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May 6, 2013

Helen Hankins
Colorado State Director
Bureau of Land Management
2850 Youngfield Street
Lakewood, CO 80215-7076

BY HAND DELIVERY AND ELECTRONIC MAIL

Re: Request for State Director Review on Decision suspending operations and production on oil and gas leases: COC 66687, COC 66688, COC 66689, COC 66690, COC 66691, COC 66692, COC 66693, COC 66694, COC 66695, COC 66696, COC 66697, COC 66698, COC 66699, COC 66700, COC 66701, COC 66702, COC 66908, COC 66909.

Dear Ms. Hankins:

Wilderness Workshop respectfully requests State Director review of the April 9, 2013 Decision by the Bureau of Land Management's Colorado River Valley Field Office suspending operations and production on 18 leases held by SG Interests I, Ltd. (SG) in the Thompson Divide area of the White River National Forest (the Field Office decision).

Wilderness Workshop is a nonprofit organization based in Carbondale, Colorado. Wilderness Workshop's mission is to protect and conserve the public lands and natural resources of the Roaring Fork Watershed, the White River National Forest, and adjacent public lands. Wilderness Workshop is one of a number of local stakeholders working to protect the Thompson Divide from oil and gas development, including the area affected by the Field Office decision. Wilderness Workshop's members also use and enjoy the areas affected by the Field Office decision.[1]

Wilderness Workshop is adversely affected by the Field Office decision, which extends the life of the 18 leases. By preventing the leases from expiring, the Field Office makes it substantially likely that Wilderness Workshop's aesthetic, recreational and organizational interests will be harmed by oil and gas development in the Thompson Divide See Three Forks Ranch Inc., 171 IBLA 323, 329 (2007); Order, Natural Resources Defense Council, et al., IBLA 2012-272 (May 1, 2013).

This request for review is timely filed pursuant to 43 C.F.R. § 3165.3.

The Field Office decision should be reversed, and SG's request for suspension should be denied, for the following reasons:

[1] http://www.wildernessworkshop.org/our-work/oil-and-gas/thompson-divide/.

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1. BLM improperly granted the suspension based on the "totality of circumstances," even though none of the circumstances relied on would itself justify suspension.

2. Suspension was improper because the leases were sold in violation of applicable laws and under conditions that BLM has recognized as making them "invalid ab initio."

3. BLM violated NEPA by relying on a categorical exclusion to suspend the leases and not conditioning the suspension on reserving the right to deny all drilling on the leases.

These issues are discussed in more detail below.

I. INTRODUCTION

Nearly ten years ago, during the height of the Bush Administration's push to lease public lands, SG Interests and its predecessor in interest acquired eighteen oil and gas leases in the Thompson Divide area of the White River National Forest (the Lake Ridge leases).[2]

During the ten-year term of these leases, SG had ample opportunity to develop them. Over the past decade, tens of thousands of wells have been drilled elsewhere in the Piceance Basin, and gas prices reached historic highs for several years. SG Interests, however, held the Lake Ridge leases without pursuing any diligent development. As a result, the leases are scheduled to expire this year. In early 2013, however, the company asked BLM to extend the life of the leases by suspending them.

SG's suspension request should have been denied because it flies in the face of national policy. The White House Blueprint for a Secure Energy Future (March 30, 2011) states that such extensions should be a reward for operators that have "demonstrated diligent exploration and development" – not as a tool for operators to hold interests in public land.[3] President Obama highlighted this policy during the 2012 presidential debates when he explained that "[y]ou had a whole bunch of oil companies who had leases on public lands that they weren't using. So what we said was you can't just sit on this for 10, 20, 30 years, decide when you want to drill, when

[2] Sixteen of the 18 Lake Ridge leases were purchased by SG in 2003. SG acquired the other two leases from Encana in early 2013.

[3] http://www.whitehouse.gov/sites/default/files/blueprint_secure_energy_future.pdf at 12, at Appx. p. 1; see also id. ("when companies approach lease deadlines or apply for extensions, their record of demonstrating diligent exploration and development will help determine whether they should be able to continue using their leases, or whether those leases would be better utilized by others."). The enclosed disk contains an Appendix of documents cited in this Request, along with other relevant materials for your consideration.

you want to produce, when it's most profitable for you. These are public lands. So if you want to drill on public lands, you use it or you lose it."[4]

SG Interests' suspension is exactly the type of extension that should not be permitted under the "use it or lose it" policy. The company purchased leases in 2003 that have a ten-year term. For its own business reasons, the company chose not to develop the Lake Ridge leases during that term. The company is not entitled to an extension, and it should be held to the terms of its lease contracts.

Following the "use it or lose it" policy is particularly important in this case because the Lake Ridge leases present numerous legal and environmental problems. The leases cover some of the most ecologically important land in western Colorado, including several inventoried roadless areas and habitat for a variety of wildlife. Lake Ridge and the Thompson Divide also support local ranchers, as well as hunters and anglers, recreationists, and the businesses that depend on those existing uses. These environmental values and uses all are incompatible with oil and gas development.

Despite the importance of the Divide, BLM also failed to do any analysis under the National Environmental Policy Act (NEPA), or comply with the Endangered Species Act (ESA), when it issued the Lake Ridge leases in 2003. BLM has recognized that leases sold under identical conditions violate the law and should be treated as void.

The Field Office decision granting SG's suspension request should be reversed. Allowing the Lake Ridge leases to expire according to their terms will resolve the agency's NEPA and ESA violations. Letting the leases expire also will permit the Forest Service to fully protect these important public lands.

II. BACKGROUND

A. Ecological And Economic Values Of The Lake Ridge Area

The Thompson Divide is an area of extraordinary ecological and economic value. It encompasses about 220,000 acres, including the largest complex of non-wilderness roadless lands left in Colorado. The Divide has no fewer than nine different roadless areas. It makes up one of the most valuable and diverse mid-elevation forested landscapes left in the state. From a regional perspective, the Divide connects roadless forested lands on the Grand and Battlement Mesas with the main stem of the Rocky Mountains. The Thompson Divide is the ecological linchpin that holds together this larger complex of valuable public lands.

The Lake Ridge area, including the 18 leases that SG has asked BLM to suspend, lies in the heart of the Thompson Divide. Thirteen of those leases overlap with inventoried roadless

[4] Available at: http://www.debates.org/index.php?page=october-1-2012-the-second-obama-romney-presidential-debate .

areas—mostly the Thompson Creek Roadless area. As in many national forest roadless areas, rivers and streams flowing from Lake Ridge supply agricultural and domestic water for nearby ranches and communities.

The rivers and streams running through SG's leases are the lifeblood of the local economy and ecosystem. For example, the three forks of Thompson Creek make up a pristine watershed with usable groundwater.[5] In fact, the Thompson Creek watershed retains the most favorable conditions for aquatic life in the broader area.[6] Thompson Creek is also eligible for Wild and Scenic designation,[7] and flows through a BLM designated Area of Critical Environmental Concern (ACEC). Threatened and endangered plant species, like the Ute Ladies' Tresses, also rely on consistent and clean water flowing from the Divide.

Oil and gas development poses a real threat to this watershed. The White River National Forest's 2012 Oil and Gas Leasing DEIS describes the Outlet Roaring Fork River, which includes Thompson Creek, as having "High Watershed Sensitivity"[8] and states that Thompson Creek also has "potentially susceptible groundwater."[9] Environmental Protection Agency modeling indicates that groundwater in Thompson Creek is the most likely to experience adverse effects from future oil and gas development.[10]

The Lake Ridge leases cover an area that also is important to wildlife. It has been identified as a Potential Conservation Area by the Colorado Natural Heritage Program (CNHP) because of its exceptional biodiversity.[11] The Lake Ridge area is home to important populations of elk and deer, black bear, lynx, moose, bald eagles, and sensitive and rare trout populations. Pp. 14-15, infra. The area also provides excellent habitat for sensitive amphibians like boreal toad and northern leopard frog. And it provides important transitional, winter and summer range

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[5] White River National Forest, 2012 Oil and Gas Leasing Draft Environment Impact Statement (WRNF DEIS), at 3-106 (copy included on enclosed disk), available at: http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/61875_FSPLT2_277731.pdf .

[6] WRNF DEIS at 3-106.

[7] *See* Tetra Tech, March 2007. Final wild and Scenic River Eligibility Report, Prepared for the U.S. Bureau of Land Management Kremmling and Glenwood Springs Field Offices, Colorado, at 3-82. Available at http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/land_use_planning/rmp/kfo-gsfo/KFOWSR.Par.97085.File.dat/FinalEligibilityReport_Mar2007.pdf .

[8] WRNF DEIS, at 3-90; see also Table 17, 3-91.

[9] WRNF DEIS, 3-107.

[10] WRNF DEIS, 3-107.

[11] See Colorado State University, Colorado Natural Heritage Program, 2012. Level 4 Potential Conservation Area (PCA) Report, Middle Thompson Creek, Appx. p. 57, available at: http://www.cnhp.colostate.edu/download/documents/pca/L4_PCA-Middle%20Thompson%20Creek_8-30-2012.pdf .

for big game—helping to lure hunters to two of the most sought after hunting units in the State. See id.

The area is also critically important to local ranchers who are part of the historic fabric of this region and who staunchly oppose oil and gas drilling there. Thirteen grazing permits directly overlap with SG's Lake Ridge leases. Those permittees provide beef to local restaurants, markets, and cooperatives, and they depend on federal grazing allotments to remain economically viable. By supporting local ranches, the Thompson Divide also provides indirect protection for the private land on those ranches, which contain increasingly scarce undeveloped winter range for big game.

For similar reasons, local outfitters demand protection of the Lake Ridge area, which is important range for elk and deer.

In addition, the Thompson Divide area is a popular recreation destination for cross-country and downhill skiing, snowmobiling, hiking, biking, birding, hunting, angling and horseback riding. The area is critically important to local businesses that rely on tourism and recreation.

Today, there is no oil and gas drilling anywhere near the Lake Ridge leases. No oil or gas has been produced there, in fact, for decades. Kreckel Report at Appx. pp. 46, 52. The leases also are miles away from a pipeline that could transport gas to market.[12]

B. History of the Lake Ridge Leases

All 18 of the Lake Ridge leases were purchased in 2003. Twelve of them were sold for the statutory minimum bid of $2 per acre—meaning that no other company bid against SG. The six remaining leases were sold for only $4 to $9 per acre. Those bids are comparable to what SG paid for other leases in the southern Piceance Basin, where the company has been sued by the federal government for bid-rigging in violation of antitrust laws.[13] The bids are considerably lower than bids that other companies were paying for leases in the Piceance Basin. Governor Hickenlooper has criticized the decision to lease this area, stating: "That's a beautiful landscape

[12] The Source Gas Wolf Creek gas storage field is adjacent to a few of the Lake Ridge leases. The Wolf Creek field produced gas until 1972 when it ran dry, and it is now used for storage but not drilling or production. We understand that the Source Gas pipelines could not be used by SG for new operations. Appx. p. 87 (notes from meeting between SG and BLM).

[13] http://www.denverpost.com/business/ci_22211529/judge-rejects-settlement-colorado-oil-and-gas-bid; http://aspenjournalism.org/2012/10/14/justice-dept-investigating-power-play-on-local-gas-pipelines/, copies attached at Appx. pp. 60-72; see also, http://www.justice.gov/atr/cases/sggunnison.html.

that shouldn't be developed. I don't know what the BLM was thinking when they leased that land for two bucks an acre or what they thought the benefit was."[14]

For more than nine years after acquiring them, including extended periods when gas prices were at historic highs, SG Interests chose not to pursue any development on the Lake Ridge leases. During that same period, more than 10,000 new wells were drilled in Garfield County, and SG drilled more than sixteen wells in the Ragged and Bull Mountain areas to the south. See p. 11, infra. Nor were the Lake Ridge leases embroiled in litigation, as was the case for BLM leases on the Roan Plateau. But SG Interests never even applied for a drilling permit on any of the Lake Ridge leases. Instead, the company chose to simply "sit on" its leases without developing them.[15] See, e.g., Peter Fowler, Oil and gas leases held within miles of Glenwood, Carbondale: Companies have no plans to drill on them any time soon, Glenwood Springs Post Independent (April 4, 2009).[16]

In 2011, SG made its first effort to extend the life of the leases without developing them. The company proposed to incorporate the 18 leases into what it called the "Lake Ridge Unit." Had this request been approved, unitization would have extended the life of all of the leases upon the drilling of just a single "unit holder" well on one lease. 43 C.F.R. §§ 3107.1, 3107.3-1, 3186.1 ¶ 18(e). SG, however, did not submit an application for a permit to drill (APD) that well.

SG Interests' leases do not give the lessee any right to unitization. See pp. 8-9, infra. Normally, however, BLM processes unitization requests without any public notice or involvement. See Appx. p. 81 (Oct. 2011 letter from industry trade associations). SG's unitization proposal proved to be an exceptional case. Due in part to the efforts of Wilderness Workshop, the public learned what SG was seeking to do and responded with fierce opposition, including local protests, petitions signed by hundreds of members of the public, and numerous letters from local governments and residents submitted in Summer and Fall 2011. To date, SG's unitization request has not been approved.

Despite the controversy over its proposed unit, SG took no steps to develop its leases. Instead, the company has attempted to suspend the leases as an alternate way of extending their terms. After its unitization request ran into opposition, the company waited another year, until

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[14] Dorothy Atkins, Hickenlooper speaks out against drilling in the Thompson Divide, Aspen Daily News (Mar. 7, 2013), available at: http://www.aspendailynews.com/section/home/156983.

[15] Prior to transferring its two leases to SG (see n. 2, above), Encana also did not attempt to develop them. In fact, Encana representatives stated publicly on multiple occasions that the company had no interest in developing its Thompson Divide leases. See e.g. Lea Linse, Students offered chance to question the gas industry, Glenwood Springs Post Independent (June 5, 2011), attached at Appx. p. 75, available at: http://www.postindependent.com/article/20110605/VALLEYNEWS/110609937 .

[16] Attached at Appx. 73, available at http://www.postindependent.com/article/20090405/VALLEYNEWS/904049995&parentprofile.

October and November 2012, and January 2013, and then filed APDs on only six of the 18 leases. SG made clear in communications with BLM that these APDs were filed solely for the purpose of seeking suspension of the Lake Ridge leases. The company also timed the APDs to ensure that they could not be approved and drilled before the leases expired in 2013. See pp. 10-20, infra.

Following this strategy, SG submitted letters on February 12, 2013 and March 25, 2013 requesting suspension of all 18 leases – including the twelve for which no APDs had been filed.

The Field Office issued a decision on April 9, 2013 suspending the leases until April 1, 2014. The Field Office based its suspension decision on three factors: (1) SG's pending request to unitize its leases; (2) BLM's decision (announced for the first time in the April 9 decision) to do additional NEPA analysis on the Lake Ridge leases; and (3) SG's assertion that it hoped to engage in settlement talks with other stakeholders. None of these factors would support lease suspension. See pp. 7-12, infra. But the Field Office asserted that when the three factors were combined, the "totality of the circumstances" justified suspending the leases. Field Office decision at 5. The decision, which had the effect of extending the life of the leases for more than a year, should be reversed.

III. THE FIELD OFFICE DECISION VIOLATES THE MINERAL LEASING ACT, APPLICABLE REGULATIONS, AND THE AGENCY'S MANUAL.

The Mineral Leasing Act requires diligent development of federal oil and gas leases. The Act provides that a lease will expire after ten years unless oil and gas is produced in paying quantities, in which case the life of the lease is extended. 30 U.S.C. § 226(e). The Act allows extensions of the ten year term for certain reasons, such as (a) a two year extension if diligent drilling operations are being conducted at the end of the primary term, id. § 226(e); 43 C.F.R. § 3107.1, (b) if the lease is combined under a unit agreement and a well capable of production in paying quantities has been drilled on any of the leases in the unit (a unit holder well), 30 U.S.C. §§ 226(e), (m); 43 C.F.R. § 3107.1, or (c) the lease has been suspended. 30 U.S.C. § 209. The first two exceptions – diligent drilling operations, and unitization – do not apply here.

Nor is a lease suspension justified. Section 39 of the Mineral Leasing Act, and BLM regulations, authorize suspension of operations and production "in the interest of conservation of natural resources." 30 U.S.C. § 209; 43 C.F.R. § 3103.4-4(a).[17] The IBLA has interpreted Section 39 to authorize suspension under two conditions:

[17] A different provision of the Act, Section 17(i) authorizes suspensions of operations only, or of production only, where a force majeure event occurs. 30 U.S.C. § 226(i); 43 C.F.R. § 3103.4-4(a). A Section 17(i) suspension is not available on leases without a well capable of production. Savoy Energy, 178 IBLA 313, 323 (2010). The Lake Ridge leases do not have wells capable of production, nor does a force majeure situation exist.

(a) Where unusual administrative delays "have the effect of denying the lessee timely access to the property." Harvey Yates Co., 156 IBLA 100, 105 (2001). Such suspension is available only to provide "extraordinary relief when lessees are denied beneficial use of their leases." TNT Oil Co., 134 IBLA 201, 203 (1995); BLM Manual 3160-10, Appendix 2 at 8 (1985 solicitor's opinion).

(b) A suspension may be granted to "prevent damage to the environment or loss of mineral resources. Harvey Yates Co., 156 IBLA at 105.

Problems with connecting to a pipeline, or lack of access to a market for the gas, are not sufficient justification for a suspension because they are not caused by BLM or the Forest Service. Appx. p. 77 (Dec. 17, 2012 denial of suspension request by Willsource).

The lessee bears the burden of showing that the conditions for suspension have been met. TNT Oil, 134 IBLA at 203; see also, 43 C.F.R. § 3103.4-4(a) (applications for suspension must furnish "complete information showing the necessity of such relief"). A suspension request filed after the lease expiration date must be denied, unless necessary environmental reviews precluded earlier processing. BLM Manual 3160-10.31(B)(2).

Instead of applying this law, the Field Office suspended the leases based on its view of the "totality of the circumstances." Suspending leases, however, requires more than a discretionary decision untethered to any meaningful standards. BLM must find that: (a) SG has been denied beneficial use of its leases, and that (b) suspension will prevent damage to the environment or avoid a loss of mineral resources. Neither prerequisite for a suspension exists here.

A. SG Interests Has Not Been Denied Beneficial Use Of Its Leases.

The first two factors on which the Field Office relied – SG's unsuccessful unitization request, and BLM's decision to conduct additional NEPA analysis on the Lake Ridge leases – raise the question of whether the company was denied beneficial use of its leases. Neither factor constitutes "denial of beneficial use" under the facts of this case.

1. The Mineral Leasing Act does not permit suspension of leases based on SG's unsuccessful unitization request.

For a suspension to be granted or directed on the ground that the company has been denied beneficial use of its lease, BLM's Manual requires a showing that "activity has been submitted on the lease (such as filing a Notice of Staking (NOS) or an APD) and the activity has been stopped by actions beyond the operator's control." BLM Manual 3160-10.31(A)(3).

Here, SG did not even apply for permits to drill 12 of the 18 leases it seeks to suspend. Instead, the company requested suspension of all 18 leases based on its unapproved 2011 request to unitize these leases. The Mineral Leasing Act does not allow suspension on this basis.

a. Suspension violates the Mineral Leasing Act.

The Mineral Leasing Act draws a distinction between extending a lease based on unitization, and extending it through suspension where a company has attempted diligent development. The Act does not permit leases to be extended where: (a) the leases have not been unitized and where no unit holder well has been drilled; and (b) the company has not filed an APD or been denied beneficial use of its leases.

As noted above, the Mineral Leasing Act specifies the conditions under which the life of a lease can be extended. The Act provides that unitization will extend a lease – but only if: (a) the unit has already been approved, and (b) a unit holder well has been drilled. 30 U.S.C. §§ 226(e), (m). Congress did not authorize extending the life of a lease based solely on a pending request for unitization. Id.

BLM's Manual is consistent with the MLA on this point. The Manual provides for suspensions where a lessee has filed applications to drill but been denied the ability to develop its leases. Pp. 7-8, supra. Nothing in the Manual suggests that a pending request for unitization by itself could support suspension. Id.; see also, BLM Manual H-3180-1(II)(J)(2) ("Pursuant to 43 CFR 3103.4-2(f), the authorized officer may grant a suspension of operations and/or production for any or all leases effectively or fully committed to the unit agreement due to existing circumstances that prohibit the unit operator from drilling and/or producing on unitized land") (emphasis added). The Field Office decision itself concedes this point. It recognizes that the "lack of an approved unit agreement . . . by itself is ordinarily an insufficient reason for a suspension." Field Office decision at 5.

The definition of unitization reinforces this conclusion. Approval of a unit agreement (much less an unapproved agreement) does not constitute diligent development under the lease terms. Rather, a unit merely modifies the impact of any development activities that do occur. As the IBLA has explained, the "essence of unitization is that activities on one lease that fulfill lease obligations are imputed to and benefit every other lease in the unit." River Gas Corp., 149 IBLA 239, 246 (1999). A unit does not eliminate the obligation of diligent development altogether.

The Mineral Leasing Act and unitization regulations make clear that unitization is distinct from diligent development: even when a unit agreement is approved, that agreement does not extend the lease unless a unit holder well has been drilled. 30 U.S.C. §§ 226(e), (m); 43 C.F.R. §§ 3107.1, 3107.3-1, 3186.1 ¶ 18(e). SG's unitization request does not represent diligent development.

Moreover, BLM's failure to act on SG's unitization request does not represent a denial of beneficial use that could support suspension. Unitization provides a tool for BLM to manage development of leases – not a right given to companies. Onshore oil and gas leases give a lessee certain rights to explore, drill for, and develop minerals during the ten-year term of the lease. BLM Form 3100-11. The lease, however, gives BLM – not the lessee – the right to extend that

period by requiring creation of a unit. BLM Form 3100-11 § 3. Here, BLM has simply not chosen to exercise its unitization power. That non-action does not limit any of SG's lease rights, and does not allow the leases to be suspended.

Because SG has no approved unit, the six APDs it has filed cannot be "imputed to and benefit" the other 12 leases. River Gas, 149 IBLA at 248-49. Having filed no APDs on 12 of the 18 leases, the company has no basis to request their suspension. BLM must reverse the Field Office's decision to extend leases on grounds not authorized by the Mineral Leasing Act.

b. SG's claim to have expected approval of the unit does not justify suspension.

SG also suggested that suspension is warranted because until September 2012 "BLM repeatedly told SG a Unit decision would issue, but BLM has not issued the Lake Ridge Unit determination." Feb. 12, 2013 letter at 2. This theory fails.

First, SG's claim that until September 2012 it expected the unit agreement to be approved is inaccurate as a factual matter. SG's unit proposal prompted well-publicized protests and numerous public objections in Summer and Fall 2011. Pp. 6-7, supra. As a result, the company knew by Autumn 2011 that its unitization proposal faced significant local opposition. See Appx. 81 (Oct. 2011 industry trade association letter complaining about public involvement). Had SG wanted to develop its leases in a timely manner, it could have filed APDs in late 2011 or early 2012 – in time for them to be processed and approved during the lease term. Instead, the company delayed for a full year before filing applications with BLM.[18]

Moreover, email correspondence with BLM confirms that by June 2012 at the latest, SG knew it could not assume the unit would be approved and was planning to submit APDs. Appx. pp. 106-108. The company then waited another four months to file any APDs – until normal seasonal weather conditions ensured that wells could not be drilled before they expired. See pp. 10-19, infra. SG had ample notice that it could not assume its unit would be approved, and that it needed to develop the leases before their normal expiration dates.[19]

More broadly, SG's unitization and suspension proposals just represent variations on the same strategy: seeking to extend the life of the leases without having to develop them in a timely manner. Notes from discussions about the unit proposal with BLM confirm SG's goal. They state that there is "no urgency for company to produce." The company apparently hoped to drill

[18] Press reports indicate that SG did not even start surveying potential drilling locations on Lake Ridge leases until June or July 2012. See e.g., http://www.steamboattoday.com/news/2012/oct/25/sg-interests-applies-drill-thompson-divide/, attached at Appx. p. 88.

[19] Even if BLM had approved SG's unit proposal, the leases would not have been extended until the company drilled a unit holder well. 43 C.F.R. §§ 3107.1, 3107.3-1, 3186.1 ¶ 18(e). Inexplicably, SG failed to file the APD necessary to hold its leases had the unit been approved.

the legal minimum of one well to hold the unit, and then wait at least five years to pursue more extensive development. See Appx. p. 104 (notes from meeting between SG and BLM).

This conclusion is highlighted by the contrast between SG's approach to unitizing Lake Ridge, and its efforts elsewhere. Where the company wanted to develop in a timely manner, it moved much more quickly to unitize its leases and put them into production. In the Bull Mountain area of Gunnison County, the company acquired leases in 2000, and began drilling in 2002. In 2003, only three years after acquiring the leases, SG combined them into the Bull Mountain Unit. Since then, sixteen wells have been drilled in the Bull Mountain unit. See Bull Mountain Unit draft EA/MDP at 3, 9-10;[20] Kreckel Report, attached at Appx. p. 48. In Lake Ridge, by contrast, SG waited until the ninth year of its ten-year term to even propose a unit, and then waited until snow had fallen in the tenth year before submitting any APDs.

The contrast between Lake Ridge and Bull Mountain further confirms that SG's strategy here is to hold its Lake Ridge leases without diligently developing them. BLM's failure to accommodate that strategy does not entitle SG to an extension of its leases.

2. BLM's decision to conduct additional NEPA analysis on the Lake Ridge leases did not deny SG beneficial use.

The second factor on which the Field Office relied was its decision to "undertake additional NEPA analysis addressing the decisions to issue the leases to determine whether the leases should be voided, reaffirmed or subject to additional mitigation measures . . . ." Field Office decision at 2. That decision did not deny beneficial use of the Lake Ridge leases, because the NEPA analysis did not halt any effort by the company to develop those leases. The company has pursued a deliberate strategy of holding onto the leases for speculative purposes rather than developing them within their ten-year term. That strategic business decision was SG's choice, rather than a limit imposed by BLM, and it does not warrant a Section 39 suspension.

For a suspension to be granted or directed on the ground that the company has been denied beneficial use of its lease, BLM's Manual requires a showing that "activity has been submitted on the lease (such as filing a Notice of Staking or an APD) and the activity has been stopped by actions beyond the operator's control." BLM Manual 3160-10.31(A)(3). When seeking a suspension on the ground that beneficial use of the lease has been denied, a company has an obligation to file permit applications early enough for them to be approved and drilled during the ten-year lease term. See Hoyl v. Babbitt, 129 F.3d 1377, 1384 (10th Cir. 1997); BLM Manual 3160-10.21(C) (ordinary weather conditions and incomplete APDs not grounds for suspension).

[20] The draft EA/MDP is provided on the enclosed disk and available at: http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/uncompahgre_field/09-05_sg_interests.Par.64208.File.dat/0905%20SG%20BMMDP%20032212%20Draft%20EA.pdf .

SG has not filed any permit applications for 12 of the 18 leases, and thus cannot show that any development efforts have been halted by BLM's NEPA analysis.

But even for the six leases with a pending APD, SG has not been denied beneficial use. The company timed its permit applications so that the routine requirements for approving APDs could not be completed before the leases expire on May 31, 2013. Email correspondence between SG and BLM, in fact, show that the APDs were filed as a pretext for suspending its leases – not with the intent of actually drilling them during the lease term. Pp. 13-14, infra. As a result, even were BLM not preparing additional NEPA analysis on the leases, it would have been impossible for SG to complete the normal requirements to begin drilling before they expired. BLM's NEPA process has not denied SG any beneficial use of the leases.

a. NEPA

The first routine requirement that SG disregarded was compliance with NEPA on the approval of drilling permits and development plans. Even if BLM were not undertaking additional analysis of the lease issuance, the agency is required to analyze drilling proposals under NEPA before approving them. SG's belated APDs were filed too late for the agency to complete that routine NEPA analysis.

Under certain circumstances, extended delays in the NEPA process can rise to the level of denying beneficial use of the lease. See BLM Manual 3160-10.21(B) (suspension may be appropriate where preparation of NEPA document "prohibit[s] beneficial use of the lease"). A lessee, however, has no right to a suspension during routine NEPA compliance. The Tenth Circuit has explained:

> Preparation of an EIS [is] part of the ordinary course of developing a coal mine. Allowing a suspension to issue while ordinary mine development activities occur is not consistent with the purposes behind § 39 [of the MLA, which provides for suspension in] 'extraordinary' situations where a lessee is denied access to his lease.

Hoyl v. Babbitt, 129 F.3d 1377, 1384 (10th Cir. 1997).

BLM may in its discretion suspend a lease when facing "unexpected difficulties which cause an unreasonable delay" in the NEPA process. Id. But a suspension is not appropriate where the lessee, rather than the agency, is to blame for delays in the NEPA process. The Tenth Circuit has observed that "the equitable policies surrounding § 39 would be thwarted if a suspension were granted where the delays in preparing an EIS were attributable to the lessee and not the agency." Id.

Here, any delay in completing the necessary NEPA analysis is attributable to SG because the company delayed its submission of APDs until the eleventh hour, thus ensuring that it would be impossible to complete even routine NEPA analysis before the leases expired on May 31.

SG's attempt to game the system in this manner conflicts with the purpose of MLA Section 39. Hoyl, 129 F.3d at 1384.

b. On-site inspections and permit processing

In addition, SG timed its APD filings to ensure that they could not be processed, approved and drilled before the expiration date of the leases. In a June 2012 email exchange, SG inquired whether APDs were necessary for suspension, or whether NOSs would suffice. The BLM Colorado State Office responded that NOSs could be used, but that APDs were recommended. Appx. p. 108. After that conferral, however, the company waited another half a year before finally submitting APDs in October 2012, November 2012, and January 2013. BLM has indicated that even when they were filed, all the APDs were incomplete or deficient. SG Interests Categorical Exclusion (Cat. Ex.) at 1; Appx. pp. 90-101 (notices of insufficiency).

By filing in late Fall and Winter, SG made it impossible to complete on-site inspections for the applications. Those inspections are now expected to be deferred until "early Summer" – after the May 31 expiration date of the leases. See Appx. p. 113 (2013 email from Forest Service indicating that no on-sites had been completed). SG, the Forest Service, and BLM were forced to defer the on-site inspections because snow made it impossible to evaluate the proposed locations. Appx. p. 102. Without an on-site inspection, BLM cannot approve the well before the lease expires at the end of May.

Moreover, the on-site inspection is necessary for a complete APD package. Onshore Order No. 1, 72 Fed. Reg. 10308, 10309, 10334 (Mar. 7, 2007). Thus, the failure to complete that inspection means a suspension would be improper: the BLM Manual provides that an incomplete APD is not normally ground for suspension. BLM Manual 3160-10.21(C)(1).

None of this comes as a surprise to SG, which has operated in western Colorado for years. Since 2005, SG has drilled 21 wells in Colorado. Not a single one of those wells was drilled and completed during the Winter and Spring months of January through May.[21] Instead, SG has consistently drilled new wells during the Summer and Autumn months of June-November. Anna Ralph Decl. ¶¶ 6-7, Appx. p. 282. Had SG planned to drill the Lake Ridge wells before May 31, 2013 it would have filed the APDs much earlier than October 2012. Instead, the company timed its APDs so that they could not realistically be approved and drilled before the leases expire.

The record confirms that SG pursued a deliberate strategy of timing its filings to support suspension, rather than to develop its leases. As noted above, in a June 2012 email exchange between SG and BLM (entitled "Suspension") the company specifically inquired whether APDs or NOSs were needed for suspension. BLM responded by recommending the use of APDs

[21] SG attempted to spud one well in January 2007, but was unable to complete the well. That location, moreover, was at an elevation of only 7,219 feet above sea level – well below the Lake Ridge wells, which are at approximately 10,000 feet. Ralph Decl. ¶¶ 7-8, Appx. p. 282.

instead of NOSs "in case the on-site [inspections, which are necessary for approving an APD] are **not** delayed." Appx. p. 108 (emphasis added). Later discussions between SG and BLM reflect that the company had no expectation of drilling before May 2013. Instead, SG planned to delay on-site inspections and seek suspension of its leases. Appx. p. 109 (notes reflecting SG's plan to request suspensions), p. 111 (notes that agency would "set inspection off until Spring").

Moreover, the governing Forest Plan requires a host of surveys and other plans that must be performed before drilling. There is no evidence that these requirements have been met, or could be completed before May 31.[22] For example:

1. Before SG can begin any construction activities it must complete a detailed Erosion Control and Water Quality Monitoring Plan (ECWQMP), and get it approved by the Forest Service. U.S. Forest Serv., White River National Forest Oil and Gas Leasing Final Environmental Impact Statement, II-13–II-14 (1993) (1993 FEIS).[23]

2. In conjunction with the ECWQMP, SG needs to prepare a site reclamation plan laying out both short and long term reclamation plans. Id. at II-15–II-16.

3. SG must prepare a waste management plan. Id. at II-12 to II-13.

4. SG must submit a transportation plan that has been "approved by the Forest Service in cooperation with the County and BLM before any road or drill pad construction occurs." Id. at II-22.

5. The Forest Plan imposes several requirements to protect sensitive species, species listed under the Endangered Species Act (ESA), and Management Indicator Species

[22] Moreover, the Forest Plan prevents SG from drilling two of the wells, 8-89-7 # 1 and 9-89-5 #1, during May 2013 because they are proposed to be located in elk production areas. See 1993 FEIS at II-18 to 19 (activity not permitted in elk production areas during months of May and June); Appx. p. 112 (map showing locations of elk production areas and APDs). Thus, even if SG somehow had been able to complete all other requirements by the end of April, this timing limitation precludes the company from drilling those two wells before the leases expire on May 31, 2013.

[23] The 2002 Forest Plan incorporates by reference the requirements from the 1993 FEIS and White River National Forest Oil and Gas Leasing Record of Decision and EIS (1993 ROD). U.S. Forest Serv., Record of Decision for the White River National Forest Land and Resource Management Plan-2002 Revision, 28-29 (2002) (2002 Forest Plan ROD) ("affirming the decisions made in the [1993 ROD]" with changes that made an additional 90,700 acres administratively unavailable); 1993 ROD at 3 (incorporating mitigation requirements from 1993 FEIS). Copies of the 2002 Forest Plan and ROD, and the 1993 FEIS and 1993 ROD, are provided on the enclosed disk.

(MIS), found in this area of the Thompson Divide, as well as their habitat. These species are listed below.[24]

a. Species present or with known habitat in general area:
   A. American Bittern (FS Sensitive Species);
   B. American Elk (MIS);
   C. Bald Eagle (FS Sensitive Species, BLM Sensitive Species);
   D. Black Bear;
   E. Canada Lynx (ESA Threatened Species);
   F. Colorado River Cutthroat Trout (FS Sensitive Species, BLM Sensitive Species, MIS);
   G. Cutthroat Trout and Greenback cutthroat trout (MIS, ESA-listed);
   H. Mule Deer;
   I. Moose; and
   J. Ute Ladies' Tresses (ESA-listed).

b. Wildlife with modeled habitat present in general area:
   A. American Martin (FS Sensitive Species);
   B. American Peregrine Falcon (FS Sensitive Species, BLM Sensitive Species);
   C. American Pipit (MIS);
   D. Barrow's Goldeneye;
   E. Bighorn Sheep (FS Sensitive Species);
   F. Black Swift (FS Sensitive Species, BLM Sensitive Species);
   G. Boreal Owl (FS Sensitive Species);
   H. Boreal Toad (FS Sensitive Species, BLM Sensitive Species);
   I. Brewer's Sparrow (FS Sensitive Species, BLM Sensitive Species, MIS);
   J. Ferruginous Hawk (BLM Sensitive Species);
   K. Flammulated Owl (Forest Service Sensitive Species);
   L. Fringed Myotis ((FS Sensitive Species, BLM Sensitive Species, MIS);
   M. Gray Wolf (Endangered);

[24] Species presence information is from: Colorado Division of Wildlife, Colorado Gap Analysis Project, http://ndis1.nrel.colostate.edu/cogap/gapframe.html; Appx. p. 114 (Alison Gallensky Declaration and spreadsheet of habitat); and WRNF DEIS. Species Status information is from**:** 2002 Forest Plan Appendix EE (on enclosed disk); BLM, BLM Colorado State Director's Sensitive Species List, 1-3 (Nov. 20, 2009), available at: http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/botany.Par.8609.File.dat/BLM%20CO%20SD%20Sensitive%20Spec.%20List.pdf; and U.S. Fish and Wildlife Serv., Species Reports: Listings and Occurrences for Colorado, available at: http://ecos.fws.gov/tess_public/pub/stateListingAndOccurrenceIndividual.jsp?state=CO&s8fid=112761032792&s8fid=112762573902 .

N. Greater Sage Grouse (Candidate, BLM Sensitive Species);
O. Loggerhead Shrike (FS Sensitive Species);
P. Mexican Spotted Owl (Threatened);
Q. Northern Goshawk (FS Sensitive Species, BLM Sensitive Species);
R. Northern Harrier (FS Sensitive Species);
S. Northern Leopard Frog (FS Sensitive Species, BLM Sensitive Species);
T. Olive Sided Flycatcher FS Sensitive Species);
U. Purple Martin (FS Sensitive Species);
V. Pygmy Nuthatch;
W. Pygmy Shrew (FS Sensitive Species);
X. River Otter (FS Sensitive Species);
Y. Three Toed Woodpecker (FS Sensitive Species);
Z. Townsend's Big Eared Bat (FS Sensitive Species, BLM Sensitive Species, MIS);
AA. Virginia's Warbler (MIS); and
BB. White Tailed Ptarmigan (FS Sensitive Species).

The following requirements must be met to address these species before SG could begin drilling the Lake Ridge leases:

c. At the APD stage, surveys must be performed to document all plant and animal species that are listed, proposed, or are candidate species under the Endangered Species Act. 1993 FEIS at II-19.

d. Specialized habitat areas, such as "big game migration corridors, wallow areas, bear denning sites, and mineralized soil areas that are used as licks for big game," have to be inventoried and protected at the APD stage. Id.

e. "[L]essee[s] will implement a study to determine the effects of oil and gas exploration and development on black bears and their use of habitats." Id.

f. The BLM Manual directs that "[i]mplementation-level planning should consider all site-specific methods and procedures needed to bring species and their habitats to the condition under which management under the Bureau sensitive species policies would no longer be necessary." BLM Manual MS-6840.2A1 (2008).[25] These "methods and procedures" presumably include

[25] Available at: http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.43545.File.dat/6840.pdf ; see also BLM Manual MS-6840.22B (2001) (similar requirement), available at: http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/pdfs/pa_pdfs/biology_pdfs.Par.9d22a8ee.File.dat/6840_ManualFinal.pdf .

performing a survey to determine what BLM sensitive species are present in the area.

g. The 2002 Forest Plan calls for project level analysis to determine the impact of new roads on lynx. U.S. Forest Serv., White River National Forest Land and Resource Management Plan-2002 Revision, 2-23, ¶ G9 (2002) (2002 Forest Plan); see also U.S. Forest Serv., S. Rockies Lynx Mgmt. Direction: Record of Decision, Attachment 1, 1-8 ¶ G9 (2008) (copy on enclosed disk).

h. The 2002 Forest Plan requires "[a]ctivities [to] be managed to avoid disturbance to sensitive species that would result in a trend toward federal listing or loss of viability." U.S. Forest Serv., Final Environmental Impact Statement for the White River National Forest Land and Resource Management Plan-2002 Revision, 2-18 (2002) (2002 Forest Plan FEIS) (copy on enclosed disk). Wildlife surveys will be necessary to comply with this requirement.

i. In addition, the 2002 Forest Plan explicitly requires wildlife surveys if impacts are possible for:

1. Townsend's Big Eared Bat and Fringed Myotis: "Conduct surveys of known caves and mines before implementation of projects that have the potential to impact fringed myotis and Townsend's big-eared bat habitat . . . the survey area included the project area and a one quarter-mile radius around the project area." 2002 Forest Plan at 2-27.

2. Barrow's Goldeneye: "Conduct surveys to identify occupied and potential Barrow's goldeneye habitat prior to project implementation that may have the potential to impact Barrow's goldeneye or their habitat." Id. at 2-28.

3. Pygmy Nuthatch: "In current and potential ponderosa pine cover types, and in other cover types where pygmy nuthatches are actively nesting or winter roosting . . . [c]onduct avian and cavity surveys before projects are implemented that have the potential to impact pygmy nuthatch nest or winter roost snags and cavity trees." Id. at 2-30.

4. Black Swift: "Conduct surveys of potential black swift habitat before implementation of projects that have the potential to impact black swift habitat or nesting activities." Id. at 2-31.

To our knowledge, none of these requirements has been completed, and ordinary seasonal conditions will ensure that they cannot be finished before the leases expire this Spring. SG's failure to comply with routine Forest Plan requirements further confirms that its six APDs are nothing more than a pretext for seeking extensions of its leases.

c. SG has failed to obtain necessary permits from other agencies.

Moreover, a suspension requires that drilling is being delayed by BLM or by other unusual circumstances "beyond the operator's control." BLM Manual 3160-10.31(A)(3) (emphasis added); see Appx. pp. 77-78 (Dec. 17, 2012 letter denying Willsource suspension request). Here, SG is prevented from drilling the Lake Ridge wells by another factor completely within the company's control: it has not obtained numerous approvals from other permitting agencies. This failure provides further evidence that SG's APDs are filed as a pretext to get its leases suspended, rather than in a serious effort to drill the wells during the ten-year lease term.

For example, in addition to BLM APDs, SG must obtain drilling permits from the State of Colorado Oil and Gas Conservation Commission (COGCC). SG has filed APDs with the COGCC for only two of the 18 Lake Ridge leases, which further confirms that no drilling will happen on the other 16 leases before they expire.

Moreover, even the two COGCC APDs that were filed were submitted only in late January 2013. This delay makes it almost impossible for SG to drill the wells before those two leases expire. Normal processing of a Colorado state APD can require up to 75 days. See COGCC Rule 303.e.2 (rule governing "processing time for approvals" allows companies to file administrative appeal if COGCC staff has not issued decision on APD within 75 days). These permits also will require consultation with the Colorado Division of Parks and Wildlife because they affect sensitive wildlife habitat for elk and deer, and because the proposed locations are adjacent to restricted surface occupancy areas for the Colorado River Cutthroat Trout. COGCC Rule 1202.b (consultation requirement), Rule 100 (definitions of Sensitive Wildlife Habitat and Restricted Surface Occupancy Areas). And like their federal counterparts, the state APDs will require on-site inspections that according to COGCC staff "can not be completed until the snow melts in the spring."[26]

Again, SG's track record in Colorado shows that the company is well aware that it is filing state APDs too late to actually drill them. For every well drilled by SG in Colorado since 2005, the time between the COGCC APD filing and the spudding of the well has been 148 days or longer. Most wells took much longer, with the average time being 267 days. Ralph Decl. ¶¶ 3-5, Appx. p. 282, 286-87. Conservatively assuming a 150 day window, even the two APDs filed in January were filed too late for the wells to be spudded by May 31. For the rest of the proposed wells where SG has not yet filed a COGCC drilling application, there is no way an application will be approved in time to drill the well before May 31.

[26] Brent Gardner-Smith, Residents gather to oppose drilling in Thompson Divide, Aspen Journalism (Feb. 6, 2013) (COGCC staff also explaining that "The state's review process typically takes 75 days"), available at: http://aspenjournalism.org/2013/02/06/residents-gather-to-oppose-drilling-in-thompson-divide/#more-13648 .

Despite its experience, the company nevertheless chose to delay filing its state APDs past the point when they could be approved during its lease term. As with the BLM APDs, the state applications demonstrate that SG has no intention of actually drilling wells during the lease term.

In addition to a state APD, SG must obtain numerous other permits and approvals before it can drill, which can include:

- a Colorado Department of Public Health and Environment (CDPHE) storm water construction permit;
- Air Pollutant Emissions Notices and other permits from the CDPHE;
- Forest Service road permits: SG anticipates upgrading access roads, but apparently has not applied for authorization from the Forest Service to do so;
- County road permits;
- Colorado Department of Transportation permits for state highway access and work within right-of-way;
- Clean Water Act section 404 permits and a Clean Water Act section 401 certification;
- Endangered Species Act consultation with the Fish & Wildlife Service will be required;
- Approvals for use of water for drilling and hydraulic fracturing; and
- Safe Drinking Water Act underground injection control permit for disposal of wastewater and fluids.

See, e.g., Bull Mountain Unit EA/MDP at 31-32 (p. 11 n. 20, supra).

There is no evidence in the record that SG has applied for any of these other approvals. For example, according to the CDPHE's web site, the company has not sought a stormwater construction permit from that agency. Nor has SG requested the necessary road construction and reconstruction permits from the Forest Service or the affected counties. Without these permits, SG's suspension request should be denied. See Appx. p. 79 (denying suspension request where Willsource had not submitted any road use permits).[27]

3. Lack of pipeline capacity

Finally, SG lacks the pipeline capacity to bring the Lake Ridge leases into production if they were drilled. The company is currently under an injunction preventing it from operating the Bull Mountain pipeline, which was entered in a lawsuit with another energy company over control of that pipeline. Gunnison Energy Corp. v. SG Interests I, Ltd., No. 11CV262, at 12 (D. Gunnison Cnty. Colo. filed Jan. 3, 2013) (Findings of Fact, Conclusions of Law, Order & Judgment), attached to Ralph Decl at Appx. p. 335. In February 2012, the court in that case entered a preliminary injunction preventing SG from operating the pipeline "unilaterally." Id. ¶ 19. Subsequently, in "late summer 2012", the court denied SG's request to operate the pipeline

[27] Wilderness Workshop has requested all permit-related documents from the Forest Service and BLM. The responses we received did not include any of these materials.

pending trial. Id. ¶ 21. And in January 2013, following trial, the court entered final judgment ruling against SG in the dispute. Id. at 12.

Shortly after the court's late summer 2012 rejection of SG's request to operate the pipeline (and after SG's opponent in the case drilled a well that increased the opponent's production),[28] SG began shutting in its wells in the area. **Between August and December 2012, SG shut in all of its producing wells in Gunnison and Delta Counties**. Ralph Decl. ¶¶ 9-12, Appx. p. 282, 288.[29] The company explained that "the wells are shut in because the [Bull Mountain pipeline] is not in operation." Gunnison Energy Corp. v. SG Interests I, Ltd., No. 2011CV262, at 41-43 (D. Gunnison Cnty. Colo. filed Dec. 14, 2012) (Defendant's Closing Argument), attached to Ralph Decl, Appx. p. 289.

These developments provide further evidence that the company's Lake Ridge APDs are only a pretext for suspension: SG filed those APDs during the very same months it was shutting in all its existing production in the region. Having lost control over the only pipeline that could take gas to market, and after shutting down all its existing wells, SG does not want to invest in drilling new wells in the Thompson Divide at this time.

Moreover, SG's pipeline dispute shows that the delay in developing the Lake Ridge leases results from causes having nothing to do with BLM. The market and pipeline issues facing SG, which contribute to its delay in development, do not justify extending the leases. Appx. p. 79 (December 17, 2012 Willsource suspension denial stating that "lack of a product market and pipeline concerns" are not grounds for suspending leases because neither were caused by BLM or Forest Service actions).

4. The River Gas decision does not authorize BLM to suspend the 12 leases for which no APDs have been filed.

The Field Office recognized that BLM's Manual requires a showing of diligent development, such as the filing of an APD, as a prerequisite for lease suspension. The Field Office decision, however, disregarded the Manual based on its reading of the Interior Board of Land Appeals' decision in River Gas Corporation, 149 IBLA 239 (1999). According to the Field Office decision, River Gas allows BLM to suspend leases – even if no APD has been filed - where the agency has decided to conduct additional NEPA analysis. This misreads River Gas for several reasons.

[28] See Gunnison Energy Corp., No. 2011CV262, Defendants' Closing Argument at 44, attached to Ralph Decl at Appx. p. 289.

[29] SG had no producing wells in Pitkin County. In addition to shutting in its existing wells, SG has not completed any new wells since the court entered the February 2012 preliminary injunction. See Ralph Decl. ¶¶ 9-12, Appx. p. 282. Four wells have been drilled but are "waiting on completion." Id.

First, the statement relied on by the Field Office is dicta. The issue of whether BLM could suspend non-unitized leases in the absence of an APD was not before the IBLA in River Gas. No party even argued to the IBLA that the suspension of non-unitized leases for which APDs had not been filed was improper, and the remark on which the Field Office relied was made merely "in passing." Id. at 245. In making that passing comment, the River Gas decision did not discuss the BLM Manual requirement for submittal of APDs. Id.

Second, there was no dispute in River Gas that the company was diligently attempting to develop the leases, and those efforts at beneficial use were being halted by the agency. Id. at 243 (record reflected district manager's "confidence in [River Gas's] intent to drill all the leases, given the activities to date"); id. at 245. The company had drilled dozens of wells pursuant to an exploratory unit, and was moving from the exploration phase to full-field production phase of development. BLM's NEPA analysis was triggered by the need to evaluate that expansion in development before it proceeded. Nothing in River Gas suggests that a NEPA analysis could justify suspensions where, as here, no development efforts are being delayed by the analysis.

Third, the IBLA in River Gas excused the filing of APDs only after the company received a letter from BLM stating that additional NEPA analysis would be required prior to approving any APDs. Id. at 241, 247. The IBLA recognized that there would have been little point in filing applications that the agency had already informed the company would not be approved. In contrast, no similar statement exists here: we are aware of no written statement by BLM (except for the suspension decision itself) putting SG on notice that the submission of APDs would be futile.

SG does allege that a BLM representative made such a statement informally in December 2012. That alleged statement, however, occurred well after it could have had any impact on SG's ability to develop its leases. The Mineral Leasing Act provides for suspension when some act or omission of BLM prevents the lessee from making beneficial use of its lease. Suspension is not warranted where the delay results from the lessee's own business decisions. Anadarko Petroleum Corp., 183 IBLA 1, 10 (2012); Winona Oil Co., 146 IBLA 21, 25-26 (1998).

By December 2012, SG had delayed its permit applications past the point when they could possibly have been approved and drilled before lease expiration. Pp. 10-19, supra. Unlike in River Gas, any alleged statements by BLM during or after December 2012 or later did not affect SG's ability to develop its leases.[30] That inability resulted from SG's earlier business decisions.

[30] Moreover, to the extent BLM's alleged December 2012 statement addressed NEPA analysis on permit applications or the proposed unit (as opposed to the leases), that statement merely recognized routine legal requirements that do not provide grounds for suspending leases. As discussed above, routine NEPA compliance does not warrant suspension of leases because it is required as "part of the ordinary course of developing" an oil and gas lease. Hoyl, 129 F.3d at 1384; p. 11, supra. BLM's preparation of a NEPA analysis before approving APDs represented just such an ordinary requirement. Indeed, BLM would have violated NEPA by allowing SG to

Unlike the situation in River Gas, SG's inability to drill the leases before they expire results from its own business decisions – not from BLM's statements in December 2012 or thereafter. By December 2012, the die had already been cast: SG had delayed filing APDs for many months, and then filed a few of them as a pretext in October and November at a point when they no longer could be approved and drilled before lease expiration. Pp. 10-19, supra. SG's own strategy of delay, not any subsequent statements by BLM, is the reason SG cannot develop its leases before they expire. See Anadarko, 183 IBLA at 16 (suspension not warranted where "the delay in developing such leases results from the lessee's own exploration priorities rather than any delay that could be attributed to the Government"). River Gas does not excuse SG's failure to file APDs or pursue development activity on its leases.

B. Suspending The Leases Will Not Conserve Natural Resources.

SG also failed to meet the second requirement for a Section 39 suspension: protecting the environment or preventing the loss of mineral resources. P. 8, supra. This requirement is relevant to the third "totality of the circumstances" factor cited by BLM: SG's purported interest in negotiating a compromise with other stakeholders.

In its suspension request, SG asserted that suspension would "serve the interests of conservation" by allowing time to "explore negotiations with Pitkin County and the Thompson Divide Coalition" over the fate of the Lake Ridge leases. Feb. 12, 2013 request at 3. The Field Office recognized that such a purported desire to negotiate over potential development terms is not a basis for suspension in the absence of litigation or some act by the agency preventing a company from making beneficial use of its leases. See Field Office decision at 6; TNT Oil, 134 IBLA at 204 (rejecting argument that suspension was appropriate to allow for negotiations with third parties). Such efforts are a routine part of developing a lease, and do not represent the kind of exceptional circumstances required under the Mineral Leasing Act. The Field Office's decision to suspend the leases based in part on such negotiations must be reversed.

Moreover, SG's claimed interest in negotiations (like its APDs) was just a pretext for extending the leases. The Thompson Divide Coalition made a substantial buy-out offer to SG more than a year ago, in February 2012. If SG were genuinely interested in negotiating a compromise with the community that would be affected by its drilling, it had ample opportunity to do so. SG, however, never made a counter-offer or other effort at serious discussions with the Coalition. Appx. pp. 158, 164-176 (news stories reporting on buyback offer and dismissal by

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begin drilling without any NEPA analysis. See pp. 30-34, infra. The routine requirement of a NEPA analysis does not justify suspension of the leases.

Similarly, even had BLM attempted to approve SG's unitization request without a NEPA analysis, a unit holder APD had to be approved and drilled to extend the life of the leases. P. 9, supra. That drilling also would have required an analysis under NEPA – a condition that comes as no surprise to SG. It does not justify suspension of the leases.

SG).[31] Only when its eleventh-hour request for lease extensions was pending before the agency did SG assert that it wants to have discussions with the Coalition and others.

As expected, SG's interest in a negotiated solution appears to have evaporated following BLM's suspension of the leases. To our knowledge SG has had no meaningful discussions with the County or the Thompson Divide Coalition since the Field Office's April 9 decision.[32] SG's last minute reference to negotiations did not justify suspension of the leases.

Suspending the Lake Ridge leases also will not advance any interests that qualify as conserving natural resources. First, the suspensions do not protect the environment by preventing excessive or unplanned drilling in the area. Cf. Getty Oil Co. v. Clark, 614 F. Supp. 904, 911 (D. Wyo. 1985) (BLM suspended leases to prevent drilling from proceeding while agency considered how to manage wilderness study area). To the contrary, a suspension will actually harm the environment by enabling oil and gas development that could not otherwise proceed in the Lake Ridge area. Without a suspension, no drilling will take place because SG has failed to obtain the permits necessary to develop its leases before they expire. Pp. 10-19, supra. Allowing the leases to expire will preserve the inventoried roadless areas and other natural resources of the Thompson Divide. See pp. 3-4, supra. It also will allow the Forest Service to update its Forest Plan and provide better protections for this part of the White River National Forest without being encumbered by existing leases. See pp. 31-34, infra.

Nor would suspension prevent a loss of mineral resources. There appears to be no risk that SG Interests' leases will be drained by other companies, or that excessive numbers of oil and gas wells will be drilled in this part of the Thompson Divide. To the contrary, the only other leaseholder in the Lake Ridge area, Encana, recently transferred its two leases to SG. In short, there is no rush to drill the Thompson Divide over which BLM needs to impose order. If BLM allows SG's leases to expire, the federally-owned minerals in the Lake Ridge area will remain in the ground for future generations.

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[31] See also, Janet Urquhart, Second energy company seeks 'suspension' of Thompson Divide leases, Aspen Times (Feb. 21, 2013) (Thompson Divide Coalition executive director commenting on suspension requests: "It seems odd that the industry is asking for more time to negotiate with us. Our offer has been on the table for a year now, and we've not yet seen a single counter-offer from lessees in the area. Now they want a free extension."), available at: http://www.aspentimes.com/article/20130221/NEWS/130229983.

[32] Our skepticism about SG's motives is further underscored by a conversation with the company's lawyers. On February 4, 2013 (a week before submitting its suspension request), counsel for SG invited Wilderness Workshop for the first time to discuss the Thompson Divide controversy. In that conversation, SG expressed interest in discussing a resolution of the dispute but asked that Wilderness Workshop agree to drop any opposition to lease suspension as a condition to beginning those talks. We responded that Wilderness Workshop is definitely interested in discussions, but that it could not agree to such a precondition. We have not heard anything further from SG.

There is no reason to believe that conservation of natural resources would be served by suspending the Lake Ridge leases. SG's request should be denied.

IV. THE SUSPENSION SHOULD HAVE BEEN DENIED BECAUSE THE LEASES WERE IMPROPERLY ISSUED.

SG's suspension request should have been denied for another reason: the leases in question were improperly issued in violation of NEPA, the Endangered Species Act, and applicable regulations. BLM, in fact, concedes that the leases were issued in violation of NEPA. See pp 24-28, infra. The Field Office should not have compounded the errors it made in issuing these leases by extending their lives.

A. The Leases Are Invalid Because They Were Issued In Violation Of NEPA.

Prior to offering oil and gas leases for sale, BLM must complete a NEPA analysis of the agency's proposed lease sale. Tenth Circuit case law directs that "assessment of all 'reasonably foreseeable' impacts must occur at the earliest practicable point, and must take place before an 'irretrievable commitment of resources' is made." New Mexico ex rel. Richardson v. BLM, 565 F.3d 683, 718 (10th Cir. 2009).

Where BLM auctions leases without no surface occupancy (NSO) stipulations, it irretrievably grants the lessee the right to disturb the land's surface. New Mexico, 565 F.3d at 718 ("Because BLM could not prevent the impacts resulting from surface use after a lease issued, it was required to analyze any foreseeable impacts of such use before committing the resources."); see also S. Utah Wilderness Alliance, 159 IBLA 220, 241-42 (2003) ("BLM regulations, the courts and our precedent proceed under the notion that the issuance of a lease without an NSO stipulation conveys to the lessee an interest and a right so secure that full NEPA review must be conducted prior to the decision to lease."). Therefore, BLM must undertake a NEPA analysis prior to the lease sale to take a "hard look" at all of the reasonably foreseeable environmental impacts of lease development. See, e.g., Pennaco Energy, Inc. v. U.S. Dep't of the Interior, 377 F.3d 1147 (10th Cir. 2004).

BLM failed to meet this obligation. None of the Lake Ridge leases were issued with a full NSO stipulation. BLM, however, never prepared a NEPA analysis of the reasonably foreseeable environmental impacts of its leasing decisions.

1. BLM improperly relied on a Forest Service analysis.

Even where another agency (such as the Forest Service) has analyzed oil and gas leasing under NEPA, BLM has an independent obligation to ensure NEPA compliance because the Secretary of the Interior has "the final authority and discretion to decide to issue a lease." 43 C.F.R. § 3101.7-2(b); Wyo. Outdoor Council, 159 IBLA 388, 414 (2003).

Here, BLM did not do so. Instead, it relied entirely on the prior analyses that the Forest Service had prepared. Appx. p. 178 (correspondence explaining that the Forest Service had conducted NEPA analyses for the leases as part of the 1993 FEIS and 2002 Forest Plan); see also Appx. pp. 178-243 (BLM leasing documents indicating agencies' reliance upon the Forest Service's 1993 and 2002 NEPA documents for the leases at issue, but not listing any BLM NEPA support for leases). BLM's reference to Forest Service NEPA documents did not fulfill BLM's independent NEPA responsibilities. Anacostia Watershed Soc'y v. Babbitt, 871 F. Supp. 475, 485 (D.D.C. 1994) ("[A]n agency may not avoid its NEPA obligations by simply relying on another agency's conclusions about a federal action's impact on the environment.").

In some instances, "the NEPA regulations do permit an agency . . . to adopt another agency's environmental impact statement or environmental assessment." Id. However, the agency must review the EIS and "accept[] responsibility for its scope and content." Id. One agency may adopt the EIS of another: 1) If the agency was a cooperating agency, it may adopt a final EIS after independent review and determination the EIS satisfies the agency's own NEPA procedures; 2) If not a cooperating agency, but the agency is undertaking an action substantially the same as the one covered in the EIS, the agency may adopt and circulate the EIS itself, including independent review and determination its own NEPA processes were satisfied; or 3) if the agency's action is not substantially the same as the one analyzed in the EIS, the agency may circulate the EIS as a draft and then prepare its own FEIS. Id.; 40 C.F.R. § 1506.3. BLM's own handbook directs that the agency follow these regulations. BLM National Environmental Policy Act Handbook H-1790-1 (BLM NEPA Handbook), chap. 5.4.1.[33]

Here, BLM was a cooperating agency for the Forest Service's 1993 FEIS, as well as the 2002 Forest Plan. Therefore, to adopt the Forest Service's NEPA documents, BLM was required to complete an independent review of them and conclude that its comments and suggestions had been satisfied. 40 C.F.R. § 1506.3(c). The IBLA and BLM's own guidance documents instruct that BLM accomplishes this requirement by publishing a Record of Decision (ROD). Wyoming Outdoor Council, 159 IBLA 388, 415 (2003) ("CEQ guidance states that, following an EIS, a cooperating agency with jurisdiction by law over part of the proposed action will have to prepare its own ROD for its action, in which it must explain how it reached its conclusions."). BLM's NEPA Handbook similarly directs that the agency must issue a ROD when adopting any such EIS. BLM NEPA Handbook chap. 5.4.1.

BLM failed to meet these requirements, and the lease issuance therefore violated NEPA. The agency did not complete its own NEPA analysis for the leases, and did not publish its own ROD with its conclusions regarding the Forest Service's 1993 and 2002 NEPA reviews.

The IBLA has previously invalidated leases sold under identical circumstances in the Thompson Divide area. In Board of Commissioners of Pitkin County and Wilderness

[33] See http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf.

Workshop, et al., 173 IBLA 173 (2007), the IBLA invalidated three oil and gas leases in the White River National Forest, which had been issued by BLM in 2004 and later assigned to Encana Oil & Gas, Inc. In issuing the Encana leases, BLM relied upon the same Forest Service NEPA documents used for the Lake Ridge leases. The IBLA held that BLM must either conduct its own NEPA analysis or expressly adopt the Forest Service's analysis as its own. As with the Lake Ridge leases, BLM did neither. According to the IBLA, "[w]here, as here, the record does not demonstrate that BLM adopted either the Forest Service's 1993 or 2001 FEISs, we are unwilling as we are unable to assume that it did so." Id. at 183-84. As a result, the IBLA found that BLM violated NEPA in offering the leases for sale. See also Anacostia, 871 F. Supp. at 488 (finding agency violated NEPA and must do its own analysis under similar circumstances).

In response to the IBLA's Pitkin County ruling, BLM declared the Encana leases invalid ab initio, withdrew them effective their date of issuance, and refunded the company's rental and bonus bids for the leases. Appx. pp. 244-45 (letter to Encana). This was proper under leasing regulations, which hold that "[l]eases shall be subject to cancellation if improperly issued." 43 C.F.R. § 3108.3(d); Grynberg v. Kempthorne, 2008 WL 2445564 at *4 (D. Colo. June 16, 2008) (BLM has authority to "cancel [a] lease administratively for invalidity at its inception."); Celeste C. Grynberg, 169 IBLA 178, 183 (2006) ("It is well established that the Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates, including administrative errors committed prior to lease issuance.") (citing Boesche v. Udall, 373 U.S. 472, 476 (1963)); Clayton W. Williams, Jr., 103 IBLA 192, 202 (1988)); see also MX RE-STORE, LLC, 174 IBLA 254, 258 (2008) (same).

When issuing the Lake Ridge leases, BLM relied on the identical 1993 and 2002 Forest Service NEPA documents addressed in Pitkin County, and made exactly the same error. Under Pitkin County, BLM's failure to complete its own assessment violates NEPA, and renders the leases invalid. BLM, in fact, acknowledges that the Lake Ridge leases were issued improperly. Field Office decision at 2.

BLM should not attempt to correct its NEPA violations a decade after the fact. Instead, the correct remedy here is to let the invalid leases expire, or cancel them as it did in Pitkin County. It was arbitrary and capricious for BLM to extend leases that it has concluded were issued under circumstances making them void ab initio.

2. The Lake Ridge leases fell outside the scope of the Forest Service's 1993 and 2002 NEPA analyses.

Even had BLM properly adopted the Forest Service's NEPA documents, those analyses failed to address the Lake Ridge leases. NEPA requires all federal agencies to take a "hard look" at the environmental consequences of proposed federal actions, including oil and gas leasing. Oil and gas development involves several stages at which NEPA's "hard look" requirement applies. See New Mexico, 565 F.3d at 716-18. During the leasing phase of oil and gas development, agencies may refer back to plan-level EISs, but must still analyze all reasonably foreseeable site-specific impacts in a separate NEPA analysis at the earliest practicable point. Id.;

see also 40 C.F.R. §§ 1502.20, 1508.28 (regulations governing tiering to existing NEPA analyses). Agencies may not rely upon earlier plan-level analyses where the new project's reasonably foreseeable impacts fall outside the scope of those prior analyses. In that situation, failure to analyze the specific project's effects before an irretrievable commitment of resources is made violates NEPA's requirement to take a "hard look" at the project's impacts.

Here, BLM relied on the Forest Service's 2002 Forest Plan, and 1993 White River National Forest Oil and Gas EIS, when issuing the Lake Ridge leases. In addressing oil and gas development, the 2002 LRMP incorporated the 1993 EIS without substantial change. As a result, BLM relied on a ten-year-old NEPA analysis when issuing the Lake Ridge leases in 2003.

By 2003, however, oil and gas development in the White River National Forest had far exceeded anything predicted or analyzed in the 1993 NEPA document. The 1993 EIS utilized a "Reasonable Foreseeable Development Scenario [RFD] to estimate the number of wells that can be anticipated. This estimate provides the 'cause' which is then used to estimate environmental 'effects.'" 1993 White River National Forest Oil and Gas FEIS ROD at 7; see also ROD at 10 ("Effects were determined based on analysis of the RFD.") The 1993 Reasonable Foreseeable Development Scenario stated that "[p]rojected drilling activity for the whole Forest for the next 15 years is 23 wells, including 1 discovery and 12 development wells." 1993 ROD, Appendix C at 3. Therefore, the Forest Service used that projection in assessing and forecasting environmental impacts.

Yet far more than 23 wells had been drilled in the Forest when BLM issued the Lake Ridge leases. By 2006, for example, approximately 77 wells had already been approved on the Forest —more than three times the number of wells predicted in the EIS. Appx. p. 263 (2006 correspondence). The Forest Service's 1993 FEIS thus never planned for or analyzed the impacts the level of oil and gas development present in the Forest by 2003 or 2006. As a result, when the Forest Service approved the 2003 leases, the reasonably foreseeable drilling and related impacts associated with them were far beyond the scope of the 1993 FEIS on which the agencies relied. The agencies thus approved the leases without the "hard look" required by NEPA.

In addition to being out of date, the 1993 and 2002 documents fail to satisfy NEPA because they provide no site-specific analysis of the reasonably foreseeable environmental impacts from drilling the Lake Ridge leases. For example, in issuing leases in 2003, BLM did no analysis of specific impacts to wildlife or water quality in Lake Ridge from development of those leases. Nor does the 1993 FEIS have any analysis of the roadless areas in Lake Ridge or of compliance with the 2001 roadless rule. NEPA requires more.

BLM violated NEPA when issuing the Lake Ridge leases because it analyzed none of the impacts associated with the reasonably foreseeable development of those leases. The agency must not compound this earlier error by extending the improperly issued leases.

B. The Leases Are Invalid Because They Were Issued In Violation Of The ESA.

The agencies also violated the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2), by failing to address the impacts of the Lake Ridge leases on threatened and endangered species. Section 7(a)(2) of the ESA requires that "[e]ach federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency…is not likely to jeopardize the continued existence of any endangered species or threatened species" or "result in the destruction or adverse modification of" a listed species' designated critical habitat. Id. To ensure compliance with these substantive provisions, the "action agency" must "consult" with and obtain the expert opinion of the U.S. Fish & Wildlife Service (FWS), before the agency takes any discretionary action that "may affect" a listed species or designated critical habitat. Id.; 50 C.F.R.§ 402.14(a); Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 524 F.3d 917, 924 (9th Cir. 2008).

Courts have recognized that oil and gas leases are federal actions that may affect listed species or critical habitat, and that leasing therefore may not occur without completion of the consultation process. See 16 U.S.C. § 1536(a); 50 C.F.R. §§ 402.14, 402.13; Connor v. Burford, 848 F. 2d 1441, 1455 (9th Cir. 1988) (BLM could not issue oil and gas leases until FWS analyzed consequences of all stages of leasing plan in a Biological Opinion).

The Department of the Interior has recognized this requirement. The Interior Department's Office of the Solicitor for the Rocky Mountain Region has concluded that the ESA requires the Forest Service and BLM to complete formal consultation with FWS prior to issuing an oil and gas lease containing habitat occupied by threatened or endangered species:

> [T]he Department of the Interior may not deny all rights to drill on a Federal oil and gas lease, unless it has expressly reserved that right in the initial lease terms by, for example, imposing a no surface occupancy stipulation (NSO). This means that the appropriate stage for comprehensive study in the case of endangered species…is the leasing stage. … This also means that in the absence of an NSO stipulation biological opinions need to be completed at the leasing stage to determine whether the Department must expressly reserve the right to prohibit all surface activity on the lease.

Memorandum from Regional Solicitor, Rocky Mountain Region, to Regional Director, Fish and Wildlife Service, Region 6, at 2 (Nov. 18, 1992).

BLM was required to consult with FWS before issuing the Lake Ridge leases in 2003. For example, the Lake Ridge lease parcels fall within or in close proximity to areas identified as providing occupied or high potential habitat for the Canada lynx.[34] The Canada lynx was listed

[34] See Appx. 278 (map of Lynx habitat); see also, http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5357382.jpg . Consultation was also required to address potential impacts to other listed species in the area, including Greenback Cutthroat Trout and Ute Ladies' Tresses.

as a threatened species under the ESA in 2000. 65 Fed. Reg. 16052 (Mar. 24, 2000).[35] However, there is no indication BLM fulfilled its mandatory ESA consultation obligations. The agency did not consult with FWS when it issued the leases in 2003. Nor is there any indication that BLM even assessed lynx presence in the leasing area or evaluated its ESA obligations prior to issuing the leases. This failure violated the ESA. See Pitkin County, 173 IBLA at 186-87 (ruling that leases issued under identical circumstances violated ESA).

Here again, BLM should not exacerbate its earlier error by extending the life of these leases. These leases are invalid and must be allowed to expire.

C. BLM Issued The Leases Without Acknowledging The Requirements Of The 2001 Forest Service Roadless Rule.

When the Lake Ridge leases were issued in 2003, the Forest Service's Roadless Area Conservation Rule (the roadless rule) barred any road construction or reconstruction within inventoried roadless areas on national forest land. 66 Fed. Reg. 3244, 3272-73 (Jan. 12, 2001). Thirteen of the Eighteen Lake Ridge leases are subject to the roadless rule because they cover lands within inventoried roadless areas. Appx. p. 279 (map of leases and roadless areas).[36] As a result, any lease rights held by SG are subject to the roadless rule. Moreover, the requirements

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[35] Canada lynx reside in the White River National Forest. The Forest Service's EIS supporting the 2002 Forest Plan determined that the lynx is a "species of viability concern" in the Forest, and that "forest management activities have the potential to significantly affect overall populations." 2002 Forest Plan FEIS at 3-98; 3-99; see also 2002 Forest Plan Appendix EE-5. The FEIS acknowledged that oil and gas leasing and development "may result in higher disturbance to any lynx using these areas because of the activities at the developments and associated roads to the developments." 2002 Forest Plan FEIS at 3-141. A Forest Service assessment completed as an appendix to the FEIS determined that because some of the proposed actions in the Forest Plan might alter lynx habitat and because some disturbance to individuals might occur, the actions encompassed by the plan "MAY AFFECT THE SPECIES OR ITS HABITAT." Pitkin County, 173 IBLA at 185 (citing 2002 Forest Plan FEIS, Appendix N at N-19) (emphasis in original). The evaluation added that development related to oil and gas leasing "may result in permanent or long-term changes to [Canada lynx] foraging, denning, or dispersal habitat, or increases in snow compaction because they would only be restricted or limited, and only minimize adverse effects." Id. The evaluation concluded that because "some actions may only minimize adverse affects, the proposed actions of the 2002 Forest Plan are LIKELY TO ADVERSELY AFFECT THE SPECIES OR ITS HABITAT." Id. (emphasis in original). The Forest Service thus acknowledged that the actions assessed in the 2002 Forest Plan —including oil and gas leasing—"may affect" and are "likely to adversely affect" the Canada lynx. This determination triggered the agency's consultation requirements under the ESA.

[36] While the roadless rule was embroiled in litigation for more than a decade, the rule was indisputably in force during the period in mid-2003 when most of the Lake Ridge leases were sold. The roadless rule, moreover, was eventually upheld by the United States Court of Appeals for the Tenth Circuit. State of Wyoming v. U.S.D.A., 661 F.3d 1209 (10th Cir. 2011).

of the roadless rule should have been reflected in stipulations or lease notices when the leases were sold. See, e.g., 36 C.F.R. § 228.102.

The Forest Service and BLM, however, improperly issued the leases without attaching any stipulations or lease notices expressly barring road construction or acknowledging the applicability of the roadless rule. To the extent BLM or SG Interests assert that those leases conveyed any rights inconsistent with the roadless rule, they are invalid. See Grynberg v. Kempthorne, 2008 WL 2445564, ** 2-4 (D. Colo. June 16, 2008) (upholding decision that lease was "invalid ab initio" where BLM failed to obtain required consent from Forest Service); 43 C.F.R. § 3108.3(d) (leases subject to cancellation if improperly issued). Given the cloud over these leases, suspension should have been denied.

V. THE FIELD OFFICE VIOLATED NEPA BY SUSPENDING THE LAKE RIDGE LEASES.

As stated above, the Field Office should have denied the Lake Ridge suspension requests. In approving the requests, however, BLM was required to comply with NEPA. First, before approving a suspension, the Field Office was required to prepare a NEPA analysis of the reasonably foreseeable impacts from extending the life of these leases. The suspension cannot be approved using a categorical exclusion. Second, any suspension should have reserved the right of BLM to deny all surface disturbing activity.

A. The Leases Cannot Be Suspended Using A Categorical Exclusion.

Granting a suspension alters the status quo by preventing the Lake Ridge leases from expiring and thus preserving SG's right to drill in the Thompson Divide. Under these circumstances, BLM must prepare a NEPA analysis addressing the reasonably foreseeable impacts of that decision before suspending the leases. Pit River Tribe v. U.S. Forest Serv., 469 F.3d 768, 782-83 (9th Cir. 2006); see also, California ex rel. California Coastal Comm'n v. Norton, 311 F.3d 1162, 1174-74 (9th Cir. 2002) (reversing suspension decision that extended life of leases where no NEPA analysis done).

BLM's categorical exclusion for lease suspensions may not be used here because several extraordinary circumstances exist. See BLM NEPA Handbook ch. 4.2.1 and Appendix 4 at B.4 (categorical exclusion), Appendix 5 (list of extraordinary circumstances) (see p. 25 n. 33, supra). For example, extraordinary circumstances apply because the Lake Ridge proposal may:

(A) "Have significant impacts on such natural resources and unique geographic characteristics as . . .wilderness areas, prime farmlands . . . or other ecologically significant or critical areas." BLM NEPA Handbook Appendix 5 at 2.2.

This extraordinary circumstance arises because of the inventoried roadless areas in the leases, as well as numerous other environmental values. The Field Office reasoned that suspending the leases would have no significant impacts on those resources because suspension

does not by itself allow surface disturbance. Cat. Ex. at 4. The suspension, however, changes the status quo by preventing the leases from expiring and thus makes significant impacts from future drilling reasonably foreseeable. Those significant impacts preclude application of the categorical exclusion. See Sierra Club v. Dep't of Energy, 255 F. Supp. 2d 1177, 1185 (D. Colo. 2002); California, 311 F.3d at 1176-77.

Remarkably, the Field Office also claimed that the Thompson Divide is not "ecologically significant or critical" because the Forest Service's 1993 Oil and Gas Leasing EIS, and its 2002 Land and Resource Management Plan, made the area available for leasing. Cat. Ex. at 4. This rationale is flawed, however, because the terms of the Forest Plan do not determine whether the area is ecologically significant. Instead, those terms just illustrate how out-of-date the Forest Service's oil and gas leasing plan really is.

There is no genuine dispute today that the Thompson Divide represents an "ecologically significant or critical area." Pp. 30-31, supra. The Forest Service recognized the ecological significance of roadless areas when it adopted the 2001 roadless rule and the 2012 Colorado roadless rule. Moreover, the Forest Service is revising its oil and gas leasing EIS to reflect that value. The agency's 2012 draft EIS acknowledges that leases sold under the 1993 and 2002 documents lack adequate protections. WRNF DEIS at 3-198 to 3-199.

(B) "Have highly controversial environmental effects or . . . involve unresolved conflicts concerning alternative uses of available resources." BLM NEPA Handbook Appendix 5 at 2.3.

As noted above, development of the Thompson Divide is highly controversial and the use of these public lands is the subject of unresolved conflicts. The Field Office's assertion that there are no "unresolved conflicts" in the Thompson Divide rests on the premise that its 20-year-old planning decision opened this area for leasing. BLM's reasoning fails because that outdated plan is in the process of being revised and significant conflict does exist over the use of these lands. The Field Office's contrary conclusion has no support in the record.

Moreover, BLM has never analyzed the impacts that hydraulic fracturing will have on this area. The advent of hydraulic fracturing since 1993 raises significant new controversies over the environmental impacts of drilling. BLM must analyze those impacts here. See Center for Biological Diversity v. Bureau of Land Management, __ F. Supp. 2d __, 2013 WL 1405938 (ND Cal. Mar. 31, 2013).

(C) "Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects." BLM NEPA Handbook Appendix 5 at 2.5.

Suspending these leases will allow them to remain in force and permit oil and gas development on the Thompson Divide. BLM's assertion that suspending the leases "will

maintain the status quo" and "does not authorize surface disturbance" fails for the reasons discussed above.

(D) "Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects." BLM NEPA Handbook Appendix 5 at 2.6.

The suspension is directly related to future development of the area by preventing the leases from expiring without being drilled. The cumulative effect of enabling all eighteen leases to be drilled will cause significant environmental harms. The Field Office's contrary conclusion fails for the reasons stated above.

(E) "Violate a Federal law . . . imposed for the protection of the environment." BLM NEPA Handbook Appendix 5 at 2.9.

As noted above, these leases were issued in violation of NEPA and the ESA, and their suspension violated the Mineral Leasing Act and other laws. In addition, any surface disturbance on the inventoried roadless areas within SG Interests' leases would violate the roadless rule.

(F) "Contribute to the introduction, continued existence, or spread of noxious weeds." BLM NEPA Handbook Appendix 5 at 2.12.

One of the most pervasive problems with oil and gas development is its role in spreading noxious weeds into previously undisturbed areas. See 1993 FEIS, at IV-77 (discussing the potential impact of noxious weeds introduced by oil and gas production); 2012 DEIS at 3-397 – 3-403 (same).

In dismissing this extraordinary circumstance, the Field Office again erred by addressing the suspension in isolation without considering the reasonably foreseeable development that the suspension makes possible. Sierra Club, 255 F. Supp. 2d at 1185. BLM does not question that the reasonably foreseeable development enabled by extending the leases will contribute to the introduction and spread of noxious weeds.

Finally, we note that BLM already has acknowledged that extraordinary circumstances exist here preventing the application of a categorical exclusion. According to SG, BLM has concluded that SG's unit proposal cannot be approved using a categorical exclusion, and that a NEPA analysis is required. Feb. 12, 2013 request at 2. Under BLM's NEPA Handbook, suspensions are subject to the same set of extraordinary circumstances as unitizations. BLM NEPA Handbook Appendix 4 at B.3, B.4 (nearly identical categorical exclusions for approvals of suspensions and unitizations), Appendix 5 (list of categorical exclusions). Thus, a categorical exclusion is unavailable for SG's suspension request for the same reasons it could not be used for the company's proposed unit.

Any NEPA analysis, moreover, must address the full impacts from developing those leases. NEPA requires that when BLM makes oil and gas leasing decisions, the agency's "assessment of all 'reasonably foreseeable' impacts must occur at the earliest practicable point. . . ." New Mexico, 565 F.3d at 717-18; see also, Colorado Env. Coal. v. Office of Legacy Mgt, 819 F. Supp. 2d 1193, 1208 (D. Colo. 2011) (same).

Here, SG Interests has not made a diligent effort to develop its leases. Instead, the company has "sat on them" for future drilling or sale to another company. See Appx. p. 45 (Kreckel report). But SG has emphatically taken the position that eventual development of its leases is reasonably foreseeable. The company has claimed in conversations that the leases are worth several billion dollars, and asserted publicly that the leases supposedly contain "a huge resource" of recoverable natural gas.[37] When SG filed its unitization proposal, it submitted a geologic summary describing the formation it hopes to develop, and why it believes the leases should be combined into a single unit for exploration and development.[38] BLM cannot disregard SG Interests' submittal and statements in considering the extent to which development is reasonably foreseeable.

Indeed, the entire purpose of SG Interests' suspension request is to prevent its leases from expiring and thus allow for eventual future development. If development of those leases were not reasonably foreseeable, SG Interests would have no reason to seek their extension. Before extending the life of the leases by suspending or unitizing them, BLM must analyze and disclose the environmental impacts that may result from that extension. See League for Coastal Protection v. Norton, 2005 WL 2176910, ** 4-5 (N.D. Cal. 2005) (NEPA analysis for lease suspensions must address the future exploration and development of the leases where suspension served to prevent leases from expiring); see also, California ex rel. California Coastal Comm'n v. Norton, 311 F.3d 1162, 1174-74 (9th Cir. 2002) (reversing suspension decision that extended life of leases where no NEPA analysis done).

In addition, the analysis must analyze all reasonable alternatives. New Mexico, 565 F.3d at 708. These should include: (a) allowing the leases to expire, (b) cancelling the leases, and (c) barring all surface disturbance on the leases.

A NEPA analysis is especially important at this stage because BLM failed to prepare a site-specific analysis before issuing the Lake Ridge leases in 2003. See pp. 26-27, supra. As a result, 20 years has passed since any NEPA analysis of oil and gas development in this area has been done. The Forest Service's 2012 DEIS acknowledges the numerous environmental issues

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[37] See John Colson, Senators seek delay of Thompson Divide gas decision, The Aspen Times (Oct. 14, 2011), available at: http://www.aspentimes.com/article/20111014/NEWS/111019908 (comments of SG Interests Vice President Robbie Guinn), attached at Appx. p. 280.

[38] BLM has not disclosed that geologic summary to the public, despite requests under the Freedom of Information Act.

surrounding oil and gas development that were not previously addressed and require a new analysis. See WRNF DEIS; Wilderness Workshop Nov. 30, 2012 comments (noting several examples) (both attached on enclosed disk).

For example, in the decade since the Lake Ridge leases were issued, the 1993 EIS has become even more inadequate. Between 2002 and 2009 alone, 73 wells were drilled on the White River National Forest – three times what was considered in 1993.[39] Having failed to consider the site-specific impacts that will result from drilling this area before making a commitment of resources in 2003, BLM cannot compound its error by extending the life of the leases without a full NEPA analysis.

B. BLM Must Condition Any Suspension On Reserving Its Right To Deny Any Drilling On The Lake Ridge Leases.

It is settled law that BLM can condition a lease suspension or unitization by reserving its right to deny all drilling. Getty Oil, 614 F. Supp. at 915-16; see also, SUWA, 127 IBLA 331, 355-56 (1993) (stating that "[t]here is . . . little question that [BLM] could have refused to approve the commitment of the subject lease to the [ ] Unit unless it was expressly accompanied by the acceptance of such surface use limitations as would [satisfy] the nonimpairment standards for that part of the leased land located within the boundaries of [a wilderness study area]"). Here, such a condition is not just permissible, but required: by suspending the Lake Ridge leases without reserving the right to deny all drilling, the Field Office impermissibly predetermined its NEPA analysis.

Under NEPA, an agency must prepare a NEPA analysis addressing the reasonably foreseeable environmental impacts of its decision before it makes an irreversible and irretrievable commitment to that action. See p. 24, supra. A corollary to this rule is that an agency cannot predetermine the outcome of its NEPA analysis "by *irreversibly and irretrievably* commit[ting] itself to a plan of action that is dependent upon the NEPA environmental analysis producing a certain outcome, before the agency has completed that environmental analysis." Wyoming, 661 F.3d at 1264 (quoting Forest Guardians v. U.S. Fish & Wildlife Serv., 611 F.3d 692, 726 (10th Cir. 2010)); see also, 40 C.F.R. §§ 1506.1(a), (c) (prior to issuing decision, agency may not take action that would limit the choice of reasonable alternatives).

Leasing an area for oil and gas development is an example of such an irreversible and irretrievable commitment. Unless a lease forbids all surface disturbance, it creates a contractual right allowing the lessee to use some part of the surface of the leasehold for drilling. New Mexico, 565 F.3d at 718. That contractual commitment irreversibly prevents BLM from choosing to just leave the land alone. Id. Thus, committing an area to a lease falls squarely in

[39] White River National Forest 2010 Reasonably Foreseeable Development report at 14, available at: http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/61875_FSPLT2_277719.pdf (copy included on enclosed disk).

the category of improper predetermination. The Tenth Circuit has ruled that an agency predetermines its NEPA analysis "when there was concrete evidence demonstrating that the agency had irreversibly and irretrievably bound itself to a certain outcome—for example, through a contractual obligation or other binding agreement." Wyoming, 661 F.3d at 1265, citing Davis v. Mineta, 302 F.3d 1104, 1112-13 (10th Cir. 2002).

As a result, unless BLM reserves the right to deny all drilling, granting such an extension would ensure that the NEPA analysis proceeds under the shadow of those leases. By preventing the leases from expiring, such an extension would represent an irreversible commitment, Pit River, 469 F.3d at 782-83, and improperly predetermine its forthcoming NEPA analyses on the leases, as well as the oil and gas leasing EIS and decision now being prepared by the Forest Service for the White River National Forest.[40]

Complying with the rule against predetermining NEPA analyses is particularly important because of the important resources to be protected in the Thompson Divide. For example, reserving the right to deny surface use will allow BLM and the Forest Service to fully protect water and wildlife resources, as well as roadless areas. See pp. 3-4, 14-15, supra.[41] The Field Office should have conditioned any suspension on reserving its right to deny all drilling on the Lake Ridge leases.

VI. CONCLUSION

Thank you for your consideration of this request. Wilderness Workshop urges BLM to reverse the Field Office decision and deny SG's requests for suspension of operation and production on the Lake Ridge leases.

[40] We note that the Field Office decision indicates BLM may choose to void the Lake Ridge leases following additional NEPA analysis. While the agency has that authority and voiding the leases remains the appropriate resolution, we expect that SG would dispute the agency's right to take such a step. By contrast, conditioning the suspension on the right to deny drilling will provide significant clarity for BLM by requiring SG to accept that as a potential outcome.

[41] Conditioning suspension as required by NEPA also could allow reintroduction of the Wolverine in the Thompson Divide. The Fish and Wildlife Service (FWS) recently proposed to list the Wolverine as a threatened species under the Endangered Species Act. 78 Fed. Reg. 7,864 (Feb. 4, 2013). FWS also announced a plan to "establish a nonessential experimental population (NEP) area for the North American Wolverine in the Southern Rocky Mountains of Colorado." 78 Fed. Reg. 7,890 (Feb. 4, 2013). The Thompson Divide area includes potential Wolverine habitat. See 1993 FEIS at III-42. Protecting the Thompson Divide thus could help pave the way for reintroduction of this iconic species in Colorado. Id.

Sincerely,

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INDEX OF ENCLOSED DOCUMENTS
(on disk)

1. Appendix of documents referenced in comments

2. 1993 White River National Forest Oil and Gas Leasing Final Environmental Impact Statement and Record of Decision

3. 2002 Revision – White River National Forest Land and Resource Management Plan, with Final Environmental Impact Statement and Record of Decision

4. March 2006 Forest Plan Amendment, Management Indicator Species

5. October 2008 Southern Rockies Lynx Management Direction, Final Environmental Impact Statement and related documents

6. September 2010 Reasonably Foreseeable Development Scenario for Oil and Gas Activities for the White River National Forest

7. March 22, 2012 Bull Mountain Unit Master Development Plan - Preliminary Environmental Assessment

8. October 2012 White River National Forest Oil and Gas Leasing Draft Environmental Impact Statement

9. November 30, 2012 Comments of Wilderness Workshop, et al., to White River National Forest, Forest Supervisor relating to Draft Oil and Gas Leasing Environmental Impact Statement