that are on Forest Service lands and adjacent wells that would be included in drilling spacing units and therefore impacted by any restrictions on the USFS wells. Although the restrictions would not preclude all or even most of the economic activity calculated above, they are likely to impact a significant portion. The direct and indirect benefits that are at risk from increased stipulations number in the billions of dollars, illustrating the importance of right-sized management prescriptions.

#### Conclusion

Western Energy Alliance strongly supports Alternative 1, which would maintain the current lease stipulations that, combined with site-specific NEPA permitting procedures, are and will remain adequately protective of other resources in the planning area while allowing for responsible oil and natural gas development in the future. The expanded lease stipulations analyzed under Alternative 3 are not reasonable or warranted and would have Western Energy Alliance appreciates the opportunity to submit these comments on the draft SEIS. Please do not hesitate to contact me with any questions.

Sincerely, Tripp Parks

Manager of Government Affairs