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May 6, 2013

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

BY PERSONAL DELIVERY AND ELECTRONIC MAIL

Re: Request for State Director Review of April 9, 2013 decision suspending operations and production on oil and gas leases: COC-66706, COC-66707, COC-66708, COC-66709, COC-66710, COC-66711, and COC-66712

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 7 leases held by Ursa Piceance, LLC (Ursa) 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 7 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 Ursa's request for suspension should be denied, for the following reasons:

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

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

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, the seven leases at issue were sold in the Thompson Divide area of the White River National Forest ("the Ursa leases" or "the leases").[2] The leases were purchased at a May 8, 2003 lease sale by Edward Linares. Five of the seven leases were issued with effective dates of June 1, 2003.[3] Two of the leases were issued with effective dates of September 1, 2003.[4]

During the ten-year term of these leases, they have been transferred between several energy companies, none of which has made a diligent effort to develop them. Most recently, Ursa acquired the leases in late 2012 as part of a larger liquidation of all of the assets held by Antero in the Piceance Basin.[5] To date, only a single application for permit to drill (APD) has been filed on the Ursa leases. See February 14 suspension request at 2. No wells have been drilled on any of the leases. Ursa's public statements make clear that the company's current development priorities are elsewhere in the Piceance and that it does not intend to drill any wells on the Ursa leases before they expire this year.[6] Instead of bringing its soon-to-expire leases into production, Ursa asked the BLM to extend their lives by suspending them.

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[2] Complete lease files for all seven of the Ursa leases are incorporated into this letter by reference.

[3] The five leases with June 1, 2003 effective dates include COC 66706, 66707, 66710, 66711, and 66712.

[4] Because BLM failed to consider or include any stipulations before the lease sale and because they overlapped with an existing gas storage unit, leases COC 66709 and 66709 were issued only after the bidder accepted application of post-sale stipulations withdrawing strata within the storage unit from the lease rights.

[5] See John Colson, *Antero Sells Off Piceance Basin Assets*, GLENWOOD SPRINGS POST INDEPENDENT, November 6, 2012, available at http://www.postindependent.com/article/20121106/VALLEYNEWS/121109927&parentprofile=search (describing Antero assets that were acquired by Ursa as including 284 producing wells, 61,000 acres of leases, and 30 miles of gathering pipeline), attached as Appendix B.

[6] See note 33 infra; see also Appendix U.

Ursa's lease suspension 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.[7] 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 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."[8]

Ursa's request is exactly the type of extension that should not be permitted under the "use it or lose it" policy. The Ursa leases were sold in 2003 with ten-year terms. Ursa is the latest in a series of companies that have bought and sold the leases with full knowledge of the lease terms, but have not worked to diligently develop them. Ursa acquired these leases as part of a much larger transaction knowing that they were on the verge of expiration. For its own business reasons, however, the company chose to focus on drilling elsewhere this year. That decision does not entitle the company to an extension. Ursa 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 Ursa leases present numerous legal and environmental problems. The leases cover some of the most ecologically important land in western Colorado, including portions of two inventoried roadless areas and habitat for a variety of sensitive wildlife. Public lands encumbered by the Ursa leases 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 Thompson 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 Ursa leases in 2003. BLM has recognized that leases sold under identical conditions violate the law and should be treated as void.

BLM should not reaffirm the mistakes it made in leasing this area. Allowing the Ursa leases to expire according to their terms will resolve the agency's NEPA and ESA violations.

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[7] See White House, Blueprint for a Secure Energy Future (March 30, 2011), available at http://www.whitehouse.gov/sites/default/files/blueprint_secure_energy_future.pdf, at 11, attached as Appendix C; see also id. at 12 ("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.").

[8] Commission on Presidential Debates, Transcript of Second Presidential Debate (October 16, 2012), at 10, available at http://www.debates.org/index.php?page=october-1-2012-the-second-obama-romney-presidential-debate, attached as Appendix D.

Letting the leases expire also will permit the Forest Service to fully protect these important public lands. The Field Office decision to extend these illegal leases must be reversed.

II. BACKGROUND

A. Ecological And Economic Values At Risk

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 intact and valuable public lands.

The area encumbered by the Ursa leases lies in the heart of the Thompson Divide. All of the Ursa leases overlap with inventoried roadless areas—the Fourmile Park/East Divide Roadless Area and the Thompson Creek Roadless Area. As in many national forest roadless areas, rivers and streams flowing from this area supply agricultural and domestic water for nearby ranches and communities.

Rivers and streams running through the Ursa leases are the lifeblood of the local economy and ecosystem. For example, East Divide Creek, Willow Creek, Fourmile Creek, and Thompson Creek and tributaries within the project area have very good water quality.[9] The streams are used for municipal, domestic, and agricultural purposes. They support an abundance and diversity of cold water biota including important sensitive aquatic species and are relied upon by threatened and endangered species. In addition, these streams are prized for recreational use.[10] In fact, the water quality flowing from and through the Ursa leases is some of the best in

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[9] U.S. Environmental Protection Agency (EPA). 2008. National Assessment Database – Assessment Data for Colorado, Water Body Report for Mitchell, Canyon, Elk, Garfield, Divide, Beaver, and Cache Creeks, available at http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_list_id=&p_au_id=COLCLC07_6500&p_cycle=2008&p_state=CO (last accessed 3/19/12); see also Colorado Department of Public Health and Environment (CDPHE). 2004. Status of Water Quality in Colorado – 2004. Water Quality Control Commission.

[10] For example, the three forks of Thompson Creek make up a pristine watershed with usable groundwater. See White River National Forest, 2012 Oil and Gas Leasing Draft Environment Impact Statement (WRNF DEIS), at 3-106, available at: http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/61875_FSPLT2_277731.pdf, copy included in "WRNF Planning Documents" folder and included as Enclosure 1 on disc. The Thompson Creek watershed retains some of the most favorable conditions for aquatic life in the broader area. See id., at 3-106. Thompson Creek is also eligible for Wild and Scenic designation. See Tetra Tech, March 2007. Final wild and

the area. It is markedly better than water quality downstream where energy development and intensive agricultural operations have contributed to "impaired" designations.

Oil and gas development poses a real threat to this watershed. The White River National Forest's 2012 Oil and Gas Leasing Draft Environmental Impact Statement describes the Outlet Roaring Fork River, which includes Thompson and Fourmile Creeks, as having "High Watershed Sensitivity"[11] and states that Thompson Creek also has "potentially susceptible groundwater."[12] Environmental Protection Agency modeling indicates that groundwater in Thompson Creek is the most likely to experience adverse effects from future oil and gas development.[13]

The Ursa leases cover an area that is also important to wildlife. It includes several Potential Conservation Areas identified by the Colorado Natural Heritage Program (CNHP) because of exceptional biodiversity.[14] The leases occupy an area that is home to important populations of elk and deer, black bear, lynx, moose, northern goshawk, boreal owl, and sensitive and rare trout populations.[15] The area also provides excellent habitat for sensitive

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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 (accessed 3/19/13). Thompson Creek also flows through a BLM designated Area of Critical Environmental Concern (ACEC), campsites, popular backcountry climbing destinations, and along well used hiking trails. East Divide, Fourmile and Willow Creeks retain similarly outstanding quality and character.

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

[12] WRNF DEIS, 3-107.

[13] WRNF DEIS, 3-107.

[14] See Colorado State University, Colorado Natural Heritage Program, 2012. Level 4 Potential Conservation Area (PCA) Report, Middle Thompson Creek, available at: http://www.cnhp.colostate.edu/download/documents/pca/L4_PCA-Middle%20Thompson%20Creek_8-30-2012.pdf, attached as Appendix E; see also id., Level 4 Potential Conservation Area, Willow Creek, available at http://www.cnhp.colostate.edu/download/documents/pca/L4_PCA-Willow%20Creek_8-30-2012.pdf, attached as Appendix F; see also id., Level 4 Potential Conservation Area, Fourmile Creek at Sunlight, available at http://www.cnhp.colostate.edu/download/documents/pca/L4_PCA-Fourmile%20Creek%20at%20Sunlight_8-30-2012.pdf, attached as Appendix G.

[15] WRNF DEIS, 3-229 (listing streams with documented populations of Colorado River Cutthroat Trout, including East Divide Creek, Willow Creek, and Thompson Creek tributaries). See also note 40 and pp. 16-18 infra (detailing specific species and habitat found in the area occupied by the Ursa leases).

amphibians like boreal toad and northern leopard frog.[16] And it provides important transitional, winter and summer range for big game—helping to lure hunters to two of the most sought after hunting units in the State. State Wildlife Areas lie to the north, just outside the National Forest. In contrast to other drainages further north and west in the Piceance where oil and gas development proliferates, this area has not been developed. The area retains very important habitat and provides critical connectivity for migrating species that could be significantly impacted by oil and gas development.

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. Several grazing permits directly overlap with the Ursa 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 area encumbered by the Ursa leases, which is important range for elk and deer and important to their businesses.

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. There are numerous opportunities for dispersed recreation in and around the Ursa leases, including a winter trailhead and developed snowmobile trails.[17] The area is critically important to local businesses that rely on tourism and recreation.

Today, there is no oil and gas drilling in the vicinity of the Ursa leases.[18] The leases also are miles away from a pipeline that could transport gas to market.

B. History of the Ursa Leases

All seven of the Ursa leases were purchased at a lease sale on May 8, 2003 by Edward G. Linares. Five of the leases were issued with June 1, 2003 effective dates and two were issued with September 1, 2013 effective dates.[19] Despite the fact that 10,000 wells have been drilled in

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[16] WRNF DEIS, 3-230 ("Leopard frog breeding sites occur in the June Creek watershed (East Divide area)"). See also note 40 and pp. 16-18 infra.

[17] WRNF DEIS, 3-296; 3-297 (cataloguing the East Divide winter trailhead and the groomed East Divide route on the Rifle Ranger District of the White River National Forest).

[18] See Todd Sieber, Geologic Evaluation Report on Application for Permit to Drill Lease COC 66708, March 24, 2012, at 1 ("The closest producing gas well is 3.4 miles east..."), attached as Appendix H.

[19] See page 2 supra: two of the leases (COC 66708 and COC 66709) were not issued immediately because the BLM failed to adequately consider overlap with the existing Wolf Creek storage field before selling them.

nearby portions of Garfield County since these leases were issued, no drilling has occurred on these leases and no production is attributable to these leases.

In 2003, Mr. Linares made no attempt to develop the leases. In early 2004 the leases were assigned to KLT Gas, Inc. (KLT). KLT pursued no development of the leases. Late in 2004 KLT assigned the leases to Windsor Castle Springs, LLC (Windsor Castle). Windsor Castle held the leases with no attempt at development from 2004 until 2008. In 2008 the leases were assigned to Antero.

When it acquired the leases in 2008, Antero was very actively developing the Piceance and filing numerous APDs to drill federal minerals.[20] For example, the company was proceeding with plans to drill more than 500 wells in the North Castle area.[21] The company was also actively pursuing development plans and drilling hundreds of wells in areas north and west of the Ursa leases.[22] During that period, however, Antero did not file single APD on the 7 Ursa leases.

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[20] See e.g., Northwest Colorado Oil and Gas Forum powerpoint presentation, BLM/U.S. Forest Service Update (September 2, 2010), available at http://cogcc.state.co.us/ (click on "library", scroll down and click on "Northwest Colorado Oil and Gas Forum Presentations", scroll down to September 02, 2010 and click on "BLM/USFS Update"), at slide 2 (indicating that Antero filed 6 APDs in the Colorado River Valley Field Office during financial year 2010); see also Northwest Colorado Oil and Gas Forum powerpoint presentation, BLM/U.S. Forest Service Update (June 2, 2011), available at http://cogcc.state.co.us/ (click on "library", scroll down and click on "Northwest Colorado Oil and Gas Forum Presentations", scroll down to March 04, 2010 and click on "BLM/USFS Update"), at slide 8 (indicating Antero had applied for 9 APDs in the Colorado River Valley Field Office during financial year 2011).

[21] See note 26 supra.

[22] See also Staff Report, *Antero to begin gas exploration project near Battlement Mesa Preliminary plan schedules drilling to start August 15*, GLENWOOD SPRINGS POST INDEPENDENT, May 28, 2009, available at http://www.postindependent.com/article/20090528/VALLEYNEWS/905279995&parentprofile=search, attached as Appendix I; see also John Colson, *Battlement Mesa residents speak their piece on Antero's drilling plans*, GLENWOOD SPRINGS POST INDEPENDENT, July 9, 2009, available at http://www.postindependent.com/article/20090709/VALLEYNEWS/907089990&parentprofile=search, attached as Appendix J; see also John Colson, *Antero plans increased drilling activity south of Silt; Company seeks approval for up to 850 new wells*, GLENWOOD SPRINGS POST INDEPENDENT, October 28, 2011, available at http://www.postindependent.com/article/20111028/VALLEYNEWS/111029898, attached as Appendix K.

While Antero had earlier discussions with the Forest Service, it was not until April of 2011 that the routine NEPA process commenced on plans for drilling lease COC 66708.[23] In subsequent months, it became very clear that Antero's priorities remained elsewhere: its submissions were incomplete and the NEPA analysis was delayed by the company. Federal officials had to repeatedly request more information from Antero to proceed with analysis of its drilling plans.[24] Similarly, the Forest Service's routine NEPA was held up for months because Antero was slow in delivering information that the agency needed.[25] Antero only filed its first APD for lease COC 66708 in April 2012, just a year before the lease was due to expire.[26]

Because of Antero's delays, it was not until September 27, 2012 that a Notice of Proposed Action (NOPA) outlining the plan to develop lease COC 66708 was published and

[23] WRNF, Lava Boulder Project Scoping Notice (April 18, 2011) available at http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/59229_FSPLT2_048854.pdf (accessed 3/19/13).

[24] See email from Robert Hartman, BLM, to Jennifer Robinson, CRVFO, BLM (June 05, 2012, 3:11PM) (detailing drilling plan deficiencies associated with Antero's Lava Boulder APD), attached as Appendix L; see also email from Steve Ficklin, Colorado River Valley Field Office, BLM, to Peter Hart, Wilderness Workshop (June 06, 2012, 8:45AM) (confirming that the Lava Boulder APD was incomplete), attached as Appendix M; see also email from Peter Hart, Wilderness Workshop, to Jason Gross, USFS, and Steve Ficklin, BLM (March 20, 2013, 10:14AM) (memorializing statements regarding the still incomplete Lava Boulder APD made by Jason Gross to Peter Hart via phone on March 20, 2013, 9:20AM), attached as Appendix N.

[25] See email from Jason Gross, Physical Scientist, White River National Forest, to Peter Hart, Conservation Analyst/Staff Attorney, Wilderness Workshop (April 03, 2012, 4:14PM), (indicating that any delays in the NEPA process were not attributable to the Forest Service), attached as Appendix O.

[26] Antero was well aware of timelines associated with getting agency approval for drilling projects. The operator was involved in permitting and drilling numerous large- and small-scale projects throughout the Piceance, including the North Castle Springs Master Development Plan (MDP) and numerous individual wells on federal lands. The North Castle Springs MDP involves a proposed 513 wells from 24 pads. See Northwest Colorado Oil and Gas Forum powerpoint presentation, BLM/U.S. Forest Service Update (March 4, 2010), available at http://cogcc.state.co.us/ (click on "library", scroll down and click on "Northwest Colorado Oil and Gas Forum Presentations", scroll down to March 04, 2010 and click on "BLM/USFS Update"), at slides 10-12.

released for public comment.[27] By that time, the operator's own lack of diligence had virtually guaranteed that drilling COC 66708 within its ten-year term would be impossible.[28]

Meanwhile, Antero and Ursa made no effort at all to develop the other six leases. Instead, Antero sought to unitize them in order to extend their lives by drilling the single well on lease COC 66708. In August 2012, Antero asked BLM to unitize all seven of the Ursa leases as part of the proposed Wolf Springs Unit.[29] Given Antero's delay in permitting an APD for COC 66708, however, unitization of the other leases (even if approved) would not have extended their lives.

Three months later, Antero further demonstrated its lack of interest in developing these leases by announcing in November 2012 that the company planned to sell all its assets in the

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[27] Legals, *Public Notice USDA – Forest Service*, POST INDEPENDENT, September 27, 2012, available at http://apps.postindependent.com/utils/c2/app/v2/index.php?do=adDetail&adId=8432463&viewState=gallery (accessed 3/19/13). The NOPA did not fulfill the agencies' obligations under NEPA and the requisite Environmental Analysis remains incomplete today.

[28] Lease COC 66708 is encumbered with timing limitations for elk production that prohibit drilling on the proposed well site until July. The Forest Plan imposes a nondisturbance buffer around raptor nests existing nearby the proposed Lava Boulder pad site until August. See 2002 LRMP, Wildlife Standards, at 2-16 (copies of the 2002 LRMP and other forest planning documents are included on the disk enclosed with the concurrently-filed petition for review of the SG Interest lease suspensions). In addition the 2002 LRMP Guidelines for boreal toads and leopard frogs impose timing restrictions and require buffers to protect occupied or known habitat like that found near the Lava Boulder site. Id., at 2-26. Recent information from the USFS confirms that it will take at least six weeks for Antero to perform necessary roadwork to access the Lava Boulder site with a drill rig. See email from Jason Gross, Physical Scientist, to Peter Hart, Wilderness Workshop (March 18, 2013, 9:59AM) (confirming that roadwork necessary for drilling at Lava Boulder would take the operator at least six weeks to complete), attached as Appendix P. In short, the leaseholder's own business decisions have left insufficient time for roadwork and to drill a well on lease COC 66708 – even assuming all routine permits and analysis could be acquired or completed before lease expiration. There is no evidence to support that assumption at this point (see pp. 12-20 infra).

[29] There was immediate and vocal public opposition to this proposal. See e.g., Scott Condon, *Gas drilling company works on keeping leases: Antero applies to create unit in Thompson Divide area out of leases that are set to expire in 2013*, GLENWOOD SPRINGS POST INDEPENDENT, August 4, 2012, available at http://www.postindependent.com/article/20120804/VALLEYNEWS/120809968, attached as Appendix Q.

Piceance Basin.[30] Antero sold the seven leases to Ursa in December of 2012.[31] Ursa acquired these leases as part of a much larger asset liquidation by Antero that included 284 producing wells, 61,000 acres of leases, and 30 miles of gathering pipeline, among other assets.[32] Ursa acquired the seven leases in the Thompson Divide with only months remaining in their ten-year lease terms and with the understanding that no wells had been drilled on them and no unit had been granted.

Nevertheless, Ursa has no plans to drill any of the Ursa leases this year. Instead company representatives have said Ursa will focus in 2013 on reconditioning existing wells and drilling leases that are closer to the heart of the Piceance.[33]

On February 14, 2013, Ursa and Antero jointly submitted a Request for Suspension of Operations and Production for all seven of the leases in the Thompson Divide.

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 four factors: (1) Ursa'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 Ursa leases; (3) Ursa's efforts at settlement talks with other stakeholders; and (4) the single pending APD on lease COC 66708. None of these factors would support lease suspension of all seven leases. See pp. 10-20, infra. But the Field Office asserted that when the four factors were combined, the "totality of the circumstances" justified suspending all of 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.

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[30] See John Colson, *Antero Sells Off Piceance Basin Assets*, GLENWOOD SPRINGS POST INDEPENDENT, November 6, 2012, available at http://www.postindependent.com/article/20121106/VALLEYNEWS/121109927&parentprofile=search, attached as Appendix R.

[31] Ursa was on notice of the controversy surrounding the Thompson Divide leases before the sale with Antero closed. On November 22, 2012, Wilderness Workshop sent a letter to Ursa informing the company of its opposition to development of the seven leases and detailing their legal deficiencies. See email from Peter Hart, Conservation Analyst/Staff Attorney, Wilderness Workshop, to Don Simpson, Vice President of Business Development, Ursa Resources Group, LLC (November 22, 2012, 6:58AM), attached as Appendix S; see also Comments of Wilderness Workshop, et al. on the Lava Boulder Exploratory Development Program AND the Wolf Springs Unit (October 29, 2012) which were attached to the November 22, 2012 email to Don Simpson, attached here as Appendix T.

[32] See note 5 supra.

[33] See John Colson, *Ursa VP says drilling will be resumed later in 2013: Meanwhile, company will perform 'workover' on old Antero wells*, GLENWOOD SPRINGS POST INDEPENDENT, February 27, 2013, available at http://www.postindependent.com/article/20130227/VALLEYNEWS/130229905&parentprofile=search, attached as Appendix U.

III. THE REQUIREMENTS FOR LEASE SUSPENSION HAVE NOT BEEN MET.

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).[34] The IBLA has interpreted Section 39 to authorize suspension under two conditions:

(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.[35]

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).

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[34] 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 Ursa leases do not have wells capable of production, nor does a force majeure situation exist.

[35] See Decisions of Steve Bennett, Field Manager, Colorado River Valley Field Office, BLM, denying suspension requests for lease COC 58839, and leases COC 58836, 58837, and 58838 (In Reply Refer To: CONO40) (December 17, 2012), attached as Appendices V and W.

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 call untethered to any meaningful standards. BLM must find that: (a) Ursa 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. Antero and Ursa Have Not Been Denied Beneficial Use Of The Leases.

The first two factors on which the Field Office relied – Ursa's pending unitization request, and BLM's decision to conduct additional NEPA analysis on the Ursa 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 unsuccessful unitization requests.

For a suspension to be granted 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) (emphasis added).

Here, neither Ursa nor Antero has applied for permits to drill six of the seven leases it seeks to suspend.[36] Instead, the companies request suspension of all seven leases based on an unapproved 2012 request to unitize these leases. The Mineral Leasing Act does not allow suspension on this basis.

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, as here: (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 for the six leases or been denied beneficial use of them.

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.

[36] The only lease with an APD currently filed is lease COC 66708. See p. 8 supra; see also note 24 supra.

BLM's Manual is consistent with the Act 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. See 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). Antero's 2012 unitization request does not represent diligent development.

Moreover, BLM's failure to act on the Wolf Springs 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 lease rights that Antero or Ursa may have, and does not allow the leases to be suspended.

Ursa and Antero's pending unit proposal provides no basis for a lease suspension. The Field Office's decision on this point should be reversed.

2. BLM's decision to conduct additional NEPA analysis did not deny Ursa 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 Ursa leases, because the NEPA analysis did not halt any effort by Ursa or Antero to develop those leases. The companies

have 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 their 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).

Ursa and Antero have not filed any permit applications for 6 of the 7 leases, and thus cannot show that any development efforts have been halted by BLM's NEPA analysis.

But even for the one lease with a pending APD (COC 66708), neither Ursa nor Antero has been denied beneficial use of the lease.

For a suspension to be granted 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) (emphasis added). 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).

Even if BLM planned no further NEPA analysis on the lease, the companies could not proceed with drilling on COC 66708 because they have not completed routine requirements for doing so. That failure was a business decision made by the companies, rather than a limit imposed by BLM, and it does not warrant a Section 39 suspension.

a. Routine NEPA compliance

The first routine requirement that leaseholders disregarded was compliance with NEPA. 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 a 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 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 leaseholders' own actions. It took Antero three years from acquisition of the Ursa leases to provide a firm proposal which the Forest Service could begin to analyze. The company then failed to supply the Forest Service with sufficient information for the Notice of Proposed Action (NOPA), much less a complete EA, to be circulated for public comment until late in August of 2012.[37] Here the operator's own delays – not those of the Forest Service – have prevented completion of the NEPA process. The company's self-inflicted wound here does not allow suspension of lease COC 66708 under Section 39 of the Act. The requirement to complete a routine NEPA analysis has not denied Antero or Ursa beneficial use of the lease.

b. On-site inspections and permit processing

Moreover, there is no indication that Ursa and Antero have satisfied a variety of other requirements that must be met before drilling can begin. For example, the governing Forest Plan requires a host of surveys and other plans to be completed. The information we have received from FOIA requests and other sources provides no evidence that these requirements have been met, or that they could be satisfied before the leases expire.[38] For example:

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[37] See note 25 supra (email from Jason Gross describing that delays in the process were attributable to the leaseholder rather than the agency); see also email from Jason Gross, Physical Scientist, White River National Forest, to Peter Hart, Conservation Analyst/Staff Attorney, Wilderness Workshop (August 24, 2012, 1:47PM) (indicating that the Forest Service had just received a final draft of the proposed action from Antero and that the agencies internal review could now move forward), attached as Appendix X.

[38] Importantly, the Forest Plan prevents Ursa from drilling a well on lease COC 66708 between May (when the snow begins to melt in the area) and August 2013 because it is located in an elk production area and nearby raptor nesting sites. See 1993 FEIS at II-18 to 19 (activity not permitted in elk production areas during months of May and June); see also 2002 LRMP, Wildlife Standards, at 2-16 ("A nodisturbance buffer around active nest sites will be required

1. Before Ursa 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).[39]

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

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

4. Ursa 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 (MIS), found in this area of the Thompson Divide, as well as their habitat. These species are listed below.[40]

    a. Species present or with known habitat in general area:
        A. American Bittern (FS Sensitive Species);

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from nest-site selection to fledging (generally March through July)."). Copies filed with SG Petition.

[39] 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.F.S., 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 these documents are filed with the SG Petition.

[40] Species presence information is compiled from: Colorado Division of Wildlife, Colorado Gap Analysis Project, http://ndis1.nrel.colostate.edu/cogap/gapframe.html; Wildlife/wildland value screen spreadsheet compiled by Alison Gallensky, GIS and IT Director for Rocky Mountain Wild (see Alison Gallensky, Declaration (March 18, 2013) attached as Appendix Y; see also Wildlife and wildland screen for the Ursa leases attached as Appendix Z); and WRNF DEIS. Species Status information is from**:** 2002 Forest Plan Appendix EE (filed with SG Petition); 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 (accessed 3/19/13); 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 (accessed 3/19/13).

B. American Elk (MIS);
C. Black Bear;
D. Canada Lynx (ESA Threatened Species);
E. Colorado River Cutthroat Trout (FS Sensitive Species, BLM Sensitive Species, MIS);
F. Cutthroat Trout and Greenback cutthroat trout (MIS, ESA-listed);
G. Mule Deer;
H. Moose;
I. Mountain Lion;
J. Northern Leopard Frog (FS Sensitive Species, BLM Sensitive Species); and
K. Northern Goshawk (FS Sensitive Species, BLM Sensitive Species).

b. Wildlife with modeled habitat present in general area:
A. American Bittern;
B. American Martin (FS Sensitive Species);
C. American Peregrine Falcon (FS Sensitive Species, BLM Sensitive Species);
D. American Pipit (MIS);
E. American Wigeon (FS Sensitive Species);
F. Barrow's Goldeneye;
G. Bighorn Sheep (FS Sensitive Species);
H. Black Swift (FS Sensitive Species, BLM Sensitive Species);
I. Boreal Owl (FS Sensitive Species);
J. Boreal Toad (FS Sensitive Species, BLM Sensitive Species);;
K. Brewer's Sparrow (FS Sensitive Species, BLM Sensitive Species, MIS);
L. Ferruginous Hawk (BLM Sensitive Species);
M. Flammulated Owl (Forest Service Sensitive Species);
N. Fringed Myotis ((FS Sensitive Species, BLM Sensitive Species, MIS);
O. Gray Wolf (Endangered);
P. Greater Sage Grouse (Candidate, BLM Sensitive Species);
Q. Loggerhead Shrike (FS Sensitive Species);
R. Mallard;
S. Mexican Spotted Owl (Threatened);
T. Northern Harrier (FS Sensitive Species);
U. Northern Pintail;
V. Olive Sided Flycatcher FS Sensitive Species);
W. Purple Martin (FS Sensitive Species);
X. Pygmy Nuthatch;
Y. Pygmy Shrew (FS Sensitive Species);
Z. Ring-Necked Duck;
AA. River Otter (FS Sensitive Species);

BB. Three Toed Woodpecker (FS Sensitive Species);
CC. Townsend's Big Eared Bat (FS Sensitive Species, BLM Sensitive Species, MIS);
DD. Veery;
EE. Virginia's Warbler (MIS); and
FF. White Tailed Ptarmigan (FS Sensitive Species).

The following requirements must be met to address these species before Ursa could begin drilling:

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).[41] These "methods and procedures" presumably include 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 with SG Petition).

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

[41] Available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.43545.File.dat/6840.pdf (accessed 3/19/13); 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 (accessed 3/19/13).

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 with SG Petition). 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 have been completed on lease COC 66708, much less on the other six leases. Leaseholders' failure to comply with routine Forest Plan requirements further confirms that development efforts on the leases have not been delayed by any action of BLM.

c. Leaseholders have failed to obtain necessary permits from other agencies.

Moreover, a suspension requires that drilling is delayed by BLM or by other unusual circumstances "beyond the operator's control." BLM Manual 3160-10.31(A)(3) (emphasis added).[42] Here, leaseholders are prevented from drilling COC 66708 by factors completely within their own control: the numerous approvals from other permitting agencies have not been

[42] See also Appendices V and W.

obtained. This failure provides further evidence that suspension of the lease is unjustified under Section 39 of the MLA.

Prior to drilling, leaseholders must obtain numerous permits and approvals, 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: URSA 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 (enclosed on disc).

There is no evidence in the record that leaseholders have applied for any of these other approvals.

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

The Field Office recognized that BLM's Manual requires a showing of attempted 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.

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, there are no development efforts on the six leases 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 Ursa on notice that the submission of APDs would be futile.

Ursa does allege that BLM has made such a statement, but it provides no documentation or date showing how it could have affected Ursa's actions. Instead, the record shows that Ursa and Antero hoped that approval of a unit would make submittal of additional permits unnecessary. Feb. 14, 2013 letter at 2. This is confirmed by Ursa's public statements that it will be focusing on drilling elsewhere this year—meaning that the company does not intend to drill these leases before the leases are due to expire.[43]

River Gas does not suggest that Ursa's unitization strategy and choice of business priorities somehow mean the company has been denied beneficial use of its leases. Suspension is not warranted where, as here, 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).

B. Suspending The Leases Will Not Conserve Natural Resources.

Leaseholders also fail to meet the second requirement for a Section 39 suspension: protecting the environment or preventing the loss of mineral resources. P. 11, supra. This requirement is relevant to the third "totality of the circumstances" factor cited by BLM: Ursa's purported interest in negotiating a compromise with other stakeholders.

The leaseholders assert that suspension would "serve the interests of conservation" by allowing "additional time for Ursa to engage in settlement discussions with Thompson Divide Coalition." Feb. 14, 2013 request at 3. The Field Office recognized that a desire to negotiate over potential development terms is not a basis for suspension in the absence of litigation or

[43] See p. 10, supra.

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.

Suspending the Ursa leases also will 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 area. Without a suspension, no drilling will take place because leaseholders have failed to obtain the permits necessary to develop leases before they expire. Pp. 12-21, supra. Allowing the leases to expire will preserve the inventoried roadless areas and other natural resources of the Thompson Divide. See pp. 4-6, supra. It also will allow the Forest Service to update its Oil and Gas Leasing Plan and provide better protections for this part of the White River National Forest without being encumbered by existing leases. See p. 33, infra.

Nor would suspension prevent a loss of mineral resources. There appears to be no risk that the Ursa 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. The only other leases in the area are owned by SG Interests, which also is attempting to extend its own leases without developing them, and, Encana, which is indicated that it intends to let the leases expire.[44] In short, there is no rush to drill the area over which BLM needs to impose order. If BLM allows the Ursa leases to expire, the federally-owned minerals will remain in the ground for future generations.

There is no reason to believe that conservation of natural resources would be served by suspending the Ursa leases. Leaseholders' request should be denied.

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

Leaseholders' 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 24-26, 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.

[44] Dorothy Atkins, SG Interests acquires two new leases in Thompson Divide, ASPEN DAILY NEWS (April 2, 2013), available at http://www.aspendailynews.com/section/home/157333.

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 Ursa 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.[45] 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

[45] Wilderness Workshop incorporates by reference the entire BLM lease file for each lease the Field Office has suspended.

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.[46]

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 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 Ursa 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 Ursa 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.[47] This was proper under the leasing regulations, which hold that

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[46] Available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf (accessed 3/20/13).

[47] Karen Zurek, Chief Fluid Minerals Adjudication, Colorado State Office, BLM, August 12, 2009 Decision withdrawing leases, declaring leases invalid ab initio, and authorizing refunds (IN

"[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 Ursa 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 Ursa leases were issued improperly. Field Office decision at 2. The agency 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 the Field Office to extend leases that BLM has concluded were issued under circumstances making them void ab initio.

2. The Ursa 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 Ursa 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 Ursa 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 Ursa 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 more than 23 wells had been approved and/or drilled in the Forest when BLM issued the Ursa 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.[48] 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 Ursa leases. For example, in issuing leases in 2003, BLM did no analysis of specific impacts to wildlife or water quality that would result from development of the leases. Nor does the 1993 FEIS have any analysis of the roadless areas overlapped by the Ursa leases or of compliance with the 2001 roadless rule. NEPA requires more.

BLM violated NEPA when issuing the Ursa leases because it analyzed none of the impacts associated with the reasonably foreseeable development of those leases. The Field Office should not have compounded 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 Ursa 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

[48] See High Country Citizens' Alliance et al. Protest of Colorado BLM's August 10, 2006 Lease Sale, at 18, attached as Appendix CC.

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 Ursa leases in 2003. For example, the Ursa lease parcels fall within or in close proximity to areas identified as providing occupied or high potential habitat for the Canada lynx.[49] The Canada lynx was listed as a threatened species under the ESA in 2000. 65 Fed. Reg. 16052 (Mar. 24, 2000).[50] However,

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[49] See map depicting lynx habitat and Thompson Divide leases, attached as Appendix DD; see also, Southern Rockies Lynx Habitat Map (2006), available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5357382.jpg (accessed 3/20/13).

[50] 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

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.

At the time the Ursa leases were sold 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). All of the Ursa leases are subject to the roadless rule because they cover lands within inventoried roadless areas.[51] As a result, any lease rights held by Ursa are subject to the roadless rule. Moreover, the requirements 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 leaseholders 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

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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.

[51] 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 the Ursa 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). See Map depicting leases and inventoried roadless areas within the Thompson Divide, attached as Appendix EE.

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 URSA LEASES.

As stated above, the Field Office should have denied the Ursa 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 changes the status quo by preventing the Ursa leases from expiring and thus preserving Ursa'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. 24 n. 46, supra). For example, extraordinary circumstances apply because extending the Ursa leases 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. Ursa suspension Categorical Exclusion (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, it just illustrates 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." 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 agency is revising its oil and gas leasing EIS to reflect the value of the Thompson Divide. 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 seven 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. In addition, any surface disturbance on the inventoried roadless areas within the Ursa 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.

In a similar situation in the adjacent Lake Ridge area of the Thompson Divide, BLM has acknowledged that extraordinary circumstances exist that prevent the application of a categorical exclusion to approval of a proposed unit. According to SG Interests, the proponent of the Lake Ridge Unit, BLM has concluded that SG's unit proposal cannot be approved using a categorical exclusion, and that a NEPA analysis is required.[52] Circumstances are exactly the same here. Extraordinary circumstances exist that prevent use of a categorical exclusion to suspend or unitize the Ursa leases.

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 Ursa's suspension request for the same reasons it could not be used for SG'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

[52] See SG Interests Request for Suspension of and Production for leases in the Thompson Divide (February 13, 2013), attached as Appendix FF.

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, leaseholders have not made a diligent effort to develop the leases. Instead, the companies repeatedly bought and sold them without bringing the leases into production. But leaseholders' proposals for COC 66708 suggest that development of the leases is reasonably foreseeable.[53] Indeed, the entire purpose of leaseholders' 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, leaseholders would have no reason to seek their extension and if they leaseholders do not intend to develop these leases then there is no justification for extending them.

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 Ursa leases in 2003. See pp. 23-25, supra. As a result, 20 years have 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 surrounding oil and gas development that were not previously addressed and require a new analysis.[54]

For example, in the decade since the Ursa 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.[55] Having failed to consider the site-

[53] See Wilderness Workshop et al. Lava Boulder NOPA AND Wolf Springs Unit Cmts attached as Appendix T.
[54] See WRNF DEIS (on enclosed disc) (noting several examples of environmental issues that have never been analyzed by the agency); see also Wilderness Workshop et al. comments on the WRNF DEIS (Nov. 30, 2012) (also noting several examples of environmental issues that have never been analyzed by the agency), attached as Appendix GG.
[55] White River National Forest 2010 Reasonably Foreseeable Development report at 14, available at

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 Ursa Leases.

It is settled law that BLM can condition 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: if BLM suspends the Ursa leases without reserving the right to deny all drilling, it will impermissibly predetermine several NEPA analyses.

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 pp. 25-26, 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 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).

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,

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http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/61875_FSPLT2_277719.pdf (copy included on disk with SG Petition).

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.[56]

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. 4-6, 16-18 supra.[57] If the leases are suspended, BLM must condition any suspension on reserving its right to deny all drilling on the Ursa leases.

[56] We note that the Field Office decision indicates that it 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 under the circumstances, we expect that Ursa 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 Ursa to accept that as a potential outcome.

[57] 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.

VI. CONCLUSION

Thank you for your consideration of this request for review. Wilderness Workshop urges BLM to reverse the Field Office decision and deny leaseholders' request for suspension of operation and production on the Ursa leases.

Sincerely,

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List of Appendices (provided on disk):

Appendix A: Ursa Piceance LLC, Request for Suspension of Operations and Production for Federal Oil and Gas Lease Nos. COC-66706; COC-66707; COC-66708; COC-66709; COC-66710; COC-66711; and COC-66712; Garfield, Mesa, and Pitkin Counties, Colorado, (February 14, 2013)

Appendix B: John Colson, *Antero Sells Off Piceance Basin Assets*, GLENWOOD SPRINGS POST INDEPENDENT, November 6, 2012

Appendix C: White House, Blueprint for a Secure Energy Future (March 30, 2011)

Appendix D: Commission on Presidential Debates, Transcript of Second Presidential Debate (October 16, 2012)

Appendix E: Colorado State University, Colorado Natural Heritage Program, 2012. Level 4 Potential Conservation Area (PCA) Report, Middle Thompson Creek

Appendix F: Colorado State University, Colorado Natural Heritage Program, 2012. Level 4 Potential Conservation Area, Willow Creek

Appendix G: Colorado State University, Colorado Natural Heritage Program, 2012. Level 4 Potential Conservation Area, Fourmile Creek at Sunlight

Appendix H: Todd Sieber, Geologic Evaluation Report on Application for Permit to Drill Lease COC 66708, March 24, 2012

Appendix I: Staff Report, *Antero to begin gas exploration project near Battlement Mesa Preliminary plan schedules drilling to start August 15*, GLENWOOD SPRINGS POST INDEPENDENT, May 28, 2009

Appendix J: John Colson, *Battlement Mesa residents speak their piece on Antero's drilling plans*, GLENWOOD SPRINGS POST INDEPENDENT, July 9, 2009

Appendix K: John Colson, *Antero plans increased drilling activity south of Silt; Company seeks approval for up to 850 new wells*, GLENWOOD SPRINGS POST INDEPENDENT, October 28, 2011

Appendix L: Email from Robert Hartman, BLM, to Jennifer Robinson, CRVFO, BLM (June 05, 2012, 3:11PM)

Appendix M: Email from Steve Ficklin, Colorado River Valley Field Office, BLM, to Peter Hart, Wilderness Workshop (June 06, 2012, 8:45AM)

Appendix N: Email from Peter Hart, Wilderness Workshop, to Jason Gross, USFS, and Steve Ficklin, BLM (March 20, 2013, 10:14AM)

Appendix O: Email from Jason Gross, Physical Scientist, White River National Forest, to Peter Hart, Conservation Analyst/Staff Attorney, Wilderness Workshop (April 03, 2012, 4:14PM)

Appendix P: Email from Jason Gross, Physical Scientist, to Peter Hart, Wilderness Workshop (March 18, 2013, 9:59AM)

Appendix Q: Scott Condon, *Gas drilling company works on keeping leases: Antero applies to create unit in Thompson Divide area out of leases that are set to expire in 2013*, GLENWOOD SPRINGS POST INDEPENDENT, August 4, 2012

Appendix R: John Colson, *Antero Sells Off Piceance Basin Assets*, GLENWOOD SPRINGS POST INDEPENDENT, November 6, 2012

Appendix S: Email from Peter Hart, Conservation Analyst/Staff Attorney, Wilderness Workshop, to Don Simpson, Vice President of Business Development, Ursa Resources Group, LLC (November 22, 2012, 6:58AM)

Appendix T: Comments of Wilderness Workshop, et al. on the Lava Boulder Exploratory Development Program AND the Wolf Springs Unit (October 29, 2012)

Appendix U: John Colson, *Ursa VP says drilling will be resumed later in 2013: Meanwhile, company will perform 'workover' on old Antero wells*, GLENWOOD SPRINGS POST INDEPENDENT, February 27, 2013

Appendix V: Decision of Steve Bennett, Field Manager, Colorado River Valley Field Office, BLM, denying suspension requests for lease COC 58839 (In Reply Refer To: CONO40) (December 17, 2012)

Appendix W: Decision of Steve Bennett, Field Manager, Colorado River Valley Field Office, BLM, denying suspension requests for leases COC 58836, 58837, and 58838 (In Reply Refer To: CONO40) (December 17, 2012)

Appendix X: Email from Jason Gross, Physical Scientist, White River National Forest, to Peter Hart, Conservation Analyst/Staff Attorney, Wilderness Workshop (August 24, 2012, 1:47PM)

Appendix Y: Alison Gallensky, GIS and IT Director, Rocky Mountain Wild, Declaration detailing method for wildlife and wildland screening (March 18, 2013)

Appendix Z: Rocky Mountain Wild, Wildlife and wildland screen for the Ursa leases (2013)

Appendix AA: Lea Linse, *Students offered chance to question the gas industry*, GLENWOOD SPRINGS POST INDEPENDENT (June 5, 2011)

Appendix BB: Karen Zurek, Chief Fluid Minerals Adjudication, Colorado State Office, BLM, August 12, 2009 Decision withdrawing leases, declaring leases invalid ab initio, and authorizing refunds to Encana

Appendix CC: High Country Citizens' Alliance et al. Protest of Colorado BLM's August 10, 2006 Lease Sale

Appendix DD: Map depicting lynx habitat and Thompson Divide leases

Appendix EE: Map depicting leases and inventoried roadless areas within the Thompson Divide

Appendix FF: SG Interests VII, LTD, Request for Suspension of and Production for leases in the Thompson Divide (February 13, 2013)

Appendix GG: Wilderness Workshop et al. comments on the WRNF DEIS (Nov. 30, 2012)