

January 27, 2015

Kent Hoffman
Justin Abernathy
Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, Utah 84101-1345

Re.: November 2015 Federal Oil and Gas Lease Sale

Dear Mr. Hoffman and Mr. Abernathy:

We represent a number of clients who are actively engaged in environmentally responsible exploration and production of oil and natural gas resources in the Uinta Basin, Utah. Our clients and others have previously submitted a number of expressions of interest for oil and gas lease parcels located in the Vernal Field Office ("VFO"). Specifically, in December 2013, our clients nominated a number of parcels for the November 2014 lease sale. However, many of these parcels were not analyzed in the lease sale National Environmental Policy Act ("NEPA") Environmental Analysis ("EA") and were consequently not offered at the November 2014 lease sale.

Introduction

Under existing BLM regulations and internal policy, BLM is encouraged to consider proposed lease parcels contained in previously-submitted expressions of interest when deciding which parcels will be analyzed for future oil and gas lease sales. BLM Manual 3120.1.11-12 ("Each state office must offer for oral auction the available lands contained in an expression of interest or noncompetitive offer which is filed in accordance with 43 CFR 3110.1(a)(1)."); BLM IM 2004-110.

Rather than simply ask the BLM to consider *all* of the previously nominated acreage, we have carefully studied the VFO Resource Management Plan ("RMP") and relevant public land orders and related authority and identified the following thirty-one (31) parcels, all located in Uintah County, as areas on which we would like BLM to focus when compiling the parcel list for the November 2015 lease sale. Each parcel was selected because it conforms to the requirements for leasing contained in the VFO RMP and contains minimal resource conflicts. In each instance, the proposed parcel is located in close proximity to producing oil and gas wells

and the related infrastructure necessary to develop the new leasehold. Utilization of this existing infrastructure could be considered if development were to occur on this adjacent acreage.

We write to reiterate our clients' continued interest in the following thirty-one (31) parcels that were previously nominated for the November 2014 lease sale, as well as prior VFO sales. Each parcel is identified in order of priority to our clients, within three priority categories, with parcel numbers reflecting those of highest interest to our clients in descending order:

Parcel # ¹	Township, Range	Section
Priority No. 1		
WSMT 1	6S, 20E	33: all
WSMT 2	6S, 20E	34: all
WSMT 3	6S, 20E	35: all
Priority No. 2		
WSMT 4	7S, 22E	1: W/2SW/4
WSMT 5	7S, 22E	3: NE/4, N/2NW/4, SE/4NW/4, NE/4SW/4, N/2SE/4
WSMT 6	7S, 22E	4: Lots 3-6, 11, 12, S $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$
WSMT 7	7S, 23E	9: W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$
WSMT 8	7S, 23E	5: all
WSMT 9	7S, 23E	6: all
WSMT 10*	7S, 20E	25: SW, S2SE, SWNW
WSMT 11*	7S, 21E	19: LOTS 1-4, 7, SESW
WSMT 12*	7S, 21E	28: LOTS 4-6, NENE
WSMT 13*	7S, 21E	29: LOTS 2, 3, 15
WSMT 14*	7S, 21E	30: LOTS 1-14, SE, SESW
WSMT 15*	7S, 21E	31: LOTS 1-4, 17-26
WSMT 16*	7S, 21E	32: LOTS 5, 10, 17, 19, 20
WSMT 17	7S, 21E	14: NW $\frac{1}{4}$ SW $\frac{1}{4}$
WSMT 18	7S, 21E	15: W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$
WSMT 19	7S, 21E	20: SE $\frac{1}{4}$
WSMT 20*	8S, 20E	1: LOTS 1-4
Priority No. 3		
WSMT 21	10S, 16E	25: all
WSMT 22	9S, 24E	4: LOTS 3, 4, S2N2, S2
WSMT 23	10S, 16E	10: SE, E2SW, SENE
WSMT 24	10S, 16E	1: all
WSMT 25	10S, 16E	11: all
WSMT 26	10S, 16E	12: all
WSMT 27	10S, 16E	13: all
WSMT 28	10S, 16E	14: all
WSMT 29	10S, 16E	15: all
WSMT 30	10S, 16E	23: E $\frac{1}{2}$ E $\frac{1}{2}$
WSMT 31	8S, 22E	6: Lots 1-5, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$

Twenty-three (23) parcels (WSMT 1-9, 17-19, and 21-31) are legally available for leasing under the VFO RMP. As to these twenty-three parcels, there are no practical

¹ For ease of reference in this letter we have identified each of the 31 parcels as parcels WSMT 1-31.

*Parcel located in Ouray National Wildlife Refuge, see § 5 herein.

impediments to offering these parcels at the upcoming November 2015 sale. Each parcel has been carefully chosen to eliminate or, to the extent possible, minimize resource conflicts. For example, none of these parcels are located on split estate lands, embrace Areas of Critical Environmental Concern ("ACECs"), Wilderness Study Areas ("WSAs"), lands with Wilderness Characteristics, Wild and Scenic Rivers ("WSRs"), Special Management Areas ("SMAs"), or contain critical habitat for any species listed under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1599.

The remaining eight (8) parcels identified above are located in the Ouray National Wildlife Refuge (WSMT 10-16, 20) and are thus not analyzed in the VFO RMP. However, as explained in more detail below, these lands may be leased under 43 CFR § 3101.1.5-1.

We ask that you please include the above identified parcels in the Notice of Competitive Lease Sale ("NCLS") for the November 2015 lease sale and accompanying NEPA analysis.

1. Conformity with VFO RMP

Each of the twenty-three parcels identified above that are located outside of the Ouray National Wildlife Refuge are "open" for leasing under the 2008 VFO RMP. As outlined by the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701(a)(12), BLM's governing statute, oil and gas leasing is a principal use of public lands. Indeed, FLPMA's policy statement clearly sets out that it is the policy of the United States that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals . . . including implementation of the Mining and Minerals Policy Act of 1970," an Act which, as to public lands, calls on the federal government to "foster and encourage private enterprise in . . . the development of domestic mineral resources." 30 U.S.C. § 21a.

Congress reaffirmed this commitment to responsible energy development on public lands with the passage of the Energy Policy Act of 2005, 42 U.S.C. §§ 15921-15928, which aimed to streamline the oil and gas permitting process on federal lands. Accordingly, Congress has made clear numerous times that BLM must take its multiple use mandate seriously and, when appropriate under the governing land use plan, prioritize energy development on public lands.

The FLPMA RMP is a comprehensive statement of land management priorities that provides a "rational, consistently applied set of regulations and procedures." 43 C.F.R. § 1601.0-2. The RMP determines whether an area is open for oil and gas leasing and establishes the baseline protections necessary for resource conservation. Under section 202 of FLPMA, 43 U.S.C. § 1711, management decisions regarding lease parcel offerings *must* be guided by the governing RMP.

We recognize that the Secretary retains considerable discretion in determining which lands to offer for competitive lease. However, as set forth in FLPMA, the RMP *must* govern these leasing decisions, 43 U.S.C. § 1711, and BLM is not free to defer lands from leasing on an *ad hoc* basis. Under FLPMA, management decisions regarding land use planning—including a determination as to what lands are open to oil and gas leasing—is a public process that must be

undertaken with appropriate public notice and comment. This, at the very least, requires a notice of intent to amend the governing land use plan, a period for public comment, and the requisite NEPA analysis and documentation.

BLM IM 2004-110 makes clear that "all Field Offices are expected to follow their respective approved land use plans in offering for sale parcels with expressions of interest," and "fluid mineral leasing allocation decisions are made at the planning stage." The Utah State Office's continued deferral of certain parcels in the Uinta Basin that are "open" to leasing under the VFO RMP amounts to *de facto* land use planning, in violation of FLPMA's public process requirements.

Here, the 2008 VFO RMP is the document that must, in the first instance, govern BLM decisions as to whether certain parcels should be offered for lease. Parcels WSMT 1-9, 17-19, and 21-31 are all designated as "open" for oil and gas leasing by the 2008 RMP and, consistent with national policy and statutory requirements, should therefore be offered at the upcoming November 2015 lease sale. We ask that in making lease parcel determinations for the November 2015 sale, BLM rely on the 2008 VFO RMP and include all of these parcels in the NCLS for the November sale.

2. *Parcels WSMT 1, WSMT 2 and WSMT 3*

Parcels WSMT 1-3 are all priority number one parcels for our clients and have been nominated for lease by numerous parties on more than one occasion in the last five years. However, for a reason not identified by BLM,² none of these parcels have been offered for lease in the recent past.

All of these parcels are "open" for leasing in the 2008 VFO RMP and do not present any special management or leasing concerns. None of these parcels contain critical habitat for any species listed under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1599. Nor do they contain ACECs, WSRs, Wilderness Characteristics, WSAs or SMAs. Similarly, these lands are not contained in the proposed Vernal Master Leasing Plan area (discussed below) and are not currently being utilized for any use that would preclude oil and gas leasing. Instead, all of these parcels are merely identified as "open" for leasing under the RMP, either with standard stipulations or, as to the northern portions of WSMT 1 and WSMT 2, controlled surface use and timing limitations.

We further note that each of these parcels is in very close proximity to producing oil and gas wells. According to the publicly available information on the Utah Division of Oil, Gas and Mining website, twenty-four (24) producing wells are located within three miles of the proposed

² IM 2004-110 requires that when a State Director, with the input of the affected Field Manager, decides not to implement the oil and gas leasing decisions contained in the current RMP, the State Director must provide a letter to those who submitted the expression of interest for the tract "stating the reason for not offering the parcel, the factors considered in reaching that decision, and an approximate date when analysis of new information bearing on the leasing decision is anticipated to be complete."

parcels. Additionally, also within three miles of the proposed parcels, forty-nine (49) wells have approved or pending state APDs.³

Given that there is no apparent conflict preventing the offering of parcels WSMT 1-3—and their close proximity to significant oil and gas development—it is unclear why BLM has continually declined to offer these lands for lease. We ask that BLM please include these lands in the NCLS for the November 2015 sale.

3. *Parcels WSMT 17-19 and 21-31*

As with parcels WSMT 1-3, there are no significant barriers to leasing parcels WSMT 17-19 and 21 (priority number 2) and parcels WSMT 22-31 (priority number 3). Each of these parcels is “open” for leasing under the 2008 VFO RMP and do not present any significant resource conflicts. None of these parcels contain ACECs, WSRs, Wilderness Characteristics, WSAs or SMAs, and each is outside of the Vernal Master Leasing Plan area (discussed below).

Each of these parcels is also in close proximity to producing and planned oil and gas wells, enabling minimal surface disturbance when developing the new leasehold. For example, parcels WSMT 17-19 are located very close to, and in some cases within, the established Horseshoe Bend and Brennan Bottom fields. Similarly, parcel WSMT 22 is located in the Devil’s Playground field, adjacent to the Big Valley field. Proximity to producing fields and related infrastructure is an important factor, as use of existing infrastructure could be considered if development were to occur on adjacent acreage.

We note that portions of parcels WSMT 8-9 and 17-18 are located in habitat for the Horseshoe milkvetch, *Astragalus equisolensis*. While the milkvetch is not listed as threatened or endangered under the ESA, it is a State of Utah sensitive species. A Conservation Plan has been prepared for the milkvetch, *see* 2008 VFO RMP SSS-2, and conservation measures developed for sensitive species will be implemented as part of committed mitigation measures on new oil and gas leases, 2008 VFO RMP SSS-10. Thus, all leases to parcels WSMT 8-9 and 17-18 will include appropriate mitigation measures and best management practices aimed at preventing disruption to milkvetch populations and habitat. Therefore, the existence of milkvetch habitat in portions of these parcels should not prevent the offering of these parcels for lease.

Similarly, small portions of parcels WSMT 12, 15, 16, and 20 contain suitable habitat for the Uinta Basin hookless cactus, *sclerocactus glaucus*. The hookless cactus is listed as threatened under the ESA; however, the Fish and Wildlife Services have yet to designate critical habitat for the species. Nonetheless, the 2008 VFO RMP requires that Lease Notices L.1.6 and L.2.4 be included in leases for all parcels containing both suitable and potential habitat for the hookless cactus. Lease Notice L.1.6 and L.2.4 set forth a number of avoidance and minimization measures with which the lessee must comply in order to ensure that oil and gas development activities are in compliance with the ESA and do not cause harm to the species. Compliance with these lease notices, the very strict dictates of the ESA itself, and any site-specific mitigation

³ See http://oilgas.ogm.utah.gov/Data_Center/LiveData_Search/well_data_lookup.cfm.

measures imposed at the plan of development or APD stage can adequately protect any hookless cactus habitat in the vicinity of parcels WSMT 12, 15, 16 and 20. Thus, the mere existence of *suitable* hookless cactus habitat in these parcels should not serve as justification to defer leasing.

4. *Parcels within the Vernal Master Leasing Plan Area*

Parcels WSMT 4-9 are located in the Vernal Master Leasing Plan ("MLP") area. These parcels have been included in prior expressions of interest, notably in December 2013, but, citing the ongoing development of the Vernal MLP, BLM has declined to offer to lease these parcels.

The concept of an MLP was first introduced by BLM Instructional Memorandum ("IM") No. 2010-117. As explained in IM 2010-117, certain areas of public lands located in "sensitive landscapes," or areas containing a "high level of potential resource concerns" may be designated as MLP areas. Once an MLP area is delineated, in order to implement the MLP, the governing RMP must be amended. Consistent with FLPMA, this requires a public notice and comment period as well as NEPA analysis.

While BLM may amend its land use plan to include one or more MLP areas, BLM is *not free* to continue to defer lease parcels within proposed MLP areas in *ad infinitum* while it develops the required RMP amendment. According to IM 2004-110, it is BLM "policy that State Directors follow current land use allocations and existing land use plan decisions for Fluid Minerals and related energy actions when preparing land use plan amendments or revisions." Further, "nothing in the [Council on Environmental Quality] NEPA regulations requires postponing or denying a proposed action that is covered by the [EIS] for the existing land use plan to preserve alternatives during the course of preparing" a new land use plan or plan amendment. *Id.*

Here, the Vernal MLP was first proposed in 2010 and, to date, very little progress has been made toward its completion. In November 2010, BLM issued its MLP Assessment for a total of 650,157 acres managed by the VFO. The 2010 MLP Assessment stated that completion of the Vernal MLP would be "prioritized" by the BLM State Director. However, in the four and one half years since the first proposal, very few steps have been taken to further completion of the Vernal MLP.

Instead of either (1) offering leases in the MLP area or (2) finalizing the MLP, amending the RMP, and offering leases consistent with the MLP/revised RMP, BLM has instead elected to defer all parcels within the MLP area. As discussed above, continuing deferral of lease parcels designated as open for oil and gas leasing by the governing Vernal RMP is contrary to the requirements of federal law and amounts to *de facto* land use planning without adequate public participation and process. Therefore, consistent with the governing 2008 VFO RMP, Parcels WSMT 4-9 should be offered for lease in November 2015.

5. *Parcels within the Ouray National Wildlife Refuge*

Parcels WSMT 10-16 and 20 are located within the interior borders of the Ouray National Wildlife Refuge ("Refuge") and, as such, are not addressed by the VFO RMP. The minerals underlying the Refuge (and, in fact, some of the surface) is made up of a patchwork of ownership, with some minerals belonging to the public domain under BLM management, others belonging to the Uintah and Ouray Reservation, and still others in private ownership.

Further complicating matters is the fact that the Refuge was established by two separate Public Land Orders. First, via Public Land Order 2730 ("PLO 2730"), 27 Fed. Reg. 6938 (July 17, 1962), 3,937.8 acres of land were withdrawn for the creation of the Refuge. This withdrawal specifically stated that, while subject to valid existing rights, the lands included in the withdrawal are closed to all forms of appropriation. Thereafter, via Public Land Order 3999 ("PLO 3999"), 31 Fed. Reg. 6907 (May 3, 1966), an additional 2,158.96 acres were withdrawn and added to the Refuge. However, in contrast to PLO 2730, PLO 3999 specifically states that the additionally withdrawn lands "are withdrawn from all forms of appropriation under the public laws, including the mining laws, but not from leasing under the mineral leasing laws." (Emphasis added.) Thus, as to those portions of the Refuge set aside under PLO 3999, these lands may be leased under the Mineral Leasing Act.

Current departmental policy allows for development of federal minerals underlying National Wildlife Refuge System lands in certain circumstances, including situations where wells on neighboring lands are draining and capturing federally owned oil and gas without compensating the federal government. 43 CFR § 3101.1.5-1.

According to the Utah Division of Oil, Gas and Mining online records, there are presently eighteen (18) producing oil and gas wells within the Refuge and forty-two (42) APDs have been approved by the State of Utah, but the wells have not yet been spudded. Additionally, there are numerous other producing wells located on federal, tribal and fee lands directly outside of the Refuge's borders. Therefore, the circumstances described in 43 CFR § 3101.1.5-1 are met in this instance and we heartily urge BLM to lease the federal minerals underlying the Refuge that are available for leasing under PLO 3999.

We are mindful of the fact that the Refuge was established for the purpose of providing a safe haven for migratory birds and additional wildlife species. We also understand that part-and-parcel of providing this safe haven is maintaining a healthy and vibrant habitat within the Refuge. This healthy habitat can coexist with oil and gas development, as demonstrated by the large number of producing wells in close proximity to the Refuge, and can be adequately addressed through specific lease stipulations and site specific mitigation measures at the APD stage. Thus, we ask that you seriously consider leasing certain lands within the Refuge, including parcels WSMT 10-16 and 20.

6. Greater Sage Grouse Habitat

We also wish to point out that *none* of the parcels identified herein are located in either Greater sage grouse management areas or Gunnison sage grouse critical habitat. We know that the issue of sage grouse habitat—and potential future listings of the bird—have been points of consternation for the BLM in making leasing decisions. Thus, for this very reason, we have elected to put forward parcels where potential resource conflict with Greater sage grouse and Gunnison sage grouse is at a minimum. As such, we are very hopeful that BLM will not use the existence of sage grouse habitat as a justification for declining to lease the parcels identified herein.

Further, we also note that, as to the Greater sage grouse, all parcels offered at the November 2015 sale will be offered with the VFO RMP-required Greater sage grouse stipulations providing for no surface-disturbing activities within .25 miles of a lek year round (VFO RMP SSS-25), no surface disturbing activities within two miles of the lek from March 1 through June 15 (VFO RMP SSS-26) and no placement of permanent facilities or structures within two miles of leks whenever possible (VFO RMP SSS-26). In addition, lease stipulations would provide that the best available technology must be used to reduce noise year round within .5 miles of leks (VFO RMP SSS-27).

Thus, the mere fact that any parcels may contain Greater sage grouse habitat should not serve as justification not to lease those parcels. Any possible adverse consequences to Gunnison sage grouse habitat would be ameliorated through application of the standard VFO stipulations, special, parcel-specific stipulations or through site-specific mitigation measures applied at the APD stage.

Conclusion

Thank you for your consideration of the thirty-one parcels identified herein for inclusion in November 2015 lease sale. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

/s Nora Pincus

Nora R. Pincus, Esq.

Cc: Juan Palma, Mike Stiewig, Bill Stringer