



**BACKCOUNTRY
HUNTERS & ANGLERS**
NORTH DAKOTA

September 30, 2020

Subject: Northern Great Plains Management Plan Revision

Final Supplemental Environmental Impact Statement for Oil and Gas Leasing

Responsible Official: Jeff Tomac, Acting Grasslands Supervisor

Little Missouri National Grasslands, Medora and McKenzie Ranger Districts

Email to: appeals-northern-regional-office@usda.gov

Dear Objection Reviewing Officer:

Backcountry Hunters & Anglers (BHA) is a North American conservation organization dedicated to the conservation of backcountry fish and wildlife habitat, sustaining and expanding access to important lands and waters, and upholding the principles of fair chase.

The mission of BHA includes ensuring North America's outdoor heritage and hunting and fishing in a natural setting, through education and work on behalf of wild public lands and waters. BHA works towards maintaining and improving this great American legacy for both present and future generations.

The North Dakota chapter of BHA has over 400 members. Most of the membership recreates on public lands and rivers, including the Dakota Prairie Grasslands. BHA is concerned that a proposed Forest Service decision may adversely impact protected roadless area resources.

The purpose of this letter is to document BHA's objections to the selection of preferred alternative 3B identified in the Final Supplemental Environmental Impact Statement (FSEIS) and Draft Record of Decision (DROD) for Oil and Gas Leasing on the Dakota Prairie Grasslands (DPG). This lengthy planning process began in 2012 and has experienced numerous delays and periods of inactivity. A second Notice of Intent (NOI) was published in the Federal Register September 1, 2015.

For the Proposed Action, the NOI noted, "Preliminary internal scoping indicates that existing federal oil and gas operating regulations, current LRMP standards and guidelines, and existing lease stipulations provide the Forest Service with adequate authority to mitigate the effects of reasonable foreseeable oil and gas development that may occur on future federal leases. Consistent with 40 CFR 1502.9(2), the DPG will supplement the 2001 FEIS to consider new information and changed circumstances..." Furthermore, "the Grasslands Supervisor will decide whether or not changes need to be made to the 2003 leasing decision and whether the current Dakota Prairie Grasslands LRMP direction need amendment".

The October 2018 Draft Supplemental EIS (DSEIS) would modify stipulations and lease notices, including more acres of No Surface Occupancy (NSO) stipulations, codifying this protection within Inventoried Roadless Areas to strengthen protections. By specifying NSO for Inventoried Roadless Areas in a stipulation, the protection acknowledges the priorities for protecting these areas from disturbance as found in the 2002 DPG Land and Resource Management Plan (LRMP) in compliance with the 2001 Roadless Area Conservation Rule.



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BHA respectfully asks that the Objection Reviewing Officer review the LRMP's ROD to gain a greater understanding of the importance of the roadless areas to the plan revision process and the public. The deciding official noted that preserving areas as roadless is very important to many who commented (ROD p.6). To the extent possible, Modified Alternative 3 Final will preserve some (approximately 140,000 acres of nearly 280,000 acres) of the roadless areas, given the valid rights that exist on some of these areas. The ROD (p.9) provides for the management of roughly 140,000 acres of inventoried roadless lands on the DPG for retention of their current roadless character by prohibiting future road construction (with exceptions for outstanding rights, etc).

An additional 140,000 acres of Inventoried Roadless Area lands will be managed so that they would be available for potential road construction, subject to subsequent project analysis and decision. One of the six fundamental plan decisions (p.15) made in the Plan Revision included the evaluation and consideration of inventoried roadless areas for recommendation as potential wilderness areas (36 CFR 219.17), resulting in Management Area prescription 1.2 – Suitable for Wilderness.

The deciding official acknowledged the Public's Plan (ROD p.14) and how the public shaped the final decision, including people who make a living from grassland resources as well as those who value the national grasslands for their aesthetic qualities and intrinsic values. Comments resulted in changes to the final documents and the ROD. The FEIS was subject to a rare, if not unprecedented, six-month public review period and comment period. The selected alternative was chosen because it best balanced the needs of the land with the economic needs of people dependent on the national grasslands and the desires of people living across the nation who value the lands for the aesthetic values. Virtually every acre of the 1.2-million-acre unit is grazed by livestock and over 900,000 acres of the one-million-acre Little Missouri National Grasslands (LMNG) is available for oil and gas leasing. Roughly 40,000 acres are designated Suitable for Wilderness and 69,000 acres are designated backcountry recreation nonmotorized. While some would argue this is hardly a balance, many on the aesthetic side of equation supported the decision because they thought, finally, that some roadless areas on the LMNG would be permanently protected.

The Oil and Gas FSEIS and DROD were released July 2020 nearly two years after the DEIS was issued for public comment. From Draft to Final a very significant change occurred. The Draft preferred alternative 3 was modified to "a variation", designated Alternative 3B and is now the preferred alternative. Apparently some DSEIS comments were incorporated to develop 3B. The significance of the change is that 3B includes a new stipulation for protected Inventoried Roadless Areas that would provide a buffer of controlled surface use (CSU stipulation) for one-quarter mile on each side of the center line of existing roads within nearly all protected roadless areas and areas that are Suitable for Wilderness.

This "variation" alternative was not included in the DSEIS. Neither the public nor many who commented could possibly have anticipated or known this alternative would be the FSEIS preferred alternative. The DPG's letter of August 12, 2020, outlined the objection process and stated issues raised in objections must be based on who previously submitted specific written comment regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. This new information will inform BHA's comments and objections.

Due to the new information, BHA is requesting public notification of the changes from Draft to Final and an additional comment period for public input. CEQ regulations for implementing NEPA (40 CFR Parts 1500-1508) at 1503.1(b) states an agency may request comments on a FEIS before the decision is finally made. Part 1502.9 (c)(1)(i)(ii) allows an agency to prepare supplements to either draft or final EISs, including if



“There are significant new circumstances or relevant information to environmental concerns.” BHA recommends this be done (request sent to DPG 9/30/20) before any objection process begins. BHA recommends that the Forest Service should disclose that current stipulations and lease notices are adequately protecting grassland resources consistent with the purpose and need statement, but that the preferred alternative will not protect grassland resources, particularly 19,750 acres of protected roadless areas and areas Suitable for Wilderness that would be most heavily impacted by this preferred alternative.

The following documents are referenced in BHA’s objection response statements due to new information that arose after the opportunities for comment: 1) The Record of Decision (ROD) for Dakota Prairie Grasslands Final Environmental Impact Statement (FEIS) and Land and Resource Management Plan (LRMP). 2) The January 12, 2001, Transportation Rule and Policy, 3) The Final Travel Management Rule; Designated Routes and Areas for Motor Vehicle Use (Federal Register/Vol. 70, No.216/Wednesday, November 9, 2005/Rules and Regulations), 4) The September 1, 2015 Notice of Intent (Federal Register/Vol. 80, No 169), and 5) CEQ Regulations National Environmental Policy Act (40 CFR Parts 1500-1508) 2010.

Objection 1) BHA is objecting to preferred alternative 3B and the use of roads and construction of roads in protected roadless areas to conduct surface mineral activities. The Transportation Rule and Policy (LRMP ROD p.10) requires the Forest Service to identify a minimum road system, determining which roads are needed and which are not through the NEPA process. BHA cannot find any supporting analysis or decision documents that demonstrate the Rule’s requirements were met through the NEPA process. Also, the DPG did not complete the required Travel Management Plan (2005 Travel Management Rule) and the designation of roads, trails, and areas open to motor vehicles on a travel management map.

To encumber or construct roads in protected roadless areas before these required planning processes are completed fails to provide the public the opportunity to comment and participate on the status of, or need for, roads in roadless areas and other areas of the grasslands. The FSEIS (p.iv) states the new CSU stipulation would apply to roads with a maintenance level of 3, 4, or 5 and existing roads would be determined when a parcel is leased. None of these roads have been identified in the analysis and have only been made available through GIS data, a format not easily accessible for the general public.

To resolve this objection, BHA requests that the Transportation and Travel Management Rules requirements be met prior to offering any new leases with CSU stipulations in areas previously encumbered with NSO stipulations. These incomplete processes violate agency regulations and policy.

Objection 2) FEIS Purpose and Need for Action (p. 5). The purpose of the analysis is to determine whether current oil and gas lease stipulations and lease notices are providing adequate protection to resources on the LMNG on lands previously determined to be administratively available for leasing. The FS will use information from the updated reasonably foreseeable development scenario, together with other changed conditions, to determine the adequacy of the stipulations from the 2003 Record of Decision (see alternative 1) to protect natural and social resources while continuing to authorize future oil and gas leasing.

Alternative 3B is not consistent with the purpose and need statement to protect natural resources (see discussion below).

The 2015 NOI noted that preliminary internal scoping indicates that existing federal oil and gas operating regulations, current LRMP standards and guidelines, and existing lease stipulations provide the Forest



Service with adequate authority to mitigate the effects of reasonably foreseeable oil and gas development that may occur on future federal leases.

The 2018 DSEIS acknowledges “by specifying no surface occupancy for inventoried roadless areas in a stipulation, the protection acknowledges the priorities for protecting these areas from disturbance as found in the Dakota Prairie Grasslands plan in compliance with the 2001 Roadless Area Conservation Rule.” New stipulations for no surface occupancy (NSO) would be added for recreation sites, rare plants, and roadless areas to provide more reliable protections and flexibility to protect new recreation sites that may be developed in the future.

Based on preliminary internal scoping and statements in the DSEIS, current oil and gas lease stipulations and lease notices are providing adequate protection to resources on the LMNG.

Rather than determining whether current stipulations are providing adequate protections to resources, the FSEIS preferred alternative (3b) proposes a new stipulation (Controlled Surface Use) and “variant” alternative for Inventoried Roadless Areas that would provide a buffer of controlled use for one-quarter mile on each side of the center line of existing roads within (protected) Inventoried Roadless Areas. The FSEIS states that Surface development would be allowed on roughly 6,800 acres of unleased (p. 157) lands previously protected with NSO stipulations and presumably in areas Suitable for Wilderness. The FSEIS does not explicitly highlight that there is an additional 13,000 acres of protected Roadless Areas and non-motorized areas, that would also be affected by this new .25-mile buffer and CSU stipulation. Collectively, these 19,752 acres (Draft GIS Data) would touch nearly every Roadless Area in the LMNG and 3 out of the 4 areas Suitable for Wilderness. Nowhere in the FSEIS does it address the potential for these designations to be lost or negatively impacted because of the new CSU stipulations.

In this stipulation well pads and other infrastructure may be located in the buffer, as long as the distance between the edge of the road and the well pad does not exceed 100 feet. The Roadless Rule does not permit new construction of roads in roadless areas. Unless a pad were located next to a road, an access road would need to be constructed to access the pad. The FEIS provides no analysis or justification for a quarter-mile buffer (1,320 ft). BHA contends the buffer is arbitrary and capricious and not justified or supported by analysis.

Authorizing development in an Inventoried Roadless Area may have direct effects on the roadless characteristics and wilderness attributes of the potentially impacted Inventoried Roadless Areas and areas Suitable for Wilderness. Below is a summary of effects based on the roadless characteristics and wilderness attributes (FSEIS p. 137).

In areas where the controlled surface use applies, the natural character of these roadless areas will have potential direct effects. These effects would be long-term due to the duration of the well pads or other development such as transmission lines and pipelines in the roadless area. This would impact the natural character of these areas and void any future wilderness designation. This would inconsistent and contrary to the 2002 LRMP Management Area prescription 1.2 – Suitable for Wilderness that states “...their wilderness character will be protected...”. Habitat and other changes to the ecological function may also be impacted due to new construction and noise. (FSEIS p.137).

Consistent with the purpose and need statement, the NOI (2015) and DSEIS support the determination that current lease notices and stipulations are providing adequate protection to resources on the LMNG.



The proposed alternative contravenes the intent of the purpose and need statement to protect resources through the introduction of the preferred alternative. Alternative 3B will not provide adequate protection to resources.

BHA does not understand the impetus or rationale (Draft comments) for preferred alternative 3B. Justification has not been sufficiently explained and the public was neither given notification or the opportunity to comment on this significant change from Draft to Final. If an increase of NSO acres in the Draft had to be offset to achieve some perceived imbalance, the Forest Service got it wrong. The lack of rationale supporting 3B strains credulity.

To resolve this objection, BHA requests that the reviewing official takes into account the documentation and references provided to either modify or eliminate preferred alternative 3B to exclude the controlled surface use stipulation. To the extent possible, protected roadless areas should stay roadless and their character preserved for future generations to enjoy. Oil and gas facilities are not compatible nor desired in these areas; hence the NSO stipulation. BHA can support either alternative 1 or alternative 3 (FSEIS p. iv) but prefers alternative 3.

Objection 3). BHA is concerned that the supplemental oil and gas leasing decision process is being used to change roadless area and Suitable for Wilderness area protections. Any modification or change to the 140,000 acres of roadless areas that are protected in the LRMP's more restrictive Management Areas (MAs) – suitable for wilderness, nonmotorized backcountry recreation, etc.) should be conducted through either a specific significant plan amendment for roadless areas or a plan revision.

Furthermore, the changes proposed in preferred alternative 3B are inconsistent with the purpose and need statement's intent and the issues identified in the FSEIS. CEQ regulations (40 CFR Parts 1500-1508) require an early and open process for determining the scope of issues to be addressed and for identifying significant issues related to a proposed action. The preferred alternative is outside the scope of alternatives, was introduced late in the process, and basically is unknown to the public. The Executive Summary (p.1) states that alternatives were developed around those issues that involve unresolved conflicts concerning alternative uses of available resources. One of the six key issues identified (p.2) included, "Strengthen Protections for Inventoried Roadless Areas". Preferred alternative 3B does not strengthen protections for protected roadless areas, but rather as previously noted, will degrade the resources and wilderness character of those areas.

To resolve this objection, BHA requests that alternative 3B be modified to either exclude the CSU stipulation or eliminated. And, If the FS decides to continue to pursue stipulation changes in protected roadless areas to allow surface uses, it should be addressed through either a specific LRMP amendment or revision process. It should be noted that BHA does not oppose all oil and gas development within the Little Missouri National Grasslands.

In summation, NDBHA believes a "balance" was achieved in the 2002 Land and Resource Management Plan. This FSEIS and resulting Alternative 3b, does not achieve balance but tips the scales to an even greater loss of protected surface acres and specifically threatens nearly all of these special designations for the next major plan revision. The LMNG has already experienced a 93% loss of areas Suitable for Wilderness since the 1970's. Roadless Areas and areas Suitable for Wilderness are becoming more and



more valued for their character and intrinsic value. Alternative 3B will put additional acres and designations at risk of being lost permanently. Given the amount of development in the Grasslands since the 2002 LRMP and the current percentages of the Grasslands being leased and grazed. NDBHA believes Alternative 3 provides the balance that the DPG seeks, allowing a significant majority portion of the Grasslands to be developed by industry but still protecting key areas and designations for the future.

Sincerely,



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