

**FINAL ENVIRONMENTAL IMPACT STATEMENT  
AND  
NEBRASKA NATIONAL FOREST  
REVISED LAND AND RESOURCE MANAGEMENT PLAN**

**Record of Decision  
Oil and Gas Leasing**

**NEBRASKA NATIONAL FOREST  
BUFFALO GAP NATIONAL GRASSLAND  
FALL RIVER COUNTY  
SOUTH DAKOTA**

June 13, 2002

Lead Agency: U.S. Department of Agriculture  
Forest Service  
Rocky Mountain Region

Responsible  
Official: Rick Cables  
Regional Forester  
Rocky Mountain Region

Cooperating Agency: U.S. Department of Interior  
Bureau of Land Management  
Montana State Office

Responsible  
Official: Sherry Barnett  
State Director  
Montana State Office

Recommending  
Official: Douglas J. Burger  
Bureau of Land Management  
North Dakota Field Office Field Manager

This is the Bureau of Land Management (BLM) Oil and Gas Leasing Decision on the Environmental Impact Statement (EIS). The EIS and Plan reflect the Forest Service (FS) and BLM environmental analysis and planning review for oil and gas leasing actions and reasonably foreseeable development anticipated if the lands are leased.

Current leases held by production can be operated under the present lease terms as long as there is production and therefore, no expiration date can be defined for them. In addition, current leases have a ten-year term and expire at the end of those ten years, unless production is established. Stipulations selected, as a result of this Decision, will only apply to new leases after the existing lease has expired.

## Explanation of Acreages and Data Sources

The information in the table included in this document were generated from a variety of sources, including several different Geographical Information System (GIS) software platforms, tabular databases, and data from a variety of models used in the planning analysis. The acreage figures from the various sources do not match exactly in all cases. However, when added, acres of the National Forest System lands and split estate lands (non-federal surface/federal minerals) are within acceptable margins of error.

### **DECISION**

Based on the analysis conducted by the FS and accepted by the BLM and documented in the Final EIS, and the cooperating agency involvement of the BLM, I hereby make the following findings and decisions:

- 1) As required by regulation at 43 CFR 3101.7-1(c) the BLM will only offer and issue leases on the lands that are included in the Regional Foresters decision to authorize specific lands for leasing. No lease parcels will be offered over the objections of the FS.
- 2) The BLM will offer lands for lease and issue leases for lands within the west half of Fall River County, South Dakota, on the Buffalo Gap National Grassland subject to stipulations required by the Regional Forester in Alternative 3 of the FEIS, in accordance with the regulation at 43 CFR 3101.7-2(a).
- 3) The BLM will make all (approximately 58,720 acres) non-federal surface/federal mineral (split estate) lands within the administrative boundary of the previously described study area available for oil and gas leasing. These lands will be offered for lease, and leases will be issued subject to the terms and conditions identified in the selected alternative for the FEIS (Alternative 3) with a slight modification relative to paleontology resources. This decision is partially different from the decision for Forest System lands which also includes a stipulation for paleontology resources. The level of resource protection and effect of the stipulation will be essentially the same, as analyzed in the EIS. The difference is BLM's stipulation will require the lessee/operator to conduct paleontology inventories and mitigation measures consistent with BLM Manual 8270 and Handbook H-8270-1. This stipulation is included with this Decision as Attachment A.

### **RATIONALE FOR DECISION ON FOREST SYSTEM LANDS**

The regulation at 43 CFR 3101.7-1(c) for leasing of National Forest System lands administered by the FS, requires the BLM to obtain prior consent to leasing such lands. In the present case, such consent involves decisions being made by the Regional Forester with respect to authorization of specific lands for leasing as well as stipulations and conditions of approval needed to mitigate damage to surface and subsurface resources within the boundaries of a project area that encompasses the west half of Fall River County, South Dakota, on the Buffalo Gap National Grassland.

The BLM has participated as a cooperating agency in the analysis and documentation leading to the FS decisions and recommendations. As a cooperating agency, the BLM has independently reviewed the FEIS and Nebraska National Forest Revised Land and Resource Management Plan (LRMP) and finds that it contains all the necessary information and analysis to allow BLM to make decisions concerning leasable oil and gas minerals in compliance with the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations, and related requirements including public involvement and consultation with other agencies and organizations.

The BLM participation as a cooperating agency has included the use of BLM staff in preparing needed documentation. It has also included the use of BLM staff and managers in reviewing work accomplished by the FS, including proposed decisions, recommendations, alternatives, and associated analysis.

The FEIS and LRMP meet BLM Supplemental Program Guidance (SPG) requirements for fluid minerals including the development of Reasonably Foreseeable Development Scenarios for affected National Forest System lands, identification of mineral potential for oil and gas resources within the project area, and identification of stipulations which the BLM will utilize when leasing oil and gas minerals within the boundaries of the project area. It also reflects consideration of public, other agency, and interdisciplinary team input obtained during the analysis and decision making processes. Finally, it complies with applicable laws, regulations, and policies. Therefore, the BLM will use the FEIS as the NEPA compliance document for its leasing decisions within the administrative boundaries of the project area described above.

#### **RATIONALE FOR DECISION ON SPLIT ESTATE LANDS:**

As noted in the rationale for the BLM decisions on Forest System Lands, the agency has participated as a cooperating agency with the FS in the analysis and documentation leading to the leasing decisions and recommendations found in the FEIS and Nebraska National Forest Revised LRMP. Also as noted, the FEIS and LRMP meet BLM SPG requirements for fluid minerals and reflects consideration of public, other agency, and interdisciplinary team input obtained during the analysis and decision making processes. Finally, it complies with applicable laws, regulations, and policies.

The change regarding paleontological resources from the selected alternative used on FS Lands is not a change of resource protection decisions or constraints, but only a modification of the means by which the described resource protection is to be achieved. The difference in agency decisions is based on BLMs determination that the cost of resource inventories and mitigation of resources must be covered by the lessee/operator. This decision also gives the BLM more flexibility in applying mitigation when considering surface owner land use rights while processing Federal drilling proposals on private surface lands.

The BLM is mandated by the Federal Land Policy and Management Act to coordinate, to the extent consistent with laws governing the administration of the public lands, land use inventory, planning, and management activities of or for such lands with the corresponding activities of other Federal entities. In the case of this decision, this

mandate applies to FS management activities and the management of the Federally owned oil and gas estate.

Adoption by the BLM of the same mitigation measures selected by the FS, and consideration for paleontological resources under a modified stipulation for the portion of the Federal mineral estate in the project area under BLM leasing jurisdiction, will help to ensure consistency in management of lands and resources within the boundaries of the Buffalo Gap National Grassland, while incorporating private surface owner interests.

## **CHANGES BETWEEN DRAFT EIS AND FINAL EIS**

Alternative 3 Final, as described in the FEIS, is a modification of the Alternative 3 described in the DEIS. There are differences between Alternative FEIS 3 and Alternative 3 in the DEIS resulting in changes to the environmental consequences disclosed in the DEIS. This modified alternative (Alternative 3 Final) is well within the range of alternatives the public would expect the Forest Service and BLM to consider. Most of the modifications stem from comments received on the DEIS during the comment period.

### **Oil and Gas Stipulations**

Timing stipulations for oil and gas development became more comprehensive between the draft and final EIS's, extending some restrictions to certain lease production activities. New research has furthered knowledge about wildlife requirements, such as habitat needs for species survival (see the Biological Assessment and Evaluation for Revised Land and Resource Management Plans, December 2000, Appendix H of the FEIS). As a result, Timing Limitation (TL) stipulations for many wildlife species in the Revised Management Plan are different from those contained in the draft EIS and previous oil and gas leasing analyses.

## **PUBLIC INVOLVEMENT**

This plan was developed through a coordinated process involving the resource and social economic assessments of ten National Forest and Grassland units distributed across the Northern Great Plains (NGP) and located in North Dakota, South Dakota, Nebraska and Wyoming. A planning team (called the NGP Planning Team) conducted and coordinated the assessment and planning process through a combination of approaches and techniques involving collaboration with other agencies, consultation with Indian tribes, dialogue with the scientific community, dialogue with consultants, and by ad hoc teams composed of employees from the Forest Service and other agencies. The analysis was also supplemented with local considerations and taken into consideration for this decision.

The NGP Planning Team, along with the ten grassland managers, conducted an extensive public involvement process throughout the development of the Revised Plans. The Interdisciplinary Team consulted with other Federal agencies (the Bureau of Land Management, Fish and Wildlife Service, National Park Service, and Natural Resources Conservation Service); various state agencies, including the U.S. Department of Agriculture, South Dakota Game, Fish, and Parks, and Nebraska Game and Parks Commission; Indian tribes; and county governments.

A Notice of Intent to Prepare an Environmental Impact Statement was published in the Federal Register in February 1997. The public was kept informed throughout the plan revision process through a series of newsletters and news releases, and less formal means.

The revision topics and preliminary alternatives were presented at a series of public meetings from February through April of 1996. Discussions were lively, opinions diverse, and the level of interest in the plan revisions high. Another series of meetings was held following the publication of the Draft Environmental Impact Statement (DEIS) in August 1999. These meetings were held to clarify information presented in the DEIS and answer questions. Additional meetings were held with local governments and interest groups (environmental, motorized and non-motorized recreationists, grazing associations, the timber industry, and others) throughout the plan revision process.

Publication of the DEIS and proposed Revised Plan in July 1999 was followed by a 90-day public comment period which was scheduled to end in October 1999. The comment period was extended three times until February 3, 2000. Nearly 110,000 individual comments on the DEIS and draft Revised Plan for all NGP National Grassland units were received from over 26,000 commentors. Over 2,400 commentors specifically addressed the Nebraska National Forest. The Forest Supervisor and Forest Planner read all of the summarized comments from each of those letters, and a team developed responses to them (see FEIS, Appendix A). The Final EIS was released in July 2001. A six-month public comment period was then initiated on the FEIS. Approximately 48,000 letters were received. See Appendix A of the FEIS for more information on public involvement activities.

## **ALTERNATIVES CONSIDERED**

### **GENERAL DESCRIPTION AND COMPARISON OF THE ALTERNATIVES**

The alternatives are described here in general terms, in relation to the Forest Service Land Use Plan revision topics. Only major alternative elements are discussed, and the reader is encouraged to review both Chapters 2 and 3 of the FEIS for the full scope of the alternatives and their effects.

Each alternative is essentially a separate and distinct set of Management Area allocations and a distinct Management Plan. The alternatives in the DEIS were developed without preconceived notions of a preferred alternative. The preferred alternative (Alternative 3) in the DEIS has been changed in the Final EIS in response to public comments. While all alternatives provide a wide range of multiple uses, goods, and services, some alternatives give slightly more emphasis to particular uses in order to respond to public comment and to explore management options, opportunities, and trade-offs. The characteristics of alternatives considered in detail, and modified based on public comment received on the DEIS, are described below:

#### **Oil and Gas Leasing Options Considered in the Alternatives**

The oil and gas leasing analyses and decisions conducted in 1995 and 2000 for the Buffalo Gap National Grassland were incorporated by reference in the FEIS. A range of reasonable alternatives was examined in the existing 1995 and 2000 leasing analyses and decisions. The alternatives ranged from no leasing of any lands (no lands available for

leasing), to leasing with standard lease terms only, to leasing with standard lease terms and various combinations of lease stipulations.

For the current analysis, Alternative 1 (No Action) represents existing leasing decisions. For Alternatives 2, DEIS 3, FEIS 3, 4, and 5, stipulations were developed using the standards and guidelines in the proposed land use plan for the Nebraska National Forest. This resulted in a consistent set of stipulations across all alternatives (except Alternative 1). These alternatives vary by acres allocated to management areas, and in most cases, do not vary standards and guidelines except for those associated with management areas.

The acres available for oil and gas leasing are the same under all alternatives. Alternative 1 would have the most acres with No Surface Occupancy (NSO) stipulations. Alternative 1 is also the only alternative that includes lands with standard lease terms only.

The following table displays acres of land that would be made available for leasing, and that would be stipulated by alternative. The total acres include the split estate lands included in this decision.

#### **ACRES STIPULATED BY ALTERNATIVE**

Leasing Designation and Stipulations	Alt 1	Alt 2	DEIS Alt 3 Alt 3a	FEIS Alt 3	Alt 4	Alt 5
Acres open for leasing	156,330	156,330	156,330	156,330	156,330	156,330
Acres open for leasing with stipulations. Because areas may have more than one type of stipulation, the total area with stipulations may be larger than the area open for leasing.						
No Surface Occupancy (NSO)	11,200	2,670	2,670	2,670	2,670	2,670
Controlled Surface Use (CSU)	9,210	6,360	45,440	45,440	6,130	41,850
Paleontology CSU	19,880	147,300	108,230	108,230	147,520	111,800
Timing Limitation (TL)	1,170	26,060	26,070	26,070	26,060	26,060
Standard Lease Terms	116,040	0	0	0	0	0

#### **Alternative 1 – (No Action)**

The no action alternative is required by regulation. Current Land and Resource Management Plan (Management Plan) direction and emphases would continue with this alternative. Since current plans were developed, management area titles and the management area numbering system have changed. Therefore, Management Area titles and numbers have been changed to make this alternative more easily comparable to other alternatives.

This alternative does not recommend any additional wilderness, Special Interest Areas (SIAs), or Research Natural Areas (RNA's) and does not provide any areas for non-motorized backcountry recreation. This alternative had the most acres of MA 6.1 Rangeland with Broad Resource Emphasis and the least acres of special management area designations.

### **Alternative 2**

This multiple-use alternative would emphasize production of commodities such as livestock, minerals, oil, gas, and timber. Recreation opportunities, and special area designations would be provided where they would not foreclose commodity production.

For the Buffalo Gap National Grassland, this alternative had the most acres of MA 6.1 Rangeland with Broad Resource Emphasis. It had no recommended wilderness, wild and scenic rivers, or bighorn sheep habitat management areas.

### **Alternative 3 (Draft)**

This was alternative 3 in the DEIS and it is carried forward in its entirety from the DEIS to the FEIS.

This alternative would adopt additional special area designations, such as Special Interest Areas, and places added emphasis on native plants and animals, and recreation opportunities. Plant and animal habitats would be managed to provide viable populations and many standards and guidelines have been prescribed to ensure this.

### **Alternative 3 Final - (SELECTED ALTERNATIVE)**

This multiple-use alternative would modify current Management Plan direction by adopting additional special area designations, such as Special Interest Areas. It would also place added emphasis on native plants and animals and recreation opportunities.

Changes in Alternative 3 from the Draft EIS include the following: Changes in goals, objectives, standards and guidelines, and monitoring requirements, proposed Management Area allocations, Geographic Area direction, oil and gas stipulations (See Final Land and Resource Management Plans).

### **Alternative 4**

This multiple-use alternative would feature natural processes and aggressive restoration of impaired native ecosystems. It would demonstrate the role that national grasslands and forests have in sustaining rare animal and plant communities within the Northern Great Plains. Plant and animal habitats would be managed to meet viable populations with the lowest risk level.

### **Alternative 5**

This multiple-use alternative would accentuate recreation opportunities and non-commodity services and also provide commodity outputs that complement or fit within recreation objectives. Plant and animal habitats would be managed to meet viable populations with a low risk level

## **ALTERNATIVES CONSIDERED BUT ELIMINATED FROM DETAILED STUDY**

The following alternatives were considered and eliminated from further detailed study during the planning process. They are discussed more specifically in Chapter 2 of the FEIS, including the reasons for their elimination.

Passive Management Alternative: This alternative would restore biological communities and health using limited active resource management activities.

Bison-Restoration/Free Roaming Bison Alternative: Tribes, inter-tribal organizations, individual tribal members and many others proposed removing domestic livestock and restoring free-roaming bison to the national grasslands.

Conservation Reserve Alternative: This alternative would include principles of conservation biology, establish core reserve areas on national grasslands and link core areas with biological corridors.

Designation of the Site-Specific Motorized Routes: This alternative would have included information to make these site-specific travel way determinations within this revision decision.

No Grazing Alternative: This would prohibit livestock grazing.

## **IDENTIFICATION OF THE ENVIRONMENTALLY PREFERRED ALTERNATIVE**

National Environmental Policy Act (NEPA) regulations require agencies to specify the alternative or alternatives which were considered to be environmentally preferable [40 CFR 1505.2(b)]. Alternative 4 would allow the fewest ground-disturbing activities – one measure of the environmentally preferred alternative. According to Forest Service policy, the environmentally preferred alternative is the one that best meets the goals of Section 101 of NEPA. Section 101 emphasizes the protection of the environment for future generations; the preservation of historic, cultural, and natural resources; and attainment of the widest range of beneficial uses. In terms of oil and gas leasing constraints on the Buffalo Gap National Grassland DEIS Alternative 3, FEIS Alternative 3 (the preferred/selected alternative) and Alternative 4 all would allow about the same level of ground-disturbing activities.

## **MITIGATION AND MONITORING**

The FEIS describes potential impacts to other resources from oil and gas activities. Potential mitigation measures, including lease stipulations, are presented in Chapter 2 and 3, and in Appendix D of the Nebraska National Forest Land and Resource Management Plan (LRMP).

The lease stipulations described in Alternative 3 of the FEIS and included in Appendix D of the Nebraska National Forest LRMP will be implemented as a result of this decision. The Nebraska National Forest LRMP standards and guidelines will also be used to develop conditions of approval (COA) for oil and gas operations. Additional COAs that provide site-specific mitigation can be included with approved permits for lease

operations. The site specific COAs will be designed to protect the unique site characteristics and to implement the guidelines and meet the goals described in the BLM/FS brochure entitled "Surface Operating Standards for Oil and Gas Exploration and Development" (1989).

All practical mitigation measures from Alternative 3 that are needed to avoid or minimize environmental harm have been adopted.

The effects of implementing this decision will be monitored and periodically evaluated. Monitoring will determine whether actions are consistent with current policy, whether original assumptions and impacts were accurately predicted, and whether mitigation measures are satisfactory. The BLM will depend on Forest Service monitoring plans to furnish information on any change in environmental conditions, and acquisition of new environmental data that could impact the leasing stipulations included as part of this Decision. Monitoring of lease development activities will be accomplished through the BLM Oil and Gas Inspection and Enforcement program. If monitoring and evaluation indicate that a change is needed in mitigation measures or in other aspects of this decision, such changes will be implemented.

#### **APPEALS PROCEDURES:**

The Decision made herein by the BLM may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR Part 4 Subpart E. A notice of appeal must be filed within 30 days beginning the day following the date of publication of the notice of this Decision in the Denver Post/Rocky Mountain News. The notice of appeal must be filed in the Montana State Office, 5001 Southgate Drive, P.O. Box 36800, Billings, MT 59107-6800. A copy of such notice must also be provided to the Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107-1394.

Within 30 days after filing the notice of appeal, a complete statement of the reasons for the appeal must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 801 N. Quincy St., Suite 300, Arlington, VA 22203 (see 43 CFR 4.412 and 4.413). If the reasons for the appeal are fully stated when filing the notice of appeal, no additional statement is necessary. A copy of the statement of reasons must also be provided to the Field Solicitor.

Within 15 days after each document is filed, each adverse party named in the Decision and the Field Solicitor (address: United States Department of the Interior, PO Box 31394, Billings, MT 59107-1394) must be served with a copy of the notice of appeal, the statement of reasons, and any other documents filed as part of the appeal.

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, VA 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR 4.401(c)(2)). Unless these procedures are followed, an appeal will be subject to dismissal by the IBLA. The appellant has the burden of showing that the Decision appealed from is in error.

These Decisions will become effective at the expiration of the time for filing a Notice of Appeal unless a petition for a stay of the Decision is timely filed with the Notice of Appeal. See 43 CFR 4.21(a). The provisions of 43 CFR 4.21(b) define the standards and procedures for filing a petition to obtain a stay pending appeal.

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State Director  
Montana State Office

Date

## **ATTACHMENT A**

### **Paleontology**

#### **Controlled Surface Use (CSU)**

#### **Resource: Fossils (CSU)**

#### **Stipulation**

Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified by the contrary by the BLM, shall:

1. Contact the BLM to determine if a site-specific vertebrate paleontological inventory is required. If it is required, the operator must engage the services of a qualified paleontologist, acceptable to the BLM, to conduct the inventory. An acceptable inventory report is to be submitted to the BLM for review and approval at the time a surface-disturbing plan of operation is submitted.
2. Implement mitigation measures required by the BLM to preserve, avoid, or recover vertebrate paleontological resources. Mitigation may include relocation of proposed facilities or other protective measures. All costs associated with the inventory and mitigation will be borne by the lessee or operator.
3. The lessee or operator shall immediately bring to the attention of the BLM any vertebrate paleontological resources discovered as a result of surface operations under this lease, and shall leave such discoveries intact until directed to proceed by the BLM.

#### **Objective**

Protect key paleontological resources from disturbance, or mitigate the effects of disturbance to conserve scientific and interpretive values, and the interests of the surface owner.

#### **Application Methodology**

Use this stipulation on split-estate lands (private surface/federal minerals within the Buffalo Gap and Dakota Prairie Grassland Units) for Class 3, 4, and 5 formations as described in Appendix J. The predevelopment survey protocol is described in Appendix J. Where the Forest Service is referenced in this appendix substitute BLM.

#### **Waivers**

No conditions for a waiver are anticipated, unless the surface owner elects to waive this requirement.

**Exceptions**

The authorizing office may grant an exception to this stipulation if the operator submits a plan that demonstrates impacts from the proposed action will not affect significant fossils or the surface owner elects to reject this requirement.

**Modifications**

The boundaries of the stipulated area may be modified if the authorizing office determines that portions of the area do not include significant fossils as described in Appendix J, and BLM Manual 8270 and Handbook H-8270-1.