

STATE OF MONTANA

ENVIRONMENTAL QUAL EQC ARCHIVES--1978-3

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TO: EQC Members
FROM: Terry Carmody
RE: OIL AND GAS LEASING PROGRAM

Enclosed is a copy of our report on the Oil and Gas Leasing Program by the Department of State Lands. The list of recommendations is by no means all inconclusive but is used as a starting point to institute dialogue on the subject.

Time has been allotted at the August 3 meeting to discuss this report. If you have any questions, feel free to contact our office or we will discuss it with you during the meeting.

ENVIRONMENTAL QUALITY COUNCIL

Oil and Gas Leasing Program
Department of State Lands
July 13, 1978

I. Introduction

The Department of State Lands is responsible for administering the oil and gas leasing program on over 6,000,000 acres throughout the state. The lands were granted to the state by the United States Congress through the Enabling Act when Montana became a state. Provisions for the disposition of state lands including leases is mentioned in the Enabling Act, Montana Constitution, the laws concerning the Department of State Lands, and the regulations implementing the law.

The Department of State Lands has the mandate to generate as much revenue as possible for the school trust fund from all sources, under the supervision of the Department. Oil and gas leasing is but one of many programs which generate revenue for the fund.

II. Application

The Department has all lands available for leasing on file by township, range, and section. A company or individual, interested in a particular tract, may call or write inquiring about the availability of a certain tract. If the tract is not under lease prior to the inquiry, the potential lessee has two options. He can apply on a form prescribed by the department which requires a filing fee of \$10. This automatically establishes an opening bid of \$1.50/acre at the lease sale. Or the individual can wait and allow someone else to apply, thus avoiding the \$10 filing fee. In either instance, anyone can bid on a parcel once it has been applied for. The department does not

choose which lands will be up for bid at any one sale. Those lands not applied for will not be leased. If more than one application is received, the subsequent applications are returned along with the fee and a letter stating that someone has already applied.

A sale of oil and gas leases on state lands normally will be held once in each quarter, on the first or second Tuesday of March, June, September, and December. The last lease was scheduled for June 6, 1978. To allow the department enough time to research each tract and advertise, the closing date for receiving applications was April 4. This appears to be in excess of 60 days. However, the regulations require those lands to be leased must be publicized in the Montana Oil Journal, the first publication not more than forty (40) days prior to the sale. The department lists the lands to be leased for 4 weeks prior to the sale in the Montana Oil Journal. Because the completed list of applications must be in the Journal for 4 weeks prior to a sale, this allows the department approximately one month to process the applications, review potential environmental problems and hazards, attach stipulations, write a preliminary environmental review, and circulate the documents for scrutiny within the department.

III. Environmental Review

Applications are sent to the environmental coordinator as they arrive. However, most of the applications are received immediately prior to the closing date in hopes of avoiding the \$10 fee. For the June 6 sale, the list contained in excess of 600 separate tracts. At the present time, the assistant environmental coordinator is doing the review work. As the June sale is usually the

largest of the year, and the June 6 sale was the largest to date, several additional people were "borrowed" from other divisions to assist in the environmental review. It must be noted at this time that the assistant environmental coordinator has other duties and no one is assigned full time to the oil and gas leases.

The first Preliminary Environmental Review was completed for the March 1977 sale, even though MEPA has been in existence for an excess of 5 years. The information for the PER is obtained from the department's assessment files. These files are the result of an on-site inspection made by a field person of the department. The assessment files are kept as up to date as possible considering the number of tracts involved and the limited number of manpower available.

When the list of lease applications is received, the corresponding assessment files, topographical maps and aerial photographs are consulted for potential environmental degradation. The three main criteria used in the assessment are live water, steepness, and access. Live water is any body of water whether ponded or moving. Access can mean anything down to and including a jeep trail. Steepness would be a judgement decision on the part of the reviewer, based on topographical maps. The various tracts are grouped together according to their physical similarities.

Conditions of lease or stipulations are written for each group. The tracts for lease are arranged according to their groups and a PER is written. The PER is circulated within the department only. A list of all tracts is

sent to the Fish and Game office in Helena and an individual area specific list to those regional offices of Fish and Game affected. The regional offices try to submit comments within the time periods specified but are not always able to do so.

IV. Preparation for Bid

The list of leases with their respective stipulations are returned to the Leasing Bureau for final processing. A letter is written to each applicant informing him of the stipulations which have been attached. The applicant may withdraw at this time if he feels the stipulations are too stringent. However, the tract of land will still be put up for bid or may be withdrawn at the discretion of the Commissioner. A list of lands for lease will be sent to the Montana Oil Journal for publication for four consecutive weeks immediately prior to the sale. The list is also sent to 520 people on the department's mailing list.

Oral competitive bidding determines the eventual lessee. All bids open at \$1.50/acre and continue until one person remains. The highest bidder for each tract must submit the amount of the first year's lease within ten (10) days of the sale. If the lease is approved by the State Board of Land Commissioners, it will run for ten (10) years. The lease may be cancelled if the lessee fails to make a payment or if he writes to the department asking for cancellation.

V. Exploration and Drilling

Once the lease is obtained, the successful bidder may either use this lease to tie up a large block of land, or he may actively search for gas or

oil. If a well is not drilled by the end of 5 years, the lessee must pay a late drilling penalty of an additional \$1.25/acre/year. If the stipulations of the lease allow and the lessee is able to reach agreement with the surface lessee, he can begin to search for oil or gas. Of all lands leased only 10 percent are ever entered in search of oil and gas. Only 2 percent may ever be drilled.

Once a parcel of land is selected for drilling, a permit to drill must first be obtained from the Oil and Gas Commission of the Department of Natural Resources and Conservation. The Commission requires an intent to drill be accompanied by a survey plat certified by a registered surveyor or engineer showing the location of the well in relation to other wells and the nearest lines of established public survey. A fee of \$25-\$150, depending on depth of well, must accompany the application. The Commission's only concern is with the location of the proposed well in relation to existing wells.

A company may obtain a Seismic Permit from the Department of State Lands. This permit allows for oil and gas exploration only. If the results of the tests appear favorable, the company must make application to the department or try to buy the lease at the next sale. As a holder of a seismic permit, the company may not drill nor are they shown favoritism during the application process. An environmental assessment or PER has been written for each of the permits.

VI. Stipulations

Stipulations are the conditions which are attached to the tracts for lease during the environmental review. The stipulations, when applied, range from using existing roads and trails to no surface occupancy. Many of the tracts require written approval from the department prior to any surface disturbance. The approval shall require that a designated representative of the department accompany the lessee on an inspection prior to any road construction or off road vehicle travel, well site construction, pipeline construction, or building construction.

As of this date not one lessee has asked for written approval to comply with a stipulation. This condition refers back to the statement that very few leases are ever entered. Most of the leasing and exploration activity has occurred in the eastern part of the state. With the exception of the leases in the Flathead area, and another in Granite County, no lands were leased in the western part of the state prior to September of 1976. There has been no known activity on any of the leases in the western part of the state.

If and when a lessee decides to comply with a stipulation, a written request must be submitted to the department. Along with the request, a complete plan, including a topographical map, is required. Once this complete request is received, it will be reviewed by the appropriate personnel in the office. One of the field men will make an on-site visit to the area to verify conditions on the plan and ascertain whether the information in the assessment file is correct. If it appears the environment will not be adversely

affected, the stipulation will be deemed in compliance.

VII. Public and Outside Agency Participation

At the present time Environmental groups, EQC, or the general public have no input into the review system. The main reason for this appears to be the time constraints under which the Department of State Lands are working. The PER, when written, is circulated within the department, read by the director, and filed. As was stated previously in this report, a 4-week period exists whereby all applications must be assembled, typed, given to the environmental coordinator for review, and returned for further processing before sending the package to the Montana Oil Journal for advertising. The time frames are just too rigid, as they now stand, to allow adequate outside review of the process and/or the tracts for lease.

The Fish and Game Department has been given the opportunity to review those tracts for lease where they do have an interest. However, the time allowed for comment has never been enough, in Fish and Game's opinion, to do an adequate review to protect fish and wildlife on those tracts proposed for lease. Three instances of inadequate review time are explained below.

The first involved a sale of tracts located on the Blacktail Game Range in Beaverhead County. An 18-page list of tracts was sent to the Helena Fish and Game office on January 13, 1978 and the list for the Bozeman region was sent the same day, with the response requested on January 25, 1978. Without counting mailing time or clerical time, eight working days were allowed for investigation, review, and on-site inspections, where needed. It must be noted that at the time the request for review was received, the Bozeman Regional

Office was managing the Madison elk hunt, the Gallatin elk hunt, and the Gardiner elk hunt. Contact was made by phone with the people in the Bozeman region prior to the January 25 deadline by Department of State Lands. Fish and Game was asked to check the list and notify State Lands by February 1 if any tracts should be deferred. Apparently, Fish and Game was not able to respond by February 1.

The second instance involved a proposed lease in the Glasgow Region. The PER was sent from Helena by Department of State Lands on March 20, 1978. It was mailed book rate or fourth (4th) class. The PER was received in Glasgow on Friday, March 24, 1978. The comments were requested by Monday March 27, 1978.

The third lease in question involves those tracts for sale on June 6, 1978. The June sale offered for lease 620 tracts. Over 300 of these tracts occur in the Great Falls Region of the Fish and Game Department. The list of tracts arrived in Great Falls on April 7. Not counting mail and clerical time, this allows 14 working days to review the 300 tracts located in this one region.

The region was able to submit comments within the deadline, however, Mr. Nels Thoreson, Great Falls Regional Supervisor stated, "We do not feel that proper environmental impact assessments can be made on large numbers of individual tracts in a short period of time. cursory examination of environmental impact is not sufficient for responsible management of fish and wildlife resources."

Many of the comments submitted to State Lands by the Great Falls Region

appear to be wholly or partially disregarded. For 16 tracts, totalling 3330 acres, the Fish and Game Department asked that no oil and gas exploration or development be allowed, as the areas are important to the proper functioning of the Sun River Game Range. Enclosed with this report is a list of the stipulations applied to this lease sale. Stipulation #5 has been applied to these 16 tracts. The lands have been put for lease with stipulations which allow exploration and development. Ten (10) tracts were noted that should not be leased whatsoever. The ten tracts noted by Fish and Game contain important whitetail deer range, critical grizzly bear habitat, an area adjacent to the inlet of Pishkun Reservoir, an area important to breeding waterfowl, and bighorn sheep winter range. Stipulations #1, 3 or 8 were applied to this group of tracts. These tracts contain 3246 acres. All ten tracts are listed for the lease sale with 2 of the tracts listed without any stipulations. Fourteen (14) tracts, totalling 4052 acres, were listed by Fish and Game as those which should be deferred until such time as a proper fish, wildlife, and recreation inventory and appraisal can be made. All fourteen tracts have been listed for bid with one of the tracts not having a stipulation attached. Stipulations #1, 3 or 8 were applied to each of the remaining 13 tracts. On several tracts Fish and Game asked that certain distances be specified within which development and exploration would be prohibited. State Lands has allowed half the requested distance on some and stipulated no minimum distance on others.

VIII. Conformance with MEPA

Both in the Montana Environmental Policy Act and Department of State Land's

Rules implementing the Act, the term "significant" is used repeatedly for the purpose of determining when an EIS would be required. However, a definition could not be found in either the Act or rule which states what "significant" is to mean. Webster's New Collegiate Dictionary defines "significant" as, "1. Having meaning; 2a. having or likely to have influence or effect; 2b. probably caused by something other than mere chance."

It would appear that what is significant to one agency or individual may not be significant to another. In the Rules implementing MEPA, the Department of State Lands contend, "If the PER shows a potential significant effect on the human environment, an EIS shall be prepared on that action."

The following are actions on which State Lands will prepare an EIS:

1. The action may significantly affect environmental attributes recognized as being endangered, fragile, or in severely short supply;
2. The action may be either significantly growth inducing or inhibiting; and
3. The action may substantially alter environmental conditions in the terms of quality or availability.

In a phrase quoted earlier in this section, the wording of "potential significant effect on the human environment" is found. When this phrase is compared with those found in the Department's PER, as listed below, it appears an EIS is necessary.

1. "...it was found that oil and gas activities may adversely affect other land values."

2. "...unavoidable changes in the ongoing ecosystem will occur."
3. "...may destroy or disrupt important cultural artifacts."
4. "...seriously disrupt the recreational activities associated with the golf course and possibly adversely affect the city water supply."
5. "Activity from oil and gas exploration during the fawning/nesting period could seriously stress the animals and reduce the survival rate of their young."
6. "Oil and gas activities may cause irreversible damage due to increased erosion and resulting on-site and downstream reduction of water quality; contamination of springs and streams due to unpreventable spills, seeps, blowouts, etc; reduction of available wildlife habitat; and reduction of the scenic quality by temporary and permanent facilities required during the various phases of the activities. They may cause short term or long term adverse effects, depending on the precautionary methods used during development."
7. "Human interference during their nesting times or degradation of the environment may again make them an endangered species."
8. "...the local communities will experience both adverse and beneficial effects."
9. "...the local communities may undergo complete conversion from rural to urban communities."
10. "Both adverse and beneficial economic impacts may occur."

11. "The adverse impacts which may result would occur during the development activities. This may overburden public facilities and services and may create an inflated, unstable economy."
12. "With the occurrence of oil and gas activities within an area, the areas will experience side effects. Some will probably be beneficial and others adverse. It is concluded that any adverse affects resulting from this oil and gas lease sale do not warrant preparation of an EIS."

With the information which has been presented in this section; one might take exception with the last statement in item 12 above. It would appear from the Department's PER, that a more detailed environmental assessment is necessary.

In the Department of State Lands Rules, it states, "The Department shall maintain a list of those activities or functions that fall within the categories described in the preceding subsections of this rule. The list shall be maintained as a public document and copies of the list and any subsequent revisions sent to MCEQ, the EQC, and any member of the public who has requested a copy of the list." The list supplied to this office by State Lands has, "the management, leasing, and sale of state lands including both surface and subsurface resources" included under a section which states, "Programs or actions that do not require the preparation of either a PER or an EIS." It would appear the list required by MEPA is in need of updating and revision.

IX. Conclusion

The first point which is adherently clear is that the Department of State Lands has imposed upon itself a rule which does not allow an adequate time frame for environmental review of proposed tracts for lease, especially in the western one-third of the state. The second point which must be mentioned is the lack of outside review on environmental assessments. If an agency is to do an effective job of administering the fish and wildlife of the State of Montana, they must have a voice in what happens to the land and water the wildlife must live on. Granted, the Department of State Lands must generate as much money as possible for the school trust fund, and every effort should be made to do so, but this can be compatible with a clean environment.

If we are to believe all that is written in the newspaper, the energy bill presently before Congress may have an effect on the degree of exploration and development in the near future. The bill, if passed in its present form, would deregulate the price of new oil and natural gas by the year 1985. If this were to happen, then the state can expect an increased activity in leasing, exploration, and development as the developers will feel the end product will show a profit.

To prevent possible degradation of the environment if and when the rush comes, it will be necessary to revise present leasing policy to allow more time for environmental review of the proposed tracts for lease. In conjunction with this, the Department of State Lands should recognize the Department of Fish and Game as knowledgeable in the field of fish and wild-

life management. Given enough review time, the regional offices of Fish and Game will be able to complete a thorough and comprehensive evaluation of each tract in their respective areas. Once this evaluation is submitted, State Lands should seriously consider each recommendation.

At the present time, with the exception of the salt water pits noted on our recent Northeast trip, we are not aware of any problems associated with oil and gas exploration or drilling. Further research should be conducted to determine if the Department of State Lands or the Oil and Gas Commission is responsible for the condition noted in the fields located near Plentywood. However, MEPA does not permit a procedure to exist because a problem has not been previously encountered. An after the fact revision of rules would be totally unacceptable as the purpose of MEPA is to ensure a problem will not exist from the onset.

The Department of State Lands must be complimented for doing an extremely demanding job with the limited resources available. It is hoped this study has shown that the Department has a concern with what happens with the environment but is handicapped in the number of people available to handle the workload and with the mandate to generate revenue for the school trust fund. At the very minimum, one additional person should be hired to handle the oil and gas lease sales. With additional fulltime staff and allowing additional time for environmental review, both the school trust fund and the environment will be enhanced.

X. Recommendations

The first recommendation would be to leave things as they are. This was found to be the least desirable alternative of the three studied. It appears from the study that not enough time is built into the system to allow the Department of State Lands, and especially the Department of Fish and Game to conduct adequate environmental reviews. To comply with MEPA, more than a superficial scanning of areas to be leased would be required. If the Department of State Lands foresees a trend of increased leasing activity, one individual at least, should be hired full time to do only oil and gas lease review and prepare adequate environmental assessments.

The second recommendation would eliminate one and preferably two of the leasing periods. The two remaining sales would be conducted in December and June and give several months instead of several weeks for review of the proposed tracts. Other agencies would be allowed more review time also and any discrepancy between interested parties could be worked out before the sale. Again, a person should be hired fulltime to handle the environmental reviews for the oil and gas lease sales.

The third recommendation, and the most preferable, would break the leasing procedure into a three-part system. In the first step, the lease would be applied for as is presently the case. A general PER would be written to cover the entire sale and stipulations assigned as needed. If the lessee is among the 10 percent who decide to explore for oil and/or gas, a more detailed PER would be prepared for the particular lease site and circulated to all interested and affected parties. Pertinent comments

would be incorporated into the stipulation revisions. The third phase of the recommended program would involve the 2 percent who actually drill. Before the drilling is started, an EIS would be written to consider the entire social, economic, and physical environmental spectrum. The EIS would be circulated to all interested agencies and groups, both on the state and local level. As the drilling activity itself has the potential for being the most destructive, careful consideration must be given to prevent deterioration of the environment.

This process should not be a burden on either the oil industry or the Department of State Lands. At the present time, not one of the tracts with a stipulation requiring written notice for compliance has been explored. The Department of State Lands should hire someone fulltime to administer the environmental review for all oil and gas lease sales. This person would also be responsible for the EIS process should someone request permission to explore or drill.