

DAKOTA PRAIRIE GRASSLANDS/  
MONTANA STATE OFFICE  
OIL AND GAS LEASING  
RECORD OF DECISION



June 2003

Little Missouri National Grassland  
Cedar River National Grassland



***DAKOTA PRAIRIE GRASSLANDS  
OIL AND GAS LEASING  
RECORD OF DECISION***

**Little Missouri and Cedar River National Grasslands  
Slope, Billings, Golden Valley, Grant, Sioux and McKenzie Counties  
North Dakota**

Prepared by:

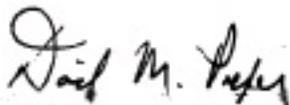
**U.S. DEPARTMENT OF AGRICULTURE - FOREST SERVICE  
DAKOTA PRAIRIE GRASSLANDS  
R-1, NORTHERN REGION**

**U.S. DEPARTMENT OF INTERIOR - BUREAU OF LAND MANAGEMENT  
MONTANA STATE OFFICE**

June 12, 2003

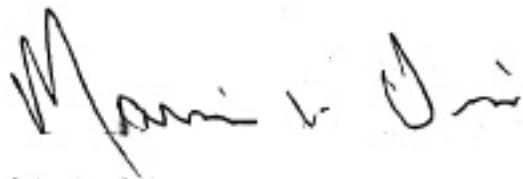
Deciding Officers

FOREST SERVICE DECISION BY:



David M. Pieper  
Grasslands Supervisor  
USDA Forest Service  
Dakota Prairie Grasslands

BUREAU OF LAND MANAGEMENT  
DECISION BY:



Martin C. Ott  
State Director  
Bureau of Land Management  
Montana State Office

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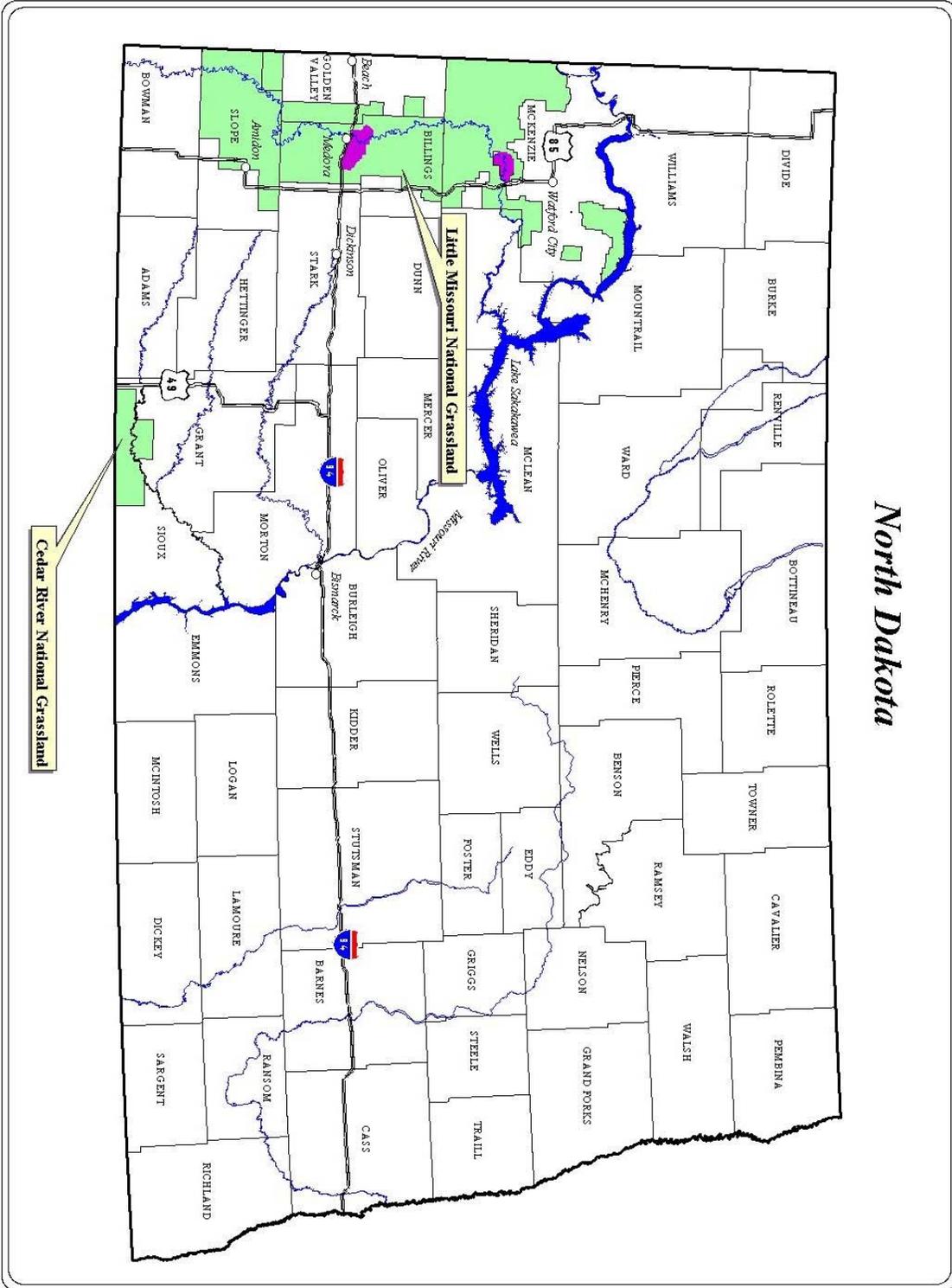
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# Map 1 – Vicinity Map



*North Dakota*

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## **I. Introduction**

### ***A. Purpose and Description of the Record of Decision (ROD)***

The Forest Service cooperates with the Department of Interior (DOI) in administering lawful exploration and development of leasable minerals. The Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA) was enacted by Congress in 1987. The implementing regulations, USDA 36 CFR 228 and DOI 43 CFR 3100, were finalized and published in the Federal Register on March 21, 1990, and June 17, 1988, respectively. The regulations set forth the procedures by which the Forest Service and the Bureau of Land Management (BLM) will carry out their statutory responsibilities in the issuance of oil and gas leases.

The purpose of this ROD is to document the Forest Service and BLM decisions concerning lands in the Little Missouri National Grassland and the Cedar River National Grassland. The ROD documents the Forest Service decision concerning which specific lands the Forest Service is authorizing the BLM to offer for lease in accordance with 36 CFR 228.102(e). The Forest Service calls this the “Leasing for Specific Lands” decision. This decision incorporates the lease terms and stipulations determined necessary to mitigate effects to surface resources. The decision and lease terms and stipulations are based on analyses documented in the Northern Great Plains (NGP) Final Environmental Impact Statement (FEIS), and the previous Northern Little Missouri National Grassland Oil and Gas Leasing EIS (Northern FEIS), and the Southern Little Missouri and Cedar River National Grasslands Oil and Gas Leasing EIS (Southern FEIS).

This Forest Service decision is consistent with the recent Dakota Prairie Grasslands Land and Resource Management Plan (DPG Plan) and Record of Decision (DPG ROD). This ROD incorporates the project files for the NGP FEIS, Northern FEIS, and Southern FEIS as a part of this project file. Refer to Map 1 for the location of the Project Area.

This ROD also documents the BLM decision to offer and issue leases on the lands that are included in the Forest Service decision and on all non-federal surface/federal mineral (split estate) lands within the administrative boundary of the oil and gas leasing project area. In addition, this ROD documents the BLM decision to use the NGP FEIS, Northern FEIS, and Southern FEIS as its National Environmental Policy Act of 1969 (NEPA) compliance document for: 1) offering lands for lease and issuing leases within the project area subject to stipulations, and 2) making available, offering and leasing, non-federal surface/federal minerals within the administrative boundaries of the Little Missouri and Cedar River National Grasslands of the Dakota Prairie Grasslands.

### ***B. Purpose and Need for the Proposed Project***

The purpose of this proposed project is for the Forest Service to determine which specific lands in the Little Missouri and Cedar River National Grasslands of the Dakota Prairie Grasslands the Forest Service will authorize the BLM to offer for lease in accordance with 36 CFR 228.102(e) (“Leasing for Specific Lands” decision) and the for BLM to make its decisions for split estate lands. The need for the project is to allow the Forest Service and BLM to continue to lease specific lands in the Little Missouri and Cedar River National

Grasslands. The specific purposes and needs for this analysis can be found in the NGP FEIS at pages 1-6 to 1-8.

In the Northern Little Missouri National Grassland Oil and Gas Leasing Record of Decision (Northern ROD) (1991) and the Southern Little Missouri and Cedar River National Grassland Record of Decision (Southern ROD) (1996), the Forest Service and BLM previously made decisions to authorize and to offer specific lands for lease in the same area of the Little Missouri and Cedar River National Grasslands covered by this ROD. Based on the 1991 and 1996 decisions the Forest Service and BLM have been leasing lands consistent with the two previous RODs.

Section 228.102(b) of the Code of Federal Regulations, Title 36, requires the Grasslands Supervisor to develop a schedule for conducting leasing analysis and Section 228.102(c) identifies requirements for the analysis. This direction was developed to comply with Congressional intent to provide for the orderly development and conservation of mineral resources. In consultation with the BLM, the state of North Dakota, and fluid minerals industry representatives, this project area was identified as a high priority for completion of a leasing analysis.

In 1997 the Forest Service began the process to revise its land and resource management plan for the National Grasslands. As a part of this process, the Forest Service considered new information as it related to the oil and gas leasing decisions made in the 1991 Northern ROD and the 1996 Southern ROD. With completion of the NGP FEIS and its Record of Decision signed July 31, 2002, the Forest Service adopted its Plan. This ROD replaces the previous Northern and Southern RODs and is consistent with the DPG Plan (2002).

### ***C. Scope Of The Proposed Project***

#### **1. Geographic Scope**

The geographic scope of the project area for the "Leasing for Specific Lands" decision is identified by the boundaries on Map 1. The area contains all of the lands administered by the Dakota Prairie Grasslands in the Little Missouri and Cedar River National Grasslands. These National Grasslands are located in portions of Slope, Billings, Golden Valley, Grant, Sioux, and McKenzie Counties of North Dakota. The "Leasing for Specific Lands" decision is made for all lands that are administratively available. This includes all lands and minerals administered by the Forest Service, regardless of their current lease status. Some of these lands are currently unleased, others are leased and held by production, and others are leased but not held by production.

In addition to the federal minerals within the boundary shown on Map 1, the Forest Service and BLM decisions also apply to a few (less than ten) isolated, outlying tracts of federal minerals. These tracts are approximately 40 acres or less in size and are in the vicinity of the Little Missouri National Grassland. The Little Missouri National Grassland has had several acquisition boundaries established by executive order prior to the current administrative boundary. These "outlying tracts" were acquired during these earlier acquisitions or were part of later exchanges.

## **2. Scope of the Project as It Relates to Land and Mineral Ownership Within the Project Area**

There are four general categories of ownership pertinent to oil and gas leasing depending on the combination of surface ownership (surface estate) and mineral ownership (mineral estate). The federal management authority over oil and gas leasing and the application of this ROD depends upon the ownership of the surface and mineral estates. Within the Little Missouri and Cedar River National Grasslands there are approximately 1,032,800 acres of federal surface ownership administered by the Forest Service and 992,870 acres of federal mineral estate. The federal mineral estate includes 898,630 acres with federal jurisdiction of both surface and minerals, and 94,140 acres of split estate lands which consist of non-federal surface and federal minerals.

This ROD contains the Forest Service and BLM decisions concerning the leasing of the federal mineral estate. Where the surface is administered by the Forest Service and the mineral estate is also federally owned, the Forest Service and BLM share the responsibility for enforcing mineral leasing policies and regulations. All leases will be issued in accordance with this ROD, federal regulations, and other federal management direction.

Where the surface is not in federal ownership but the minerals are federally owned (one type of split estate), the BLM manages the mineral estate. Each lease may contain special stipulations in accordance with federal regulations. Prior to entering the non-federal surface, the lessee must attempt to reach an agreement with the surface owner on the requirements for the protection of surface resources and reclamation of disturbed areas and/or damage payments in lieu of surface protection and reclamation measures. This ROD contains the BLM decisions concerning the leasing of the federal mineral estate where the surface is non-federally owned (94,140 acres).

A third category of ownership is federal surface ownership and non-federal mineral ownership. The Little Missouri and Cedar River National Grasslands contain 134,030 acres of outstanding and reserved mineral rights for oil and gas where there is federal ownership of the surface and non-federal ownership of the subsurface or minerals. This ROD does not apply to the non-federal owned mineral estate.

A fourth category of ownership is non-federal surface ownership and non-federal mineral ownership. The decisions contained in this ROD do not apply to these non-federal lands.

## **3. Administrative Scope**

This ROD covers all leased and unleased federal minerals in the project area. However, this ROD does not impose new or more restrictive stipulations on existing leases. When existing leases expire, the stipulations identified in this ROD will be applied when new leases are issued.

Of the 992,870 acres of federal mineral estate, approximately 689,000 acres are currently leased or held by production and subject to the requirements of this ROD only upon expiration of the existing leases. There are approximately 304,000 acres of unleased mineral estate subject immediately to this ROD. It is also anticipated that up to 683 leases not held

by production, about 314,000 acres, may expire and become available in the near future. Very little of the mineral estate leased and held by production is expected to become available in the near future.

#### ***D. Scope Of The Environmental Analysis***

The analysis process is more fully defined in the NGP FEIS (Chapter 3), Northern FEIS, and Southern FEIS and consists of the documentation supporting the decision on site-specific leasing.

Forest Service regulations 36 CFR 228.102(c)(2), (3), and (4) direct the Forest Service to: “(2) Identify alternatives to the areas listed in paragraph (c)(1) of this section, including that of not allowing leasing, (3) Project the type/amount of post-leasing activity that is reasonably foreseeable as a consequence of conducting a leasing program consistent with that described in the proposal and for each alternative, and (4) Analyze the reasonable foreseeable impacts of post-leasing activity projected under paragraph (c)(3) of this section.”

##### **1. Identify Alternatives**

The array of alternatives considered in the NGP FEIS, Northern FEIS, and Southern FEIS was designed to analyze issues such as TES species (wildlife and plants), soil and water, recreation, low development areas and aesthetics, and economics. They are discussed in more detail in Section IV (Alternatives) of this ROD.

##### **2. Reasonably Foreseeable Development Scenario**

One of the tools used in the analysis is the Reasonably Foreseeable Development Scenario (RFD) (in accordance with 36 CFR 228.102(c)(3)). The RFD is briefly discussed below. For a full description of the RFD see the NPG FEIS pages 3-112 to 3-114.

The RFD projects a total of 660 wells to be drilled over the next 10 years in the Dakota Prairie Grasslands. Most of the wells, approximately 600, are predicted based on the traditional practices and formations in the Williston Basin. Historical averages indicate that 75 percent, or 450 of the 600 traditional wells, will be productive. Areas of “predicted high development” were based on known productive areas and areas of recent drilling. Based on historical data, two thirds, or 400 of the 600 wells, are projected to be located within areas of predicted high development. Of the 660 wells, 405 are located on Federal mineral estate and 255 are located on non-federal minerals (state and private). The 405 Federal wells include 24 coal bed methane wells (CBM). Of the 255 wells on non-federal minerals, 36 are coal bed methane. All coal bed methane wells are predicted to be producers.

##### **3. Analysis of Impacts**

The impacts associated with oil and gas leasing were assessed by first identifying the surface uses that would be associated with the wells predicted by the RFD. Those uses were then analyzed by various methods to predict the effects on the natural and cultural resources.

###### ***a) Surface Use Forecast***

Exploration and development of the oil and gas resources in the EIS project area will require construction of drill pads, roads, tank batteries, power lines and pipelines. Anticipated locations of drill pads have been forecast to facilitate analysis of potential physical, biological, and social cumulative effects. These locations are valid only for analysis purposes, and are not the only locations available. Site-specific NEPA analysis at the APD stage will assess the actual locations.

Each well drilled is projected to include construction of an access road and well pad. Typically, producing wells/water injection wells on federal lands on the Dakota Prairie Grasslands disturb slightly less than 5 acres per well during the time the well is actively operating. Dry holes disturb approximately 5.7 acres and are reclaimed within a year or two. Coal bed methane wells are forecast to disturb an average of 1.38 acres per well of total ground disturbance.

A well pad serves as a staging area for setting up the rig and contains the reserve pit, storage tanks and other equipment, and installations necessary for drilling. Crew quarters may also be temporarily located on the pad. When the well is completed, the portions of the pad not required for ongoing operations are recontoured and revegetated. If the well is plugged and abandoned, the entire pad and access road are reclaimed. In some cases a new well may be drilled on an existing pad; this may require disturbance of previously reclaimed areas.

Roads are needed for oil and gas development to allow access for drilling and ongoing operations and maintenance. Individual roads are designed and constructed to standards appropriate to the type and frequency of traffic expected. Roads that lead to wells that are plugged and abandoned will be closed and reclaimed unless the Grasslands Plan or transportation planning identifies the need for the road in that location.

Either a powerline or on-site diesel generator could provide electrical power for well site operations. A powerline is often preferred for production sites because of the reduced maintenance costs and noise and air pollution problems associated with on-site generators. Generators may be the most economical option at remote sites far from the existing power grid. Electrical powerlines are usually buried as part of the normal operations in the Little Missouri National Grassland.

If a well produces natural and/or hydrogen sulfide gas, the gas is piped to a central collection system or flared on-site. Produced water is delivered to a disposal well either by pipeline or by truck. Flaring of hydrogen sulfide gas and disposal produced water must be consistent with state and federal laws and regulations.

Wells in outlying areas may begin with on-site electrical generation, flaring, and oil storage. As development advances, these wells could be tied into existing power and pipeline systems. It is anticipated new power and pipelines would be routed along new and existing road corridors.

In general, when a well is developed that is economically feasible; the area needed to continue production can be expected to be committed to that use for 7 to 40 years. A dry

hole is usually drilled and reclaimed within one year and the site is normally returned to near natural conditions within 5 years.

The above is a general description of the types of surface use associated with oil and gas development found in the Williston Basin. More information on surface use can be found in the NGP FEIS, the Northern FEIS, and Southern FEIS.

### ***b) Effects Determination***

This section briefly describes the methods used to determine the magnitude of effects associated with oil and gas leasing and subsequent development on a variety of Grassland resources. The effects of stipulations and other mitigating actions on the development of oil and gas was also analyzed in the NGP FEIS.

In addition to mapping the well locations predicted in the RFD discussed above, natural resources such as golden eagle nests, prairie dog colonies, woody draws and slopes steeper than 40% were identified and mapped (NGP FEIS Chapter 3 and DPG Plan, Appendix D). The Dakota Prairie proposed MAs, the surface and mineral ownership and other layers of information were also mapped. A geographic information system (GIS) was developed based on the maps.

Specialists identified areas with potential multiple uses based on the GIS and maps. The specialists were then able to identify and analyze the intensity of one use versus another to analyze the compatibility of the uses. Resources such as air were analyzed through models. Whether or not a predicted well was located in or near a resource of concern, the general effect of oil and gas development was analyzed.

Mitigation measures were developed and included in the DPG Plan as management area direction, standards and guides. That direction, and the standards and guides were translated into oil and gas stipulations. The stipulations were mapped and included in the GIS. The specialists then analyzed the effects of oil and gas leasing under the various plan alternatives on other resources. The effect of the DPG Plan's management area direction and stipulations on the potential oil and gas development was analyzed by predicting the percent of wells that could not be drilled under a given alternative. We also predicted the number of wells that may have to use directional or horizontal drilling to reach a target under an area protected with a NSO stipulation.

## **II. Context In Which Decisions Are Being Made**

### ***A. Oil And Gas Leasing Reform Act And Forest Service Regulations***

The Leasing Reform Act of 1987 modified the authorities of the Secretaries of Interior and Agriculture. The Forest Service developed implementing regulations, which defined the procedures to be used, and established the foundation for decision-making. The "Final Rule" was published in the Federal Register on March 21, 1990 (36 Code of Federal Regulations, Part 228, 100 et.seq; 55 FR 10423.)

In the implementing regulations, the Forest Service has three decision points relating to oil and gas development. The following text captures the spirit of the regulations, which describe the decision process.

**1. Leasing Decision (Lands Administratively Available for Leasing) - 36 CFR 228.102(d)**

The first decision includes which lands to make administratively available for leasing. Forest Service publication of this decision is intended to enable the oil and gas industry to undertake long-range planning. At the same time, the Forest Service makes no decision to lease these lands. Upon completion of the leasing analysis, the Regional Forester shall promptly notify the BLM of the area or Grasslands/Forest-wide leasing decisions that have been made; that is, identify lands, which have been found administratively available for leasing. The administratively available leasing decision for the Little Missouri and Cedar River National Grasslands was made in the DPG ROD (July 31, 2002).

**2. Leasing Decision for Specific Lands - 36 CFR 228.102(e)**

The next decision is made at such a time as specific lands are being considered for leasing. The Grasslands Supervisor has been delegated the authority to review the decision on which lands are administratively available for leasing and authorize the BLM to offer specific lands for lease subject to:

- Verifying oil and gas leasing on the specific lands has been adequately addressed in a NEPA document, and is consistent with the Grasslands Plan.
- Ensuring conditions of surface occupancy identified in 36 CFR 228.102(c)(1) are properly included as stipulations in resulting leases.
- Determining operations and development could be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy.

In this Record of Decision, the Forest Service makes the specific decision to authorize leases on individual, specified areas of land. The regulations under 36 CFR 228.102(e) allow the Forest Service to authorize the BLM to offer specific lands for lease. The regulations do not obligate the Forest Service to offer all administratively available lands for lease. The options to the Forest Service include:

- Authorize BLM to lease all available lands,
- Authorize BLM to not lease any of the available lands,
- Authorize BLM to lease some specific lands at this time with stipulations to protect federal resources.

The "Availability Decision" and the "Leasing Decision" are related to each other in that the leases authorized will be on lands earlier found to be "Administratively Available for

Leasing", and each lease will include the stipulations determined to be necessary in the specific leasing decision.

### **3. Surface Use Plan of Operations - 36 CFR 228.106-108**

In order to conduct operations on Federal surface/federal minerals, a lessee/operator must submit an Application for Permit to Drill (APD) and Surface Use Plan of Operations (SUPO) in accordance with Forest Service regulations 36 CFR 228.106-108 and BLM's regulations 43 CFR 3160. No APD on a federal oil and gas lease on National Forest System lands may be granted without a SUPO approved by the Forest Service. The decision to approve or deny the SUPO will be based on an environmental analysis in compliance with NEPA.

In summary, there are several decisions made in the process of going from the "administratively available" decision to development. Even though lands are leased, a SUPO with additional analysis is required before the lands will be developed. This is a major distinction between oil and gas leasing and other activities, which are authorized by the Forest Service.

### ***B. BLM Regulations Implementing The Oil And Gas Leasing Reform Act***

The 1987 Federal Onshore Oil and Gas Leasing Reform Act also resulted in a number of changes related to BLM regulations regarding issuance of leases (43 CFR 3101). Key regulations applicable to the decision being made herein include:

#### **1. 43 CFR 3101.7-1 General Requirements**

National Forest System lands, whether acquired or reserved from the public domain, are not to be leased over the objection of the Forest Service. In addition, acquired lands are to be leased only with the consent of the Forest Service. Most of the National Forest System lands within the National Grasslands are acquired.

#### **2. 43 CFR 3101.7-2 Actions by the Bureau of Land Management**

When the Forest Service consents to leasing of National Forest System lands with required stipulations, the BLM must incorporate the Forest Service stipulations into any lease which it may issue and may add additional stipulations. The BLM cannot issue a lease when the Forest Service objects to leasing or withholds consent. The BLM must review all recommendations and accept all reasonable recommendations of the Forest Service.

### ***C. Dakota Prairie Grasslands Plan (DPG Plan)***

The DPG Plan was approved on July 31, 2002. This long-range, integrated land and resource management plan provides integrated guidance for all natural resource management activities as required by the National Forest Management Act of 1976. The DPG Plan decision was based on the analysis and alternative selected in the NGP FEIS and established goals and management direction for the entire Grasslands.

This ROD must be consistent with the management direction established for the project area in the DPG Plan. This ROD appropriately documents the leasing decision based on the analysis in the NGP FEIS, Northern FEIS and Southern FEIS and the goals, objectives, standards and guidelines in the DPG Plan.

### **1. Grassland-wide and Geographic Area Goals, Objectives, Standards and Guidelines**

Grassland-wide and Geographic Area goals, objectives, and management standards and guidelines are detailed in the DPG Plan (Chapters 1 and 2). Management standards relating specifically to oil and gas leasing are described on pages 1- 11 and 12.

### **2. Management Area Direction**

The Management Areas (MAs) are geographic subunits of the Grasslands. The DPG Plan includes desired conditions, standards and guidelines for 17 different MAs, each with management prescriptions. All of the MAs are described in Chapter 3 of the DPG Plan (pgs. 3-1 to 3-44).

### **3. Oil and Gas Decision in the Dakota Prairie Grasslands Plan**

The DPG Plan ROD states, "This decision determines which lands will be available for leasing in accordance with 36 CFR 228.102(c) and (d). ... roughly 946,280 acres of federal minerals estate of the Little Missouri and Cedar River National Grasslands are determined to be administratively available" (DPG ROD, page 21).

The Forest Service refers to this decision as the "availability decision."

This availability decision regarding which lands to make administratively available for leasing was made in the DPG Plan ROD on July 31, 2002 (reference DPG Plan ROD, page 22). Forest Service publication of this decision was intended to enable the oil and gas industry to undertake long-range planning. At the same time, the Forest Service makes no irreversible or irrevocable decisions to lease these lands.

Table ROD-1 below identifies the federal mineral acres available and unavailable for leasing as determined in the DPG Plan ROD.

In association with this availability decision the NGP FEIS considered what lands will require the use of stipulations and identified those stipulations (Refer to Appendix D of the DPG Plan). This appendix displays the stipulations that are consistent with the DPG Plan standards and guidelines and the justification for the stipulations.

**TABLE ROD-1  
Federal Mineral Acres Available/Unavailable for Leasing**

<b>Acres Available/Unavailable for Leasing</b>	<b>MODIFIED ALT 3 FINAL</b>
Federal mineral estate	992,870
Not available MA 1.2 A -- Suitable for Wilderness Long X Divide, Twin Buttes, Bullion Buttes, Kinley Plateau MA 2.4 -- American Indian Traditional Use Blue Buttes	46,590
Acres available for leasing	946,280

#### **4. Management of Oil and Gas Operations on Federal Surface with Non-federal Minerals**

Courts have ruled that the Forest Service can reasonably regulate use of the federal surface where the surface estate is Federal and the mineral estate is non-federal but the Forest Service cannot preclude development. The Forest Service will use the DPG Plan when considering what mitigation measures may be reasonable to protect the federal surface with non-federal mineral ownership (Duncan Energy Company v. United States Forest Service 50 F.3d 584 (8<sup>th</sup> Circuit, 1995)). Since the mineral estate is the dominant estate, mitigation to the extent possible of valid existing rights complies with the DPG Plan.

#### ***D. National Energy Policy***

In May 2001, the President’s National Energy Policy Development Group issued recommendations for developing and implementing a comprehensive long-term strategy to promote dependable, affordable, and environmentally sound energy for the future. At the same time the President issued Executive Order 13212, “Actions to Expedite Energy-Related Projects,” in which agencies are ordered to “expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections.” In August 2001, the Forest Service developed a plan to implement the Executive Order.

Development of reliable domestic sources of energy is one of the areas in which the DPG has a clear role under the Administration’s direction on energy policy. The DPG covers a portion of the Williston Basin, an important basin that supplies a significant portion of North Dakota’s oil and gas production. In following the applicable recommendations of the Energy Policy Development Group and Executive Order 13212, the DPG Plan purposely makes available oil and gas resources for development. The DPG Plan also allows for whatever actions might be necessary, to the extent permitted by law and regulation and where appropriate, to expedite review of permits and accelerate completion of energy development and transmission (i.e., pipelines) projects while maintaining safety, public health, and environmental protection.

### ***E. Off-Highway Vehicle Decision***

The Off-Highway Vehicle Environmental Impact Statement and Proposed Plan Amendment for Montana, North Dakota, and portions of South Dakota (OHV Decision) was completed in January 2001. The NGP FEIS and DPG Plan incorporates the January 2001 OHV Decision.

The OHV Decision prohibits wheeled motorized cross-country travel on the Dakota Prairie Grasslands. The OHV Decision does not close any existing roads or trails, nor does it prohibit construction of new roads and trails. It also does not apply to non-federal land. The OHV Decision contains specific exemptions for wheeled cross-country motorized travel in the following situations: military, fire, search and rescue, law enforcement, official administrative business, lessees and permittees in the administration of a valid federal lease or permit, and travel to a campsite within 300 feet of an existing road or trail. See FEIS Addendum page 21. The OHV Decision does not affect oil and gas leasing or access to existing or new oil and gas leases.

### ***F. Transportation Rule And Policy***

The Administration of the Forest Development Transportation System; Prohibitions; Use of Motor Vehicles Off Forest Service Roads, Final Rule, 66 FR 3206 (Transportation Rule), and Forest Service Transportation, Final Administrative Policy, 66 FR 3219, (Transportation Policy) were signed on January 12, 2001 by Chief of the Forest Service Mike Dombeck. The Transportation Rule and Policy provides only guidance for transportation analysis – it did not dictate or adopt land management decisions.

The Transportation Policy, Forest Service Manual 7700 et seq., requires a roads analysis process to assist managers when making road management decisions. There are two roads analyses – one forest wide and one at the watershed or project scale. The Dakota Prairie Grasslands has completed the roads analysis at the forest (grasslands) wide scale. The forest (grasslands) wide roads analysis and NGP FEIS anticipated that new roads would be needed in conjunction with oil and gas development. The RFD predicted that an average of 2.4 surface acres would be disturbed for road development per well drilled. Also, unnecessary roads will be removed when wells are plugged and reclaimed.

In addition, a roads analysis process at the watershed or project area scale must be prepared prior to road management decisions to inform the public of those decisions to construct or reconstruct roads throughout National Forest System lands beginning on January 12, 2002 (DPG Plan page 1-27). The project level roads analysis will be done in conjunction with the NEPA documentation for an APD.

### ***G. Roadless Rule***

On January 12, 2001, the Special Areas, Roadless Area Conservation Final Rule, 66 FR 3244, (Roadless Rule) was signed by Secretary of the U. S. Department of Agriculture Dan Glickman. The Roadless Rule is codified at 36 CFR 294 Subpart B (2001). The Roadless Rule prohibits new road construction and timber harvest in inventoried roadless areas (IRAs) subject to exceptions. Specific exemptions allow for roads in conjunction with the

continuation, extension, or renewal of a mineral lease (36 CFR 294.12(b)(7)) and for roads pursuant to reserved or outstanding rights (36 CFR 294.12(b)(3)). Exceptions are also allowed for roads needed to protect public health and safety (law enforcement, fire suppression, etc.), and to conduct a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) action needed to prevent irreparable resource damage, for road safety, and determined to be in the public interest. In addition, the rule specifically does not affect a non-federal landowner's right of access to their land. The effects of oil and gas development on the roadless characteristics were analyzed. See 36 CFR 294.12(b)(3) and 294.14 (a) and preamble at 66 FR 3251, 3253, 3256, 3259.

Subsequently eight lawsuits, involving seven states in six judicial districts of four federal circuits have been filed against the January 12, 2001 rule. On May 10, 2001, the Idaho District Court granted the preliminary injunction requested in Kootenai Tribe of Idaho v. Veneman and State of Idaho v. U.S. Forest Service, enjoining the Forest Service from implementing "all aspects of the Roadless Area Conservation Rule." The Idaho District Court's judgment granting preliminary injunction was appealed. On December 12, 2002, the Ninth Circuit Court of Appeals concluded that the preliminary injunction should not have been issued; and reversed and remanded the case to the Idaho District Court. On April 14, 2003 the Ninth Circuit issued its mandate, which reversed the District Court's judgment.

Prior to the Ninth Circuit ruling, on June 7, 2001 the Chief of the Forest Service issued a letter concerning interim protection of IRAs, stating "the Forest Service is committed to protecting and managing roadless areas as an important component of the National Forest System. The best way to achieve this objective is to ensure that we protect and sustain roadless values until they can be appropriately considered through forest planning." As part of that letter, the Chief indicated he would be issuing interim direction regarding timber harvest and road construction in IRAs until a forest plan amendment or revision considers the long-term protection and management of unroaded portions of IRAs. This interim direction was issued on December 20, 2001 (66 FR 65789).

The Northern Great Plains Plan revision process was begun in 1997 prior to the adoption of the Roadless Rule and the NPG FEIS was issued in July 2001, after the May 2001 decision that enjoined the Roadless Rule. As a part of the NPG EIS process an inventory of areas essentially roadless in character was completed for each planning unit, including the DPG. For each area the FEIS contains a description of the affected environment along with a capability analysis, availability analysis and an evidence of need for wilderness analysis. See FEIS 3-359 to 3-378 and FEIS Appendix C. In addition, roadless areas were allocated to various MA's by alternatives. Roadless areas were considered for MA's that varied from MA 1.2 Recommended for Wilderness to MA 6.1 Rangeland with Broad Resource Emphasis (See FEIS 3-369). In so doing, this Plan Revision process fully met the intent and direction of the Chief to consider the protection and management of roadless areas appropriately through forest planning. With the issuance of the DPG Plan ROD in July 2002, the interim direction is no longer applicable to the DPG. The DPG Plan ROD, in selecting Modified Alternative 3 Final, selected management of about 115,000 acres of Little Missouri National Grassland inventoried roadless lands to retain their current roadless character prohibiting future road construction (with exceptions for existing rights) and selected management of about 104,000 more acres of inventoried roadless lands such that they would be available for

potential road construction subject to the stipulations contained in the lease on the Little Missouri and Cedar River National Grasslands (ROD p. 37, and project file). However, existing plan direction that may be in conflict with the prohibitions of the Roadless Rule are automatically superseded by the Rule's provisions. Neither the roadless rule, the DPG Plan ROD, nor this decision affect or change the rights conferred through existing leases or the rights of non-federal mineral ownership. Consequently, some of the 115,000 acres slated to retain their roadless character may in fact be developed, depending on decisions of those who hold valid existing rights within these areas.

### **III. Decisions And Rationale For The Decisions**

#### **A. Forest Service Decision**

In this Record of Decision, the Forest Service makes the specific decision to authorize leases on individual, specified areas of land after reviewing which lands are administratively available in the DPG Plan ROD. The regulations under 228.102(e) allow the Forest Service to authorize the BLM to offer specific lands for lease. The regulations do not obligate the Forest Service to offer all administratively available lands for lease. The options to the Forest Service include authorizing the BLM to lease all available lands, or not lease any of the available lands, or to lease some specific lands at this time with stipulations to protect federal resources.

The previous "Availability Decision" in the DPG Plan ROD and this "Leasing Decision" ROD are related to each other in that the leases authorized will be on lands earlier found to be "Administratively Available for Leasing." Each lease will include the stipulations determined to be necessary in the specific leasing decision.

**Based on the analysis and information disclosed in the Northern FEIS, Southern FEIS and the NGP FEIS, I have selected Modified Alternative 3 Final of the NGP FEIS for the leasing decision for specific lands subject to appropriate stipulations and management directives.**

I am authorizing the BLM to lease all available lands with the stipulations described in **Modified Alternative 3 Final** except for MA 3.51A. Consistent with Modified Alternative 3 Final, the unleased federal minerals in MA 3.51A will be considered for leasing if there is development of a well on an adjacent spacing unit or if an access road is constructed across the management area to access existing rights. This is contingent on no additional significant impact to bighorn sheep. Once development on an adjacent spacing unit or adjacent non-federal mineral estate occurs, the adjacent federal minerals may be leased using a Controlled Surface Use (CSU) stipulation and Timing Limitation (TL) if no additional significant adverse impact to bighorn sheep would occur. (The oil and gas related Modified Alternative 3 Final is described on pages 4, 7, 19, 21 and 22 of the DPG Plan ROD.)

All waivers, exceptions, and modifications of stipulations will require a 30 day public notice period per 43 CFR 3101.1-4 and 36 CFR 228.104, and will be subject to an appropriate level of environmental analysis. Exceptions to stipulations will be considered on a case-by-case basis. See Appendix D of the DPG Plan for more information on this subject.



<b>Resource</b>	<b>Stipulation or Lease Notice</b>	<b>Area or Rationale that the Stipulation (or Lease Notice) Applies</b>
Black-footed Ferret	CSU	Black-footed ferret reintroduction habitat (roaded) (MA 3.63)
Black-footed Ferret	NSO	Black-footed ferret reintroduction habitat (roadless) (MA 3.63)
Black-footed Ferret	TL	Within 1/8 mile of prairie dog colonies occupied by Black-footed ferrets (3/1-8/31) (Outside MA 3.63)
Black-footed Ferret	CSU	Within prairie dog colonies occupied by Black-footed ferrets (Outside MA 3.63)
Bighorn Sheep	NSO	Bighorn Sheep Habitat (MA 3.51)
Bighorn Sheep	TL	Within 1 mile bighorn sheep lambing areas 4/1-6/15 (Outside of MA 3.51)
Bighorn Sheep	CSU	Within 1 mile sight distance of bighorn sheep lambing grounds (Outside of MA 3.51)
Bighorn Sheep	Not currently authorized; when leased CSU & TL	MA 3.51A Bighorn Sheep with non-federal mineral ownership
Bighorn Sheep	CSU & TL	MA 3.51B Bighorn Sheep with non-federal mineral ownership
Antelope	TL	Within mapped antelope winter range (1/1-3/31)
Swift Fox	TL	Within ¼ mile of swift fox dens (3/1-7/31)
Cedar River Wildlife Areas	NSO	MA 3.64 - Knispel Wildlife Area T130N, R85W SW Sec 21 N. Community T129N, R89W NWSENE Sec 15 (NGP FEIS, Appendix B, Page 44)
TES	LN	Threatened, Endangered and Sensitive Plant or Animal Species (DPG Plan Addendum page 52)
RNA	NSO	Protect MA 2.2 Research Natural Areas
SIA – Paleontology or Geologic	CSU	Special Interest Areas – Paleontology and Geologic Resources - Slope Formation Type Section, Cannonball/Slope Formation Outcrop, Bullion Creek Formation Type Section
SIA - Heritage	NSO	Special Interest Areas – Heritage Resources - Battle of the Badlands, Custer Trail/Davis Creek, and Square Buttes
SIA - Botanical	NSO	Special Interest Areas – Botanical Resource - Aspen Stand, The Bog, Grand River Sand Dunes, Black Butte, Black Cottonwood, Riparian Pools, and Roundtop Butte
SIA - Geologic	NSO	Special Interest Areas – White Buttes, Burning Coal Vein/Columnar Juniper, and Ice Caves.
Recreation Sites	NSO	Developed Recreation Sites - Burning Coal Vein, Buffalo Gap, Sather Lake, CCC, Campgrounds; and Summit, White tail Picnic Areas; and 4 Maah Daah Hey Trail overnight camps: Wannagan, Elkhorn, Magpie, and Bennett
Recreation Sites	TL	Within ¼ mile of Burning Coal Vein, Buffalo Gap, Sather Lake, CCC, Campgrounds, Summit, and Whitetail Picnic Areas, and 4 Maah Daah Hey Trail overnight camps, Wannagan, Elkhorn, Magpie, and Bennett (5/1-12/1)
Suitable for Wilderness	NAA	MA 1.2A - Long X Divide; Twin Buttes, Bullion Buttes and Kinley Plateau
Nonmotorized	NSO	MA 1.31 – Back country nonmotorized

Resource	Stipulation or Lease Notice	Area or Rationale that the Stipulation (or Lease Notice) Applies
Scenic High	CSU	Areas of High Scenic Integrity, surface occupancy will be subject to operational constraints to maintain landscape character intact including within 1 mile of Theodore Roosevelt National Park
Scenic Moderate	CSU	Areas of Moderate Scenic Integrity, surface occupancy will be subject to operational constraints to maintain a landscape character that is no more than slightly altered
Heritage Resources	NAA	MA 2.4 - American Indian traditional use areas
Heritage Resources	NSO	National Register eligible sites
Scenic	NSO	MA 4.22 - areas within ¼ mile of Little Missouri River
Paleontology	LN	Paleontologic resources federal surface and federal subsurface
Paleontology	CSU	Paleontologic resources on areas of non-federal surface and federal subsurface
Roadless	LN	See roadless discussion below

Please note, the Roadless Rule (36 CFR 294 Subpart B (2001)) prohibits road construction and road reconstruction in IRAs identified in the Forest Service Roadless Area Conservation EIS with exceptions. Those leases to which the Roadless Rule applies, in addition to the stipulations described above, will receive a Lease Notice (see Attachment B) identifying the lands in the lease that are subject to the Roadless Rule. One exception in the Roadless Rule is that a road may be constructed or reconstructed in an inventoried roadless area if it is needed in conjunction with the continuation, extension, or renewal of a mineral lease on lands that were under lease as of January 12, 2001, or for a new lease issued immediately upon expiration of an existing lease. As such, leases issued according to this exception will be issued according to the oil and gas leasing decision and stipulations discussed above without the lease notice. The Roadless Rule does not change the terms of existing leases nor affect the rights of non-federal mineral owners. Existing plan direction that may be in conflict with the prohibitions of the Roadless Rule are automatically superseded by the Rule's provisions. However, if the Roadless Rule is enjoined or not implemented, the lands will be managed and future leases stipulated per the oil and gas leasing decision discussed above. If the Roadless Rule is changed, then the DPG IRAs will be managed as directed by any revised Roadless Rule.

## 1. Rationale for Authorizing Certain Specific Lands for Leasing

The rationale for selecting **modified Alternative 3 Final** is as follows:

The DPG Plan was approved in July of 2002. This long-range land and resource management plan provides for integrated guidance for all natural resource management activities as required by the National Forest Management Act of 1976. The DPG Plan decisions were based on the analysis and alternatives displayed in the NGP FEIS. The DPG Plan established goals and management direction for the entire Grasslands. The NGP FEIS addresses the selected alternative and discloses the site-specific effects of oil and gas leasing, exploration, development, abandonment, and reclamation within the project area. The

analysis of oil and gas specifically locates certain resources such as raptor nests and locates other resources to within the 40 acre standard required by 36 CFR 228.102(c)(1)(ii).

The Forest Service has almost 50 years experience with oil and gas development on the Little Missouri National Grassland. Past management decisions have been modified and changed as new information on various resources has become available. As a result, the vast majority of wells drilled and operated are plugged and reclaimed to a high level of natural appearance. Even with this reclamation, past oil and gas activity has left a road network over much of the Little Missouri National Grassland. The oil and gas leasing analyses and decisions for the Northern and Southern Little Missouri and Cedar River conducted in 1991 and 1996 are incorporated by reference. Those decisions were based on the management areas established in the 1986 Custer National Forest Plan. They analyzed a spectrum of stipulations for many resources. The decision on stipulations was based on what was working on the ground, research on issues such as wildlife protection, and public concern for various resources. For the current analysis, both Alternative 1 (no action) and Existing Condition represent the existing leasing decisions.

Based on public comments and consultation with the state of North Dakota, the stipulation “package” was revised between the NGP Draft Environmental Impact Statement (DEIS) and DPG Draft Plan, and the Final DPG Plan and NGP FEIS. Stipulations are primarily based on constraints indicated by the Plan’s standards and guidelines. Some stipulations are applied to entire MAs. For many resources, the stipulations based on the Final DPG Plan are similar to those in the prior Northern and Southern Little Missouri and Cedar River decisions. For NGP FEIS Alternatives 2, 3, 4, 5, DEIS 3 (as presented in the NGP FEIS), and Modified FEIS 3, a consistent set of stipulations are being applied across all NGP FEIS alternatives except Alternative 1. For example, in Alternatives 2-5, TL is applied within two miles of a sharp-tailed grouse display grounds from 3/1 to 6/15. In Alternative 1, grouse TL applies from 3/1 to 4/15. The alternatives vary by acres allocated to different management areas. Therefore, the amount of land stipulated with NSO or CSU for management area protection does vary between the alternatives. (see NGP FEIS, Chapter 2, Description of Alternatives). Appendix D of the DPG Plan and Chapter 3 – pages 101-155 and Appendix B of the NGP FEIS disclose the objective and justification for each stipulation applied (as outlined in Table ROD-3). In each case where a special stipulation is prescribed, the analysis discusses that the application of only Standard Terms would not adequately protect the resource.

Some of the public comments expressed concern over the compatibility of potential oil and gas activities with other resource values or uses. Some resource values (roadless) are incompatible with surface occupancy. One of the key considerations in making this decision was the land allocation found in the DPG Plan, which was approved following a great deal of public involvement. This decision ultimately makes 738,620 acres (about 74% of the analysis area) of the Dakota Prairie Grasslands available with surface occupancy privileges (Std. Terms, CSU, or TL, see Table ROD-4). An additional 21% is available for leasing with NSO to protect key resources and sensitive sites. This makes a total of 95% of the Little Missouri and Cedar River National Grasslands available for leasing. The remainder of the Little Missouri and Cedar River National Grasslands is either legally or administratively unavailable or not currently authorized for leasing.

Although a number of the people responding to the DEIS were supportive of oil and gas exploration and development on the Dakota Prairie Grasslands, some also commented about the need for protection of specific resources. This included protection of bighorn sheep habitat and the unroaded character of some areas. Even though this decision allows oil and gas development in many areas, it acknowledges the public's concerns. Five percent of the project area is either unavailable or not currently authorized for leasing while an additional 21% is subject to NSO stipulations. In addition, the standard lease terms and an array of stipulations will protect important resources on leased lands identified by the public and resource specialists.

## **1. Rational for Authorizing and Not Currently Authorizing Leasing in Bighorn Sheep Habitat**

Management of bighorn sheep on the Little Missouri National Grassland has been controversial over the last several decades. The draft plan proposed managing all of the bighorn sheep management areas (MA 3.51) with a NSO Stipulation. Comments on the Draft and Final DPG Plan and consultation with the North Dakota Governor's office resulted in the subdivision of the sheep habitat into MA 3.51, MA 3.51A and MA 3.51B. The MA 3.51A and MA 3.51B areas were established because of the mixed ownership of minerals (federal and non-federal).

Lands left in MA 3.51 can be leased with a NSO stipulation. The NSO stipulation will minimize the effects of oil and gas development on the sheep. These are presently some of the occupied sheep habitat areas.

Leasing of the federal mineral estate will not occur in MA 3.51A until after there is development of a well on an adjacent spacing unit or a road built across the area to access non-federal rights. Once there is development on adjacent non-federal minerals or an adjacent federal spacing unit, leasing may be allowed using CSU and TL stipulations if there are no additional significant impacts to the sheep. Not immediately issuing new leases in MA 3.51A could result in the drainage of federal minerals and the loss of some revenues to the treasury. Currently there are producing oil fields in this area and much of the area is leased. Leases with production can be held until production ceases and the wells are reclaimed. Due to the significance of this bighorn sheep area, including a large number of ewe and lamb sightings, 6,760 acres of federal minerals were left in MA 3.51A. This MA direction allows for specific consideration of impacts of leasing prior to leasing occurring.

MA 3.51B in Modified Alternative 3 Final was specifically developed from MA 3.51A to address the concerns of many people including local government officials who responded to the Draft DPG Plan, and later the NGP FEIS and DPG Plan and will make mineral development more likely in these areas. Some of the issues and concerns include the social and economic impacts of NSO and not leasing MA 3.51A until development occurred on non-federal minerals in this MA. MA 3.51B includes four of the five areas that had been in MA 3.51A. The new MA 3.51B includes 19,440 acres of federal minerals that would be available and authorized for leasing. The primary change in this area will be that leasing will occur under strict CSU and TL to protect bighorn sheep. The decisions for 3.51, 3.51A and 3.51B take into account that bighorn sheep habitat is also protected in restrictive management

areas such as MA 1.2A - Suitable for Wilderness, MA 1.31 - Back Country Nonmotorized and MA 2.2 - Research Natural Areas.

Further discussion of issues is captured in Chapter 3 and Appendix A of the NGP FEIS. Tradeoffs between the alternatives are summarized in Section IV of this decision and are more fully described in Chapter 3 of the NGP FEIS.

## ***B. BLM Decision***

Based on the analysis conducted by the Forest Service and accepted by the BLM and documented in the NGP FEIS, Northern FEIS and Southern FEIS and the cooperating agency involvement of the BLM, the BLM hereby makes the following findings and decisions:

- 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 Grassland Supervisor's decision to authorize specific lands for leasing. No lease parcels will be offered over the objections of the Forest Service.
- The BLM will offer and issue leases for lands within the Little Missouri and Cedar River National Grasslands of the Dakota Prairie Grasslands subject to stipulations required by the Grasslands Supervisor in Modified Alternative 3 Final of the NGP FEIS, in accordance with the regulation at 43 CFR 3101.7-2(a). The BLM has no decision to make on lands determined not available for oil and gas leasing by the Regional Forester in the July 2002 DPG Plan ROD. The BLM also has no decision to make on lands not currently authorized for leasing by the Regional Forester in the DPG ROD. The BLM's decision to offer and issue leases for Forest Service managed lands within the Dakota Prairie Grasslands only applies to those lands made available and authorized for leasing by the Forest Service.
- The BLM will offer for lease approximately 94,140 acres of non-federal surface/federal mineral (split estate) lands within the administrative boundary of the previously described project area. 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 (Modified Alternative 3 Final) with a slight modification relative to paleontology resources. This decision is somewhat different from the decision for National Forest System lands, which includes a lease notice for paleontology resources. However, the level of resource protection and effect of the stipulation is the same, as analyzed in the NGP FEIS. 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. The change regarding paleontological resources from the selected alternative used on Forest Service 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 BLM's 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 non-federal surface lands. This stipulation is included with this Decision as Attachment A.

## **1. Rationale For the BLM Decision On Forest System Lands**

The regulation at 43 CFR 3101.7-1(c) for leasing of National Forest System lands administered by the Forest Service, requires the BLM to obtain prior consent to leasing such lands. In the present case, such consent involves decisions being made by the Grasslands Supervisor 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 includes the Little Missouri and Cedar River National Grasslands of the Dakota Prairie Grasslands.

The BLM has participated as a cooperating agency in the analysis and documentation leading to the Forest Service decisions and recommendations. As a cooperating agency, the BLM has independently reviewed the NGP FEIS, Northern FEIS, Southern FEIS, and DPG Plan. The BLM finds that these documents contain all the necessary information and analysis to allow the agency 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 the needed documentation. It has also included the use of BLM staff and managers in reviewing work accomplished by the Forest Service, including proposed decisions, recommendations, alternatives, and associated analysis.

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

## **2. Rationale For the BLM Decision On Split Estate Lands:**

As noted in the rationale for the BLM decisions on National Forest System lands, the agency has participated as a cooperating agency with the Forest Service in the analysis and documentation leading to the leasing decisions and recommendations found in the NGP FEIS and DPG Plan. Also, as noted, the NGP FEIS and DPG Plan meet BLM requirements for fluid minerals and reflects consideration of public, other agency, and interdisciplinary team

input obtained during the analysis and decision making processes. Finally, the documents comply with applicable laws, regulations, and policies.

The BLM is mandated by the Federal Land Policy and Management Act to coordinate, to the extent consistent with laws governing the administration of public lands, land use inventory, planning, and management activities for such lands with the corresponding activities of other federal entities. In the case of this decision, this mandate applies to Forest Service management activities and the management of the federally owned oil and gas estate.

For non-federal surface and federal minerals, the adoption by the BLM of the same mitigation measures selected by the Forest Service will help to ensure consistency in management of lands and resources within the boundaries of the Dakota Prairie Grasslands, while incorporating non-federal surface owner interests. The paleontological resources will also be managed under a modified stipulation to provide consistency for the portion of the federal mineral estate in the project area under BLM leasing jurisdiction.

### ***C. Decisions Not Being Made In This Document***

This ROD does not make decisions to permit the actual drilling or subsequent operations. 36 CFR 228.106 states, "No permit to drill on a Federal oil and gas lease . . . may be granted without the analysis and approval of a surface use plan of operations covering proposed surface disturbing activities." The following decisions are required by the regulations at 36 CFR 228 but are not being made in this ROD:

- Approval of a Surface Use Plan of Operations (36 CFR 228.107(b))
- Approval of a Supplemental Surface Use Plan of Operations (36 CFR 228.107(e))

Compliance with the National Environmental Policy Act (NEPA) is required for both of these subsequent decisions. A more complete description of these decisions, the well permitting process, and information about drilling and producing equipment and procedures can be found in Appendix C of both the Northern FEIS and Southern FEIS.

This decision does not change any of the rights granted in existing oil and gas leases nor does it affect the development of non-federally owned minerals.

### ***D. Other Reasons For The Decisions***

The NGP FEIS is organized around "revision topics." These "revision topics" were the primary issues evaluated throughout the NGP FEIS. Many other issues were addressed in the NGP FEIS but the following four "environmental issues" led to the majority of stipulations and management area direction. Also, important to the decision was the effect of the decision on the social and economic issues. Therefore, some additional discussion of the following five topics is warranted.

## **1. Roadless Areas**

If an oil and gas well is drilled in a roadless area it alters the undeveloped character of a portion of the roadless area for the time the surface is occupied. Surface occupancy is not compatible with roadless management. Development could make some IRAs ineligible or less likely to be considered by Congress for wilderness designation in the future. Some of the roadless areas in the Little Missouri, i.e., Bell Lake or Tracy Mountain, contain known oil reserves. Many other roadless areas in the Little Missouri contain areas of high potential for oil and gas development. Approximately 16 of the 18 IRAs on the Little Missouri National Grassland have some portion of their area under lease for oil and gas. The DPG Plan decision and this leasing decision attempt to strike a balance between protecting some areas of high quality IRAs and allowing development of other areas of IRAs. The effect of oil and gas development on the roadless areas is summarized by roadless area in Appendix C of the NGP FEIS, NGP Addendum for the FEIS (Pg. 24-25) and in the Roadless Area Conservation FEIS.

The Roadless Rule, if implemented, allows leasing of the roadless areas but precludes the building of roads on lands that were not leased as of January 12, 2001. Oil and gas reserves that may be near the boundary of a Little Missouri roadless area may be accessed by directional or horizontal drilling. An analysis of the roadless areas and the 660 wells predicted by the RFD show that an additional 12 wells may be eliminated above the 26 wells predicted for elimination under FEIS Alt. 3. An additional 36 wells would be affected and may incur added costs and technical difficulties because they would have to be directional or horizontally drilled to reach targets under IRAs. This is over and above the 63 wells predicted to be affected by FEIS Alt. 3. The Roadless Rule direction added to the management direction detailed in the plan and this leasing decision could affect a total of 99 wells, and could eliminate a total of 38 wells predicted by the RFD. The economic effects of the Roadless Rule direction added to the direction detailed in the DPG Plan would be similar to the effects analyzed for the level of development predicted for Alternative 4 as discussed in the NGP FEIS. (Project Record: APP 2878; CD #12, page 102)

## **2. Threatened, Endangered, and Sensitive Wildlife and Plant Species**

Oil and gas development has the potential to impact several animal and plant species. Of particular concern are nesting raptors, bighorn sheep, prairie grouse, and the black-tailed prairie dog community. Issues were analyzed and mitigated by the development of lease stipulations and management area prescriptions.

Several hawk, eagle, falcon, and owl species are particularly vulnerable to disturbance during their nesting period. For example, the ferruginous hawk is well known for its propensity to abandon a nest if disturbed during incubation. In order to reduce that potential, active bald eagle, burrowing owl, ferruginous hawk, golden eagle, merlin, peregrine falcon, and prairie falcon nests will be protected through application of a NSO stipulation. Other raptor species, such as American kestrel and red-tailed hawk, also nest on the Little Missouri and Cedar River National Grasslands. These species are generally less sensitive to disturbance, and their population levels of less conservation concern. Active nests of these species will be protected through use of the flexibility available under standard lease terms.

North Dakota's bighorn sheep population is very small and concern over its viability is high. Limiting and managing the disturbance inherent in oil and gas development is critical for this herd's survival. Under Modified Alternative 3 Final, three management areas (MAs 3.51, 3.51A, and 3.51B) and portions of other management areas (MAs 1.2A, 2.2, 1.31 and 4.22) will emphasize management for this species. TL, CSU, and NSO stipulations will be used to further mitigate adverse impacts to the bighorn sheep. Special attention will be paid to protecting lambing areas, and minimizing disturbance during the critical lambing, breeding, and wintering seasons. TL stipulations have also been designed to protect important wintering habitat for pronghorn.

Prairie grouse, specifically sharp-tailed grouse and greater sage grouse, congregate at display grounds during the spring to select mates. Disruption of this activity could have considerable impacts on reproductive success. In order to reduce such potential, active display grounds will be protected through NSO and TL stipulations.

The black-tailed prairie dog community encompasses the prairie dogs themselves, as well as potentially black-footed ferrets, swift fox, and burrowing owls, among others. The black-footed ferret, one of North America's most endangered mammals, is planned for reintroduction on the Little Missouri National Grassland. It will be emphasized in a special management area (MA 3.63). This area will have NSO and CSU stipulations. In addition, CSU and TL stipulations will be used to protect any black-footed ferret habitat outside of MA 3.63, as well as swift fox den sites. As mentioned above, burrowing owl nests will also benefit from NSO stipulations.

The effects of oil and gas development on sensitive plant species were also analyzed. There are several species that may be potentially found in the development area, most notably Dakota buckwheat. Mitigation for any potential effects on this species and other sensitive plants will be provided for with a lease notice and a NSO stipulation for Research Natural Areas.

Analysis of impacts of oil and gas leasing and development on TES species are included in NGP FEIS Appendix H, Biological Assessment and in NGP FEIS Chapter 3. The justification for stipulations applied for wildlife reasons are presented in DPG Plan, Appendix D.

### **3. Soil and Water Quality**

Oil and gas activity on National Forest System lands could create soil disturbance such as compaction, displacement, contamination, and loss of vegetative cover resulting in erosion if the activity is not properly mitigated. Long-term reclamation problems could occur in areas where there are sensitive soils. Oil and gas activity could also impact water quality through chemical contamination and sediment recruitment into waterways. Conditions of Approval (COAs) that establish construction methods, operating conditions and reclamation standards are included in the approval of a proposed well to minimize potential impacts. These COAs ensure sites are reclaimed to a near natural state, protect the water quality and quantity and oil and gas activities are mitigated to an acceptable level.

Modified Alternative 3 Final addresses the soil and water issue by not allowing surface occupancy on slopes over 40%. The purpose of this stipulation is to preclude construction activities on slopes and soils, which would be difficult to rehabilitate. Analysis of the effects of oil and gas activities on the soil resource including steep slopes is documented in the Northern FEIS pages 4-9 through 4-13 and on steep slopes in the Southern FEIS page IV-132.

Modified Alternative 3 Final also places a CSU stipulation on wetlands, water bodies, woody draws, riparian areas, and flood plains for the purpose of locating oil and gas facilities away from waters edge and outside those areas if possible. It also establishes criteria for operations that may have to be located inside or across such areas. Many of these water related resources are narrow linear features that may extend for miles. An NSO stipulation was not used for water related areas because more damage to the Grasslands may occur if developments, such as roads or pipelines, had to go around them.

#### **4. Recreation, Heritage Resources and Aesthetics**

If not properly mitigated oil and gas activity could alter the sights and sounds of the Dakota Prairie Grasslands, which could affect heritage resources and/or the recreational experience for visitors to the Grasslands. Modified Alternative 3 Final applies a CSU stipulation to lands with a High Scenic Integrity Objective (SIO) to protect visual quality. A CSU stipulation is also applied to moderate SIO to ensure the landscape character is no more than slightly altered.

In order to be responsive to comments on the Draft EIS, Modified Alternative 3 Final requires a NSO for all developed campgrounds and a TL within a 1/4-mile of all campgrounds and developed sites from May 1 to December 1. Also, five areas are not available for leasing (MA 1.2A and MA 2.4) and other areas (e.g. MA 1.31, MA 2.2, and MA 4.22) are available with NSO stipulations to protect recreation and heritage resources. In all of these areas the undeveloped character of the land will be largely protected. The level of protection depends on the level of development of existing leases. Further recreation stipulations are disclosed in Table ROD-3. Modified Alternative 3 Final adequately protects these recreation resources.

Other recreation issues were described by the public in response to the Draft EIS. A complete discussion, including the Forest Service responses, can be found in the NGP FEIS, Chapter 3 and in Appendix A and the NGP FEIS Addendum.

#### **5. Economics**

Oil and Gas activities are very important to the economics of the four western counties (Slope, Billings, Golden Valley and McKenzie) as well as to the entire state of North Dakota. The four counties that contain the Little Missouri National Grassland receive 25% of the royalties from those acquired lands. That money is designated for roads and schools and is an important part of the counties' budgets. The state of North Dakota receives 50% of the royalties from public domain minerals. In the years 1996-2001, payments to the state and counties of North Dakota ranged from two to five million dollars annually. Economic

analysis presented in Chapter 3, pages 3-34 through 3-38 of the NGP FEIS and Errata FEIS, page 9, indicates that over 1000 jobs and over 30 million dollars in labor income are generated annually by oil and gas development on the Little Missouri National Grassland.

The DPG Plan decision and this leasing decision attempt to strike a balance between protecting resources and allowing development. Our analysis indicates that 95% of the of the Little Missouri and Cedar River National Grasslands will be available and authorized for mineral leasing and almost 75% available for surface occupancy. This would maintain 97% of the jobs and 95% of the payments to state and county governments compared to existing conditions (DPG ROD, pages 12 and 25).

Economics is further addressed in Chapter 3 of the NGP FEIS.

#### **IV. Alternatives Considered**

Existing Condition and Alternative 1 reflect the management direction contained in the Northern FEIS (1991) and the Southern FEIS (1996). Seven alternatives were considered for the oil and gas leasing decisions in accordance with 36 CFR 228.102(c). Alternative 1 and Existing condition were the same for oil and gas. In compliance with 36 CFR 228.102(c), the alternatives identified on maps those areas open to development under Standard Terms, those areas open with stipulations, and those areas closed to leasing. Because the "Availability" and "Authorizations" decisions are identical except for the treatment of MA 3.51A and MA 3.51B, each alternative map reflects both decisions except Modified Alternative 3 Final.



Table ROD-4 displays a comparison of the federal minerals by alternative. The acre totals for lands available and stipulated include the non-federal surface/federal minerals included as part of the BLM decision.

**TABLE ROD-4**

**Oil and Gas Comparison by Alternatives**

<b>Revision Topic/Key Indicators for oil and gas</b>	<b>Existing Condition and Alt 1</b>	<b>Alt 2</b>	<b>DEIS Alt 3 in FEIS</b>	<b>FEIS Alt 3</b>	<b>Alt 4</b>	<b>Alt 5</b>	<b>MODIFIED ALT 3 FINAL</b>
Access with existing leasing decisions	992,870	992,870	992,870	992,870	992,870	992,870	992,870
Not available	24,940	24,940	24,940	46,590	24,940	24,940	46,590
Not currently authorized for leasing	16,230	0	0	26,200	0	0	6,760
Acres available for leasing	967,930	967,930	967,930	946,280	967,930	967,930	946,280
No surface occupancy (NSO)	209,520	185,600	281,860	204,380	298,610	237,960	207,660
Controlled surface use (CSU)	77,920	45,230	129,110	159,230	220,650	317,490	175,390
Timing limitation (TL)	133,630	185,650	170,720	202,990	176,040	176,610	225,910
Standard lease terms only	589,840	569,800	412,590	407,430	389,050	306,320	407,430
Paleontology CSU *							94,140

\* Non-federal Surface/Federal Minerals – part of BLM Decision

**Alternatives incorporated by reference**

Forest Service regulations require consideration of the “no leasing” alternative. Analysis of two alternatives, the “no leasing” alternative and the “leasing with standard lease terms only” alternative, has been incorporated by reference from the Northern FEIS and Southern FEIS Leasing Decisions. These alternatives were considered but not re-analyzed for this decision because they did not meet goals and objectives of the DPG Plan. Prior analysis showed they did not meet the goals and objectives of the Custer National Forest Plan (1986).

In comparing the stipulations from the Southern Little Missouri EIS and ROD to Modified Alternative 3 Final most are exactly the same. Modified Alternative 3 Final makes minor modifications to the management direction of the Southern EIS and updates the Northern EIS to respond to new public issues.

**Alternative 1 - No Action and Existing condition**

This alternative reflects the 1986 Custer National Forest Plan decision, the Northern ROD and the Southern ROD. The Custer National Forest Plan blended the many uses of the Grasslands. Under this alternative approximately 24,940 acres are not available for leasing and 16,230 acres are not authorized for leasing. About 97 percent of the federal mineral

estate is available and authorized for leasing. These areas are available with a variety of stipulations required to protect resources. Surface occupancy is allowed on about 76 percent of the federal mineral estate. The information used to analyze the current stipulations has been updated to include the most recent wildlife surveys and to reflect more recent mapping efforts such as those depicting steep slopes.

### **Alternative 2**

This alternative has a slightly stronger emphasis toward mineral development than Alternative 1. Similar to Alternative 1, there are 24,940 acres not available for leasing. There are no acres not authorized for leasing. Slightly fewer acres are protected from development through the use of NSO stipulations. Surface occupancy is allowed on about 79 percent of the federal mineral estate. In particular, this alternative does not protect roadless resources and values as well as some of the other alternatives. Alternatives 2, 3 DEIS, 3 FEIS, 4 and 5 analyze a consistent set of oil and gas stipulations associated with a variety of resources. It is the stipulations assigned to the management area allocations that vary.

### **Alternative 3 Draft in Final**

This alternative emphasizes mineral development less than alternatives 1 or 2. While similar areas (24,940 acres) are not available for leasing, this alternative provides greater protection of roadless resources through the use of NSO stipulations. These areas can be leased, but surface occupancy is not authorized. This alternative also attempts to provide more undeveloped acres for bighorn sheep and other resources than all other alternatives except Alternative 4; however, development in many of the areas may occur independent of DPG Plan direction as others exercise valid existing rights to access their lands and minerals included in these areas. Most of the mineral estate is available for leasing and development with a variety of stipulations required to protect other identified resources. Surface occupancy is allowed on approximately 69 percent of the federal mineral estate. Alternative 3 Draft in the FEIS analyzed the array of oil and gas stipulations presented in the Revised DPG Plan Appendix D.

### **Alternative 3 Final**

This alternative emphasizes minerals more in some areas and less in others. It includes 46,590 acres that are not available for leasing (MA 1.2A and MA 2.4). This is an increase of almost 22,000 acres that will not be available for oil and gas leasing. These additional 22,000 acres previously had NSO stipulations. It was assumed that with current technology only those areas within a half mile of the boundary of an NSO area could be developed; consequently, change from NSO to not administratively available (NAA) is a relatively small change with respect to these specific areas. Another change made between release of the draft and final DPG Plan, and the NGP FEIS, included changes made in the bighorn sheep MAs. Other changes, such as changing areas previously identified for bighorn sheep management to other MAs, made more area available to surface oil and gas development than were available in Alternative 3 Draft. Surface occupancy is allowed on about 74 percent of the federal mineral estate. This alternative better recognizes existing land and mineral ownership patterns than the previous alternative, allowing development of more federal

surface and minerals in areas where valid existing rights may result in development of these areas independent of DPG Plan direction. These changes generally allow more development of mineral resources, and they were made to respond to public comments, potential ongoing development of existing leases, and recognition of the existing land and mineral ownership patterns.

### **Modified Alternative 3 Final**

This alternative provides slightly more emphasis to mineral development than Alternative 3 Final. About 19,440 mineral acres of MA 3.51A has been changed to MA 3.51B. The new MA 3.51B will be available for leasing with CSU and TL stipulations. This makes mineral development of the federal minerals slightly more likely than was anticipated under MA 3.51A. As with the previous alternative, this alternative better recognizes existing land and mineral ownership patterns allowing development of more federal minerals in areas where valid existing rights may result in development independent of DPG Plan direction. Surface occupancy is allowed on about 74 percent of the federal mineral estate. Even though this alternative has fewer acres of NSO than the existing condition, parcels with NSO are larger. The net result may be that fewer acres will be accessed with directional drilling.

### **Alternative 4**

This alternative provides the least emphasis on oil and gas of all the alternatives, but oil and gas development is still a key use of the grasslands. Surface occupancy is allowed on approximately 67 percent of the federal mineral estate. This alternative does not recognize existing land and mineral ownership patterns as well as the previous alternative. Unintended development across federal surface will occur more often than in the previous two alternatives as a consequence of development by others exercising their valid existing rights since larger areas would be leased with NSO stipulations.

### **Alternative 5**

This alternative provides the third least emphasis on oil and gas of all the alternatives. Surface occupancy is allowed on approximately 74 percent of the federal mineral estate. This alternative has the fewest acres available with standard lease stipulations.

## **V. Findings Required By Other Laws Or Policies**

### **A. National Forest Management Act**

Every National Forest unit is required to develop a Land and Resource Management (Forest) Plan by the National Forest Management Act of 1976 (NFMA). The DPG Plan was approved in 2002. Implementation is designed to provide for multiple use and sustained yield of goods and services from the National Forest System in a way that maximizes long-term net public benefits in an environmentally sound manner (36 CFR 219.1(a)). The DPG Plan guides all natural resource management activities including oil and gas leasing and establishes resource management standards. Determining an appropriate leasing program through this analysis will help implement the DPG Plan.

We have determined, through the interdisciplinary (ID Team) process, the project is responsive to applicable current laws and regulations guiding the planning and management of National Forest lands (NGP FEIS, Chapter IV). In accordance with NFMA implementing regulations at 36 CFR 219, the relationship of nonrenewable resources, such as oil and gas, to renewable resources was considered (NGP FEIS, IV/98-99). We also recognized the grassland's various ecosystems and took into consideration their management for the production of goods and services.

This decision is consistent with the "Availability Decision" for lands administered by the Dakota Prairie Grasslands and will implement the direction and stipulations for leasing currently described in Appendix D of the Grasslands Plan.

### ***B. National Environmental Policy Act (NEPA)***

The NEPA provisions have been followed as required under 40 CFR 1500. The NGP FEIS and this ROD comply with the intent and requirements of NEPA. The NGP FEIS analyzes an acceptable range of alternatives, including a "No-Action" alternative. It also discloses the expected impacts of each alternative, and discusses the identified issues and concerns. This document describes the decisions we have made and the rationale for making the decisions.

### ***C. Endangered Species Act***

Few endangered or threatened species occur in the project area. The Little Missouri and Cedar River National Grasslands are used, however, by migrating and wintering bald eagles. The bald eagle is a threatened species. Currently, no bald eagle winter roost sites or active nest sites are known to occur on either the Cedar River or Little Missouri National Grasslands. Should either roost or nest sites be discovered, they would be protected by use of NSO stipulations. Whooping cranes migrate through western North Dakota, but make only incidental use of the Grasslands themselves. Neither of these species is expected to be affected by oil and gas development. As noted above, extensive management guidance, in the form of Management Area prescriptions and CSU and TL stipulations has been developed to mitigate potential impacts to the endangered black-footed ferret. Part of the black-footed ferret habitat is also protected by NSO stipulations that protect roadless character, resulting in protection of black-footed ferret habitat. The biological assessment completed as part of the NGP FEIS concluded that these species are not likely to be adversely affected by proposed activities given the mitigation measures to be applied. The US Fish and Wildlife Service has determined that the proposed action, with mitigation measures, will not jeopardize threatened and endangered (TES) species.

### ***D. National Historic Preservation Act***

The project area contains numerous physical heritage resources that will be protected. If additional sites are identified following an Application for Permit to Drill, these features will be protected as well. For the remainder of sites, the NGP FEIS analysis concluded the flexibility provided by the Standard Lease Terms is fully sufficient to assure protection. The project is in compliance with the intent and requirements of the National Historic

Preservation Act and important historic, cultural, and natural aspects of our national heritage will be protected

### ***E. National Energy Policy***

According to the National Energy Policy, Executive Order 13212 and the Forest Service Energy Implementation Plan, we have examined land status and lease stipulation impediments to federal oil and gas leasing in Chapter 3 of the FEIS, pages 3-114 through 3-155 and DPG revised plan goals, standards and guidelines. We have reviewed and modified those where opportunities exist (consistent with law, good environmental practices, and balanced use of other resources). We have reviewed public land withdrawals and lease stipulations with full public consultation, especially with the people in the region, and considered modifications where appropriate. With respect to development of coal, oil and gas resources, we have addressed the goals and are consistent with the Executive Order and the Forest Service Energy Implementation Plan to the extent appropriate in a land management plan and this associated oil and gas leasing decision.

## **VI. Public Involvement And Consultation With Others**

The official public involvement process began in February of 1997 with the Notice of Intent to revise the Plan and prepare an Environmental Impact Statement. The comment period on the DPG Draft Plan began in July 1999 and was extended three times until February 3, 2000 (Comments are summarized in Appendix A of NGP FEIS).

The BLM as a Cooperating Agency has been continuously involved throughout the development of the NGP DEIS, NGP FEIS, and DPG ROD. Consultation with other state and federal agencies, including the Environmental Protection Agency (EPA), has been ongoing throughout the analysis process. Written and oral comments submitted by all agencies have been considered. Consultation with the US Fish and Wildlife Service has been accomplished as required by the Endangered Species Act. The state of North Dakota provided information and was consulted on air quality, water quality, wildlife, economic effects of development, oil and gas production, the Reasonably Foreseeable Development Scenario and a number of other areas.

Potentially affected tribes and tribal governments were contacted, both in person and in writing. Contacts were made and responses were received from the Three Affiliated Tribes and Standing Rock Sioux. Other tribes were contacted but we received no responses.

Several issues relating to oil and gas leasing were identified during the comment period on the draft plan. The major issues important to the oil and gas decision that were raised by the public, agencies and tribes included:

- More areas and acreage should be recommended for inclusion into the Wilderness system.
- Bighorn sheep habitat should not be available for oil and gas leasing.
- Backcountry non-motorized areas should not be leased for oil and gas.

- Less restrictions on oil and gas leasing in bighorn sheep areas.
- Some areas designated as MA 3.51 (bighorn sheep) have significant acreages of non-federal mineral rights. The federal minerals should not be leased NSO.
- Concern was presented that existing leases would not be honored.

Consultation with the state of ND Governor's Office occurred from November 1999 through the release of NGP FEIS. Many changes were made to the DPG Plan as a result of this consultation and public comments. Some of these include:

- Identification of Management Area 1.2A - Suitable for Wilderness: Two areas from the draft plan that would have been recommended for Wilderness were included in the new management area and two new areas were added. These areas are Long X Divide, Twin Buttes, Bullion Buttes and Kinley Plateau, respectively.
- Clarification in the DPG Final Plan and ROD that valid existing leases will be honored.
- Reduction in the number of areas classified as MA 3.51. Some of these were reclassified as areas that could be developed with surface occupancy because the North Dakota Game and Fish was not planning to reintroduce bighorn sheep into these areas during the life of the DPG Plan.
- Reclassification of 35,800 surface acres of MA 3.51 to a new Management Area - MA 3.51A Bighorn Sheep Habitat With Non-Federal Mineral Ownership (NGP FEIS Chapter 2, Table 2-7, page 42). This management area includes 26,200 acres of federal mineral estate. Land in this management area may be leased with surface occupancy if other properties (non-federal minerals) are developed and this area can be developed without further impacts to bighorn sheep habitat.
- Counties also identified a concern with overly restrictive access to lands that were reacquired with a 6.25% royalty to the counties.

The official comment period for the Final DPG Plan and NGP FEIS ended on January 22, 2002. The FS received over 70,000 comments throughout the process. These comments were centered on similar issues as were identified in relation to the Draft Plan and are included in the addendum to the NGP FEIS. These comments resulted in additional changes that were documented in the DPG Plan ROD and in this ROD. The main changes and clarifications important to the oil and gas leasing decision and how we address these issues including the following:

- Reclassification of 26,230 surface acres of MA 3.51A to a new Management Area MA 3.51B. This area includes 19,440 acres of federal mineral estate. MA 3.51B will allow oil and gas leasing and development with CSU and TL stipulations as necessary to prevent significant adverse impact to bighorn sheep.

- Land exchanges, mineral exchanges, and royalty interest exchanges provide opportunities to reduce conflicts with lands containing the 6.25% county royalty interests.

The changes from draft plan to final plan and this ROD will allow additional areas to be leased and developed by oil and gas interests while striking a balance by managing other areas for less development. All contacts are documented in the Project File for NGP FEIS.

## **VII. Environmentally Preferred Alternative**

Council on Environmental Quality (CEQ) regulations direct the decision-maker to identify the environmentally preferable alternative, which is defined as the alternative which best meets the goals of section 101 of the National Environmental Policy Act. Section 101 emphasizes protection of the environment while attaining the widest range of beneficial uses of the environment without degradation.

Alternative 2 of the Northern FEIS and Alternative E-1 of the Southern FEIS were the environmentally preferred alternatives for these analyses. These alternatives are approximated by Alternative 4 of the NGP FEIS. Under Alternative 2, and Alternative E-1, no Federal minerals, regardless of whether they are currently leased or unleased, would be considered for lease issuance. Existing leases would be valid until they expire.

When considered with the other alternatives of the NGP FEIS, Alternative 4 is the environmentally preferred alternative, as it poses the least possibility for negative environmental effects. Although the same amount of land is available for leasing in Alternative 4 as most of the other alternatives, it also contains the most lands available with NSO stipulations. This would result in Alternative 4 having the least amount of land directly impacted by oil and gas operations. Existing leases would be valid until they expire.

### **Mitigation**

Mitigation measures developed to reduce the environmental effects on surface resources from oil and gas leasing include standard lease terms, lease notices, and stipulations. These measures are applied to each lease. These mitigation measures are discussed in Chapter III of the NGP FEIS, the Northern FEIS, and Southern FEIS. Further, Appendix D of the DPG Plan discloses the details of the stipulations prescribed to lessen the effects to resources resulting from Modified Alternative 3 Final.

These measures represent what I consider to be the best means to avoid or minimize environmental impacts that may arise from the project and meet the integrated resource management requirements of the DPG Plan. In addition, these stipulations represent all practicable means to avoid or minimize environmental harm from the alternative selected. It is my decision to apply these measures to my decision. These mitigation measures are an integral part of my decision. Table ROD-3 summarize these measures.

## **VIII. Monitoring And Evaluation**

Monitoring needs are identified in Chapter 4 of the DPG Plan. Many of the monitoring questions listed in Chapter 4 pertain to the management activities on the DPG including oil and gas development and how it will affect a variety of resources. In particular the Forest Service will be monitoring the effects of grassland management on local and adjacent communities by tracking changes in jobs and income, federal receipts and federal revenue sharing with state and local governments and the determining factors behind these changes.

In addition, in accordance with 36 CFR 228.103(e) we will:

1. Determine whether a proposed parcel of land can be occupied in accordance with the DPG Plan,
2. Identify the appropriate stipulations to include in the lease in accordance with the DPG Plan and this ROD.

There is monitoring at subsequent stages. Once drilling begins on a well, through production and final plugging, the operations are inspected to ensure compliance with lease terms and the terms on the APD and SUPO.

## **IX. Implementation**

During the revision process for the Dakota Prairie Grasslands Plan and the oil and gas leasing decision, leasing continued on most lands in the Little Missouri and Cedar River National Grasslands according to existing decisions. However, some nominated parcels were held and not leased on lands where new information indicated a need for change in the previous decisions. The following identifies how the Dakota Prairie Grasslands will resume leasing under this decision.

The available unleased land, which the Forest Service has authorized the BLM to offer for lease by this decision, will be offered for lease by BLM by competitive lease sale when: (a) it is nominated by industry; (b) the Forest Service requests it be offered; (c) the BLM identifies it as subject to drainage; or (d) it had a pre-sale offer.

Prior to BLM listing the land on a sale notice, the Forest Service will parcel the nominated lands and attach the appropriate stipulations as identified in this ROD and as required by 36 CFR 228.103(e)(2) and (3). As part of the review to attach stipulations, the Forest Service will verify that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document and is consistent with the DPG Plan Revision (36 CFR 228.103(e)(1)). The Forest Service will also consider any new information or circumstances requiring further environmental analysis. If there is new information or circumstances, e.g., the listing of a new endangered or threatened species, the new information will be considered according to NEPA regulations 40 CFR 1502.9 and Forest Service Handbook, section 1909.15 Sec.18.1. This analysis will determine whether additional environmental documentation analysis is required before leasing. The Forest Service will then forward the completed lease parcel package to the BLM for inclusion in the next available lease sale.

If the offered lands receive no offers they will then be available, for two years following the lease sale, non-competitively over-the-counter. Following receipt of either a competitive lease sale bid or a non-competitive over-the-counter offer, leases may be issued by BLM. (43 CFR Subpart 3100)

Implementation of the decision in this ROD to lease specific lands will grant the lessee/operator the right to develop the oil and gas resources per the terms of the lease. Before the lessee/operator can cause surface disturbance, there must be an approved Application for Permit to Drill (APD) and a Surface Use Plan of Operations (SUPO) as required by Forest Service regulations 36 CFR 228.106-108 and BLM's regulations 43 CFR 3160. (Also See Section II (A)(3) in this ROD)

## **X. Appeal Procedures**

### **A. Forest Service Appeal**

This decision is subject to administrative review under 36 CFR Part 215 as **published in the Federal Register on November 4, 1993**. Any appeal of this decision must be fully consistent with 36 CFR 215.14, Content of an Appeal, including the reasons for appeal. A written appeal must be submitted within 45 days of the day after publication of this decision in the legal notice section of the Bismarck Tribune (Bismarck, ND). Written appeals should be sent to:

ATTN: Appeals Deciding Officer  
USDA - Forest Service, Northern Region  
P.O. Box 7669  
Missoula, MT 59801

For additional information concerning this decision or the Forest Service appeal process, contact Steve Williams, 240 W. Century Ave., Bismarck, ND 58503

If no appeal is received, implementation of this decision may occur on, but not before, 5 (five) business days from the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 days following the date of the publication of the appeal decision.

### **B. Bureau Of Land Management Appeal**

The decision made herein by the BLM may be appealed to the Interior Board of Land Appeals, Office of the Secretary (IBLA), 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 Bismarck Tribune (Bismarck, ND). The notice of appeal must be filed in the Montana State Office, 5001 Southgate Drive, PO Box 36800, Billings, MT, 59107-6800. A copy of such notice must also be provided to the Field Solicitor, US Department of the Interior, PO 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: U.S. 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 must be provided to the US Department of the Interior, Office of the Secretary, Board of Land Appeals, 801 N. Quincy St., Suite 300, 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 is in error.

BLM's decision 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.

## **XI. Contact Person**

For additional information, contact: Jim Wickel, Team Leader, Dakota Prairie Grasslands, 240 W. Century Ave., Bismarck, ND 58503 (701) 250-4443.



# **ATTACHMENT A**

## **BLM Stipulation**

### **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 (non-federal 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 demonstrating that 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.

Reference: DPG Plan Addendum, Appendix J (pages 54-62)

# ***ATTACHMENT B***

## **Roadless Area Conservation Rule Lease Notice**

Serial No.

Parcel No.

### LEASE NOTICE

#### Roadless Area Conservation Rule

Lands contained in this lease are located in an inventoried roadless area subject to the rule entitled "Special Areas; Roadless Area Conservation Rule; Final Rule" published in the Federal Register on January 12, 2001. The Roadless Area Conservation Rule or subsequent modifications thereof may prohibit operations such as road construction or reconstruction.

(Legal description)

R1-FS-2820-22b (01/03)



