

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

State of North Dakota,

Plaintiff,

vs.

The United States Department of Interior; Debra Ann Haaland, in her official capacity as Secretary of Interior; the Bureau of Land Management; Nada Culver, in her official capacity as acting Director of the Bureau of Land Management; and John Mehlhoff, in his official capacity as the acting Director of the Montana-Dakotas Bureau of Land Management,

Defendants.

Center for Biological Diversity; Sierra Club; Western Organization of Resource Councils; and Dakota Resource Council,

Defendant-Intervenors.

Case No. 1:21-cv-00148

State of North Dakota,

Plaintiff,

vs.

The United States Department of Interior; Debra Ann Haaland, in her official capacity as Secretary of Interior; the Bureau of Land Management; Tracy Stone Manning, in her official capacity as the Director of the Bureau of Land Management; and Sonya Germann, in her official capacity as the Director of the Montana-Dakotas Bureau of Land Management,

Defendants.

ORDER TO REVISE STATUS REPORT

[¶ 1] On March 27, 2023, the Court issued its Order Granting, in Part, and Denying, in Part, North Dakota’s Motion for Preliminary Injunction. Doc. No. 98. As part of its Order, the Court required the Federal Defendants to “file a report with the Court . . . detailing which lands in North Dakota have been nominated for inclusion in the quarterly lease sale (both those deferred from prior quarters and those newly nominated) and which stage of review those parcels have completed.” *Id.* The Federal Defendants filed a status report on April 17, 2023 (*see* Doc. No. 101), to which North Dakota filed an objection, arguing the Federal Defendants “significantly mischaracterize[d] and underreport[ed] the nominated lands for which expressions of interest (‘EOIs’) have been submitted in North Dakota, and for which Bureau of Land Management (‘BLM’) review is pending in order to make those nominated lands ‘available’ for future quarterly lease sales,” (Doc. No. 103). The Court held a status conference on April 24, 2023. Doc. No. 104. For the reasons stated on the record and in furtherance of its March 27, 2023 Order (*see* Doc. No. 98), the Court hereby **ORDERS** the Federal Defendants to (1) revise and resubmit the status report on or before July 7, 2023, pursuant to the additional following directions; and (2) confer with North Dakota regarding its concerns pertaining to Instruction Memorandum 2023-008: Impacts of the Inflation Reduction Act of 2022 (Pub. L. No. 117-169) to the Oil & Natural Gas Leasing Program¹ and report to the Court the result of the Parties’ conferral on or before May 15, 2023.

¹ BUREAU OF LAND MGMT., INSTRUCTION MEMORANDUM 2023-008: IMPACTS OF THE INFLATION REDUCTION ACT OF 2022 (PUB. L. NO. 117-169) TO THE OIL AND NATURAL GAS LEASING PROGRAM (2022), <https://www.blm.gov/policy/im-2023-008>.

I. Revisions to the Q2 2023 Status Report & Guidelines for Future Status Reports

[¶ 2] The status report for Q2 2023 and any future status report’s discussion of “deferred” lands must not be limited to those lands in North Dakota labeled as “Deferred” in the National Fluids Lease Sale System (“NFLSS”). Instead, the revised status report must detail:

- a. The number of lands nominated via EOIs in North Dakota from any calendar year that have any of the following statuses from the NFLSS:
 - i. Cadastral Review;
 - ii. Deferred (whether that be due to Additional Studies/Surveys, RMP/LUP Conflicts, or another reason);
 - iii. New;²
 - iv. Not Accepted (whether that be due to “EOI Contained Profanity” or another reason);
 - v. Pending;
 - vi. Pending NEPA;
 - vii. Pending SMA Concurrence;
 - viii. Parceled;
 - ix. NEPA Complete;
 - x. SO Review/SO Review Acknowledged; and
 - xi. Final Parcel.

² By including lands with a status of “New” in the NFLSS, the Federal Government will also fulfill the Court’s directive to file a report “detailing which lands in North Dakota have been nominated . . . (both those deferred from prior quarters and those *newly* nominated).” Doc. No. 98, p. 82 (emphasis added).

- b. If land in North Dakota nominated via an EOI has (1) been submitted to be considered for leasing in a quarterly lease sale in 2021 or a later time (whether that lease sale occurred or not) and its status is one of those listed above; and/or (2) had its “status” changed in the NFLSS on or after January 27, 2021 to one of the statuses listed above, regardless of the date the EOI was submitted (land meeting either of these criteria shall be referred to as “Nominated Land”), then the status report must provide:
- i. The date of the latest action taken by the Federal Defendants pertaining to that Nominated Land;
 - ii. For Nominated Lands “Pending NEPA” and “Pending SMA Concurrence,” (1) the date each Nominated Land started the NEPA or SMA Concurrence process; and (2) the date each Nominated Land is expected to complete the NEPA or SMA Concurrence process;
 - iii. A brief explanation regarding why a Nominated Land’s status is “Deferred” or “Pending” (if “Pending,” precisely at what stage of the adjudication process is the Nominated Land pending); and
 - iv. The date the Federal Defendants (1) expect to complete each Nominated Land’s “eligibility” and “availability” analyses, as those terms are understood in 30 U.S.C. § 226(b)(1)(A); or (2) the date those analyses were completed, as is applicable;
- c. Which parcels are anticipated to be part of the relevant upcoming quarterly lease sale in North Dakota;

- d. The reasoning and basis for already assigning certain parcels in the NFLSS for potential leasing in September 2023 and December 2023;
- e. A brief explanation of the Federal Defendants' methodology since January 27, 2021, for determining the cutoff date for lands' potential inclusion in a particular quarterly lease sale in North Dakota and what the Court may expect for future cutoff dates;
- f. Among the Federal Defendants, the identity of the person or persons who could provide the Court with the most information related to the following topics:
 - i. Why Nominated Lands have been deemed "Deferred";
 - ii. The exact stage of adjudication of "Pending" Nominated Lands;
 - iii. Who determines which lands (and ultimately, which parcels) will be included in a quarterly lease sale in North Dakota;
 - iv. The methodology and practice of the Federal Defendants for determining the cutoff date for lands' consideration in a particular quarterly lease sale in North Dakota and whether that date is typically published;
 - v. Who is the ultimate decisionmaker for determining when is the cutoff date for North Dakota's quarterly lease sales and where it is published; and
 - vi. Why Nominated Lands have been earmarked for lease sales in September 2023 and December 2023;
- g. A brief explanation of whether the Federal Defendants use metrics or otherwise consider the quality and/or quantity of oil and gas (i.e., the desirability of the land

for oil and gas extraction) as part of their decision to lease or not lease land in North Dakota.³

[¶ 3] The revised Q2 2023 status report must be submitted by the Federal Defendants on or before July 7, 2023.

IT IS SO ORDERED.

DATED April 25, 2023.

A handwritten signature in black ink, appearing to read 'D. Traynor', written over a horizontal line.

Daniel M. Traynor, District Judge
United States District Court

³ See Arkla Expl. Co. v. Tex. Oil & Gas Corp., 734 F.2d 347, 358 (8th Cir. 1984) (detailing the Mineral Leasing Act of 1920 was and is intended “to provide incentives to explore new, unproven oil and gas areas” and accordingly compensate the Federal Government).