



**File Code:** 1570-1  
#08-04-17-0011 A215  
**Date:** December 3, 2007

Terry Kemp  
Secretary and General Counsel  
Cedar Strat  
511 West Robins St.  
Eureka, NV 89316

CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED

Dear Mr. Kemp:

In accordance with 36 CFR 215.18, I have reviewed the appeal record, Final Environmental Impact Statement (FEIS) and the Record of Decision (ROD) for the White Pine and Grant-Quinn Oil and Gas Leasing project on the Ely Ranger District on the Humboldt-Toiyabe National Forest.

My review focused on the project documentation and the issues raised in the appeal you filed on behalf of Cedar Strat. In reviewing your appeal, I also considered the recommendations of the Appeal Reviewing Officer (copy enclosed).

### **APPEAL DECISION**

I am affirming the decision by Humboldt-Toiyabe National Forest Supervisor Ed Monnig.

I find that the activities documented in the FEIS, ROD, and the project record are in compliance with applicable laws, regulations, and policy. A more detailed response to the appeal issues is enclosed.

This constitutes the final administrative determination of the United States Department of Agriculture under 36 CFR 215.18 (c).

Sincerely,

/s/ Cathrine L. Beaty  
CATHRINE L. BEATY  
Appeal Deciding Officer

Enclosures



**White Pine & Grant-Quinn Oil and Gas Leasing Project**  
**Humboldt-Toiyabe NF**  
**#08-04-17-0011 and #08-04-17-0012 A215**

**APPEAL ISSUE 1:** The DEIS (Draft Environmental Impact Statement) comments were not responded to and there was little consideration given to responsible opposing views.

**RESPONSE:** An agency preparing a Final Environmental Impact Statement (FEIS) shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement (40 CFR Part 1503.4, FSH 1909.15 Part 24.1).

1. Modify alternatives including the proposed action.
2. Develop and evaluate alternatives not previously given serious consideration by the agency.
3. Supplement, improve, or modify its analyses.
4. Make factual corrections.
5. Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

One thousand, eight hundred comments were received during the 45-day comment period. All comments received were read, grouped according to subject matter, and then consolidated into "Public Concerns." Sub-concerns follow Public Concerns to provide additional detail. Sample Statements, which are exact quotes from comment letters, are often provided to show examples of public comment. The Agency response is then provided to each grouped Public Concern. All of the comments received are provided in their entirety within the project record (FEIS, Appendix J, p. J-3).

Comments from Cedar Strat were grouped as Public Concerns item 1 and 3 (FEIS, Appendix J, pp. J-3; J-19).

**Public Concern #1:** The Forest Service (FS) should consider and incorporate direction from the Energy Policy Act of 2005 and the Forest Service's energy mission statement (FEIS, Appendix J, p. J-19).

**Agency Response:** The Energy Policy Act of 2005 and the Forest Service's National Minerals Policy have been considered (FEIS, pp. 1-6, 7).

**Public Concern #3:** The FS should choose the least restrictive Alternative 4 (FEIS, Appendix J, p. J-3).

**Agency response:** The Environmental Impact Statement (EIS) covers a range of alternatives, one of which is Alternative 4. The deciding officer will consider all alternatives and public comments and opinions before making a decision. The FS National Mineral Policy objective

states the FS will administer its minerals program to provide commodities for current and future generations commensurate with the need to sustain the long-term health and biological diversity of ecosystems. This includes ensuring exploration, development, and production of mineral and energy resources are conducted in an environmentally sensitive manner and that these activities are integrated with the planning and management of other resources using the principles of ecosystem management (FEIS, Appendix J, p. J-3).

All comments to the DEIS were responded to in accordance to the Council on Environmental Quality (CEQ) Part 1503.4 and FSH 1909.15 Part 24.1.

**APPEAL ISSUE 2:** By making conditions for leasing overly restrictive, the FS has failed its mandates in regards to promoting and facilitating domestic energy production.

**RESPONSE:** The Wilderness Act of 1964 and the Nevada Wilderness Protection Act designated certain lands in the Humboldt and Toiyabe National Forest as Wilderness and requires that the authorized officer “manage wilderness to preserve natural ecological conditions...” (16 U.S.C. 1131-1136; 16 U.S.C. 1131-1136). The White Pine County Conservation, Recreation, and Development Act of 2006 designated additional lands within the project area as wilderness. Consequently, designated wilderness areas in the White Pine and **Grant-Quinn** portions of the Ely Ranger District were withdrawn for consideration for oil and gas leasing (Record of Decision (ROD), p. 3).

Facilitating domestic energy production must be done in a manner that will also help assure the nation’s environmental needs. The FEIS identifies the existing environment and the potential impacts to wildlife, vegetation, soils, water quality, inventoried roadless areas, and other surface resources (FEIS, pp. 3-3 - 3-84; 4-3 - 4-54). The ROD identifies lease stipulations that are necessary to mitigate impacts to these surface resources (ROD, pp. 5-11). FS regulations provide opportunities to waive, except, or modify a lease stipulation when it can be demonstrated that the factors for which the lease stipulation was developed have changed sufficiently to make the protection provided by the stipulation no longer justified or that the proposed operation would not cause unacceptable impacts (36 CFR 228.104).

The forest followed current laws, policy, and forest plan management direction in making lease stipulations that are reasonable and necessary to protect surface resources.

**APPEAL ISSUE 3:** The Roadless rule may yet be overturned on appeal.

**RESPONSE:** The 2005 State Petitions Rule for management and protection of inventoried roadless areas was in effect at the time the DEIS for this project was released to the public. On September 20, 2006, the United States District Court for the Northern District of California invalidated the 2005 State Petitions Rule and reinstated the 2001 Roadless Conservation Rule (ROD, p. 13). This order reinstated 36 CFR 294, Subpart B (2001) - Protection of Inventoried Roadless Areas (IRAs) 2001 Roadless Rule.

The ROD complies with the September 20, 2006 District Court ruling regarding IRAs and roads, by imposing a Controlled Surface Use Stipulation on all available IRAs. Under this stipulation,

no new temporary roads, permanent roads, road construction or reconstruction may occur within the IRAs (36 CFR 294.11). This stipulation may be changed in accordance with Bureau of Land Management (BLM) Manual 3101 and any other applicable provisions (ROD, p. 4).

The decision made is in compliance with the Roadless Area Protection Rule in effect at the time the ROD was issued. The FS can only apply current laws and Agency direction in effect at the time a decision is made. This decision does not foreclose future reconsideration of lands available for leasing if there is a change in law or regulation.

**APPEAL ISSUE 4:** There was no thorough scientific review of geologic information related to oil and gas potential. A Forest Supervisor cannot make a proper evaluation of the potential for oil and gas without a Geologic Survey conducted by the United States Geological Survey (USGS).

**RESPONSE:** FS regulations require the leasing analysis to project the type/amount of post-leasing activity that is reasonably foreseeable as a consequence of conducting a leasing program (36 CFR 228.102(c)(3)). The Interagency Reference Guide provides guidance on projecting post-leasing activity (BLM, Fish and Wildlife Service (FWS), National Park Service (NPS), Environmental Protection Act (EPA), FS, June 2003). The Reasonably Foreseeable Development (RFD) scenario contained in the FEIS projects the amount of exploration and development activity within the project area. The RFD, though speculative, is based primarily on geology (potential for oil and gas resource occurrence) along with past and present oil and gas activity (FEIS, pp. 1-9 - 1-12).

The geologic report discusses the geology, oil, and gas exploration, development and potential of the project area and includes an extensive list of professional references (FEIS, pp. C-1 - C-8). The project record identifies additional oil and gas information sources that were consulted in preparing the RFD (FEIS, project record index, pp. 31 - 38). Included in this list of sources are four geologic reports prepared either by or cooperatively with, the USGS.

Under a Memorandum of Understanding (MOU) between the BLM and the FS, the BLM is to provide expertise in the areas of petroleum engineering and petroleum geology on leasing analyses on National Forest System (NFS) lands (Forest Service Agreement No. 06-SU-11132428-052; 4/14/2006, p. 8). Minerals specialists of both the BLM and the State of Nevada-Division of Minerals are listed in the document as preparers and contributors (FEIS, p. 5-4).

The FEIS relied upon subject matter experts in petroleum geology and petroleum engineering, who utilized relevant published literature, to project the reasonable foreseeable development for the project area.

**APPEAL ISSUE 5:** The Decision does not allow for a waiver to the sage grouse lek stipulation.

**RESPONSE:** The use of waivers, exceptions, and modifications for specific resources is allowed under FS regulations (36 CFR 228.104).

“Critical greater sage-grouse habitat includes traditional breeding/strutting grounds (leks), nesting, brooding, rearing, and summer and winter habitat. Any oil and gas activities that result in the disturbance of leks would result in significant effects to greater sage-grouse. Alteration of sagebrush habitat utilized by greater sage-grouse at any time of the year may also cause population declines or abandonment of this habitat. This habitat includes sagebrush communities that are used for mating, nesting, brooding, rearing, and summer and winter habitat. Prior to ground-disturbing activities, survey should be conducted and leks should be identified and avoided” (FEIS, p. 4-5). BLM’s Draft Resource Management Plan recommends protection of all sagebrush within a three kilometer radius of a lek (USDA BLM Draft Resource Management Plan for the Ely District, May 2006).

The Forest determined that disturbance to leks posed too great a threat to sage grouse to allow for a waiver of this stipulation. The Forest is in compliance with FS regulations.



**File Code:** 1570-1

**Date:** November 19, 2007

**Route To:**

**Subject:** Reviewing Officer Recommendation  
White Pine & Grant-Quinn Oil & Gas Leasing Project  
Appeal Nos. 08-04-07-0011 A215 and 08-04-17-0012 A215

**To:** Appeal Deciding Officer

This is my review and recommendation on the disposition of the two appeals filed by Terry Kemp on the Humboldt-Toiyabe National Forest's White Pine & Grant-Quinn Oil & Gas Leasing Project. Terry Kemp filed two appeals, one on behalf of Terry and Lucinda Kemp and one on behalf of Chamberlain Exploration Development and Research Stratigraphic Corporation (Cedar Strat). Since the issues raised in both appeals were similar, I consolidated my review and response.

### **Project Background**

This decision identifies lands in the White Pine and Grant-Quinn portions of the Ely Ranger District that will be available for oil and gas leasing and the conditions controlling those leases. It also amends the Humboldt-Toiyabe National Forest's Land and Resource Management Plan. The Forest Supervisor's decision makes 255,603 acres of National Forest System land available in the project area for oil and gas leasing.

### **Appellant's Request for Relief**

The appellant requested the decision be overturned.

### **Appeal Summary**

The appellant expresses concern that the amount of land made available for oil and gas leasing underestimates the oil and gas potential and that the stipulations regarding oil and gas leasing are too restrictive. Specifically,

- The DEIS comments submitted by CedarStrat were not responded to and there was little consideration given to responsible opposing views.
- By making conditions for leasing overly restrictive, the Forest Service has failed its mandates in regards to promoting and facilitating domestic energy production.
- The Roadless rule may yet be overturned on appeal.
- There was no thorough scientific review of geologic information related to oil and gas potential. Forest Supervisor cannot make a proper evaluation of the potential for oil and gas without a Geologic Survey conducted by the USGS.
- The Decision does not allow for a waiver to the sage grouse lek stipulation.



## **Findings**

As Appeal Reviewing Officer, my role is to review the substantive quality and correctness, or appropriateness of the project decision with respect to the clarity, comprehension, effectiveness of public participation, and requested changes. My findings are based on my review of the decision and project record, in accordance with 36 CFR 215.19.

### **1. Clarity of the Decision and Rationale**

The Responsible Official's decision is clearly described in the Record of Decision (ROD). The rationale is logical and explains that after careful consideration of public input, and two independent federal decisions made in late 2006, modifications were necessitated between the draft and final Environmental Impact Statement (EIS). The rationale accounted for new legislation, which established four new wilderness areas, and expanded the Currant Mountain Wilderness. It also considered the U.S. District Court Order (9/20/06), which reinstated the "2001 Roadless Rule" that eliminated the option of road construction or reconstruction within all Inventoried Roadless Areas.

It is evident from the project record, ROD and EIS that the Responsible Official conducted a thorough review of relevant scientific information, considered opposing views, and acknowledged incomplete or unavailable information, scientific uncertainty, and risk.

### **2. Comprehension of Benefits and Purpose of the Proposal**

The Purpose and Need and Decision framework are clearly stated in the EIS and ROD and facilitate responsible exploration and development of oil and gas resources in the project area.

### **3. Consistency of the Decision with Policy, Direction, and Supporting Information**

I find the decision is consistent with agency policy, direction, and procedures for completing the EIS and ROD. The EIS, ROD and project record adequately disclose the environmental effects and provide sufficient evidence and analysis to make a reasoned choice.

### **4. Effectiveness of Public Participation Activities and Use of Comments**

I find that the Responsible Official complied with regulations concerning publication of the Notice of Intent and Notice of Availability in the Federal Register, and legal notices in the newspapers of record. I also find that the Responsible Official's staff provided additional public involvement through newsletters to interested parties and meetings with county commissioners. The record also illustrates consultation with tribal governments.

### **5. Requested Changes and Objections of the Appellant**

The appellants request reversal of the decision. In my review of the appeal, I did not find that the appellants presented a compelling argument in contrast to the information the Responsible Official had to make his decision. I feel the decision and record adequately address and refute the appellants' rationale for reversing the decision.

## **Recommendation**

Based on my review of the Environmental Impact Statement, Record of Decision, and supporting documentation in the project record, I recommend that the decision made by Forest Supervisor Ed Monnig be affirmed.

*/s/ Kevin B. Elliott*

Kevin B. Elliott

Appeal Reviewing Officer