United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Colorado River Valley Field Office
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April 9, 3013

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Ursa Piceance LLC
Attn: Don Simpson, CPL
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Denver, CO 80265

DECISION

Re: Suspension of Operations and Production for Federal Oil and Gas Leases COC66706, COC66707, COC66708, COC66709, COC66710, COC 66711, and COC66712, Garfield, Pitkin, and Mesa Counties, Colorado

Dear Sirs:

This letter responds to the letter dated February 19, 2013 in which Antero Resources Piceance Corporation and Ursa Piceance LLC (Ursa) request a suspension of operations and production for the above-referenced leases (Leases). The Leases underlie national forest systems lands managed by the U.S. Forest Service, White River National Forest. The Bureau of Land Management's (BLM) Colorado River Valley Field Office is responsible for managing the subject federal mineral estate. The Leases were issued with effective dates of June 1, 2003 or September 1, 2003, with ten-year primary terms.

In the request, Ursa identified the need for suspension of the Leases in the interest of conservation by providing additional time for 1) pending settlement discussions between Ursa and an organization that wishes to purchase the Leases or otherwise limit further development on the Leases, 2) BLM's plan to conduct an additional analysis of the Leases under the National Environmental Policy Act (NEPA) if Ursa notifies the BLM that negotiations are not successful, and 3) the possible need for additional NEPA analysis on applications for permits to drill (APDs).

Section 39 of the Mineral Leasing Act (MLA), as amended, authorizes the Secretary of the Interior "for the purpose of encouraging the greatest ultimate recovery" of minerals, to suspend operations and production under a mineral lease "in the interest of conservation," and to thereby extend the term of the lease for the length of the suspension period. 30 U.S.C. § 209. Section 39 provides that the Secretary may "direct" or "assent to" a suspension of operations and production. *Id.* BLM implementing regulations at 43 C.F.R. 3103.4-4(a) likewise provide: "A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources." *See also* BLM Manual 3160-10.06 (providing that "when deemed necessary by the

appropriate authority, [a suspension] will be given only in the interest of conservation of natural resources").

The decision whether to grant a request for suspension under section 39 of the MLA is discretionary. The BLM "is not required to grant a suspension request whenever an application is made, but rather is vested with discretion to deny such a request under appropriate circumstances." *Carbon Tech Fuels, Inc.*, 161 IBLA 147, 161 (2004) (coal lease) (quoting *Getty Oil Co. v. Clark*, 614 F. Supp. 904, 915 (D. Wyo. 1985)); *see also Hoyl v. Babbit*, 129 F.3d 1377, 1384 (10th Cir. 1997) (recognizing the Secretary's discretion whether to grant or deny a suspension in the interest of conservation for an undue delay associated with NEPA preparation and rejecting arguments that preparation of an environmental impact statement mandated suspension coal lease).

Section 39 of the MLA was intended "to provide extraordinary relief when lessees are denied beneficial use of their leases." BLM Manual 3160-10, App. 2 at 7-8 (Solicitor's Opinion, May 31, 1985). *See also* Solicitor's Opinion, June 4, 1937, 56 I.D. 174, 195 (stating that Section 39 "is clearly a relief section and, as such, it is to be liberally construed.") The Interior Board of Land Appeals (IBLA) has construed Section 39 as providing for suspension either:

> (1) where some act, omission, or delay by a Federal agency, beneficial use of the lease has been precluded, such as where delays imposed upon the lessee due to administrative actions addressing environmental concerns have the effect of denying the lessee "timely access" to the property; or (2) in the interest of conservation, that is to prevent damage to the environment or loss of mineral resources.

Savoy Energy, L.P., 178 IBLA 313, 322 (2010).

For suspensions of operations and production, the BLM Manual provides examples of circumstances that normally warrant suspension, including the following: 1) situations in which the BLM or other surface management agency (SMA) initiates environmental studies that prohibit beneficial use of the lease(s), or 2) situations in which the "BLM or other SMA needs more time to arrive at the decision on the proposal." BLM Manual 3160-10.06.2.21.B.1. "[T]he Department ought in all cases, where the preparation of an environmental impact statement or other environmental studies is required, to suspend operations and thus assure the lessee that he will receive an extension comparable to the period during which operations are prohibited and thus not be deprived of any of the development period which the Congress has granted him." 3160-10, App. 1 at 3 (Assistant Solicitor's Opinion, July 14, 1975); *see also Harvey E. Yates, Co.*, 156 IBLA 100, 106 (2001) (An "abnormal BLM delay in processing an APD because of the time necessary to comply with environmental laws may warrant suspension of production and operations on an oil and gas lease in the interest of conservation"). "Each case [for suspension] must be considered on its own merit." BLM Manual 3160-10.06.2.21.B.

As noted by Ursa, the BLM has identified the need to address a NEPA deficiency associated with the decisions to issue the Leases. In particular, now that Ursa has proposed a unit and development activities for the Leases, and in consideration of comments from interested parties that have asserted the Leases were issued in violation of NEPA and other statutes, the BLM has identified the need to remedy a defect at lease issuance (*see Board of Commissioners of Pitkin County*, 173 IBLA 173 (2007)), and has decided it will 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 for site-specific development proposals. The BLM requires additional time to complete this effort. Review of the unit application and APD is delayed pending completion of that analysis and resolution of leasing decision issues. No leasehold activities will be authorized until a NEPA analysis addressing the leasing decisions is completed.

In comment to BLM, interested parties have argued that the BLM is prohibited from suspending the leases due to the alleged legal violations associated with the decisions to issue the Leases. Although BLM has identified a NEPA inadequacy at lease issuance, that defect makes the Leases voidable at the discretion of the BLM based on supporting remedial analysis. *See Conner v. Burford*, 848 F.2d 1441, 1451, 1454 (9th Cir. 1988) (indicating that leases issued without NEPA and ESA compliance were voidable by contemplating that BLM would later those procedural requirements and decide whether the leases should have been issued); *Clayton W. Williams, Jr.*, 103 IBLA 192, 210-11 (1988) (characterizing as "voidable" any lease issued in violation of a procedural requirement, such as NEPA, which does not compel any particular decision). *See also Pennaco Energy v. U.S. Dept. of the Interior*, 377 F.3d 1147, 1155-56 (10th Cir. 2004) (noting that the BLM would correct a deficient pre-leasing NEPA analysis without cancellation of the leases at issue).

We find no prohibition, neither under the MLA, its implementing regulations, BLM guidance, nor interpretive case law, in suspending an onshore oil and gas lease that, through no fault of a lessee or bona fide purchaser, was sold and issued without adherence to the agency's procedural obligations. In fact, suspension is generally the initial and preferred first step in remedying a procedural fault in issuing a federal oil and gas lease and assuring the prevention of environmental harm. Repeatedly, federal courts have implicitly endorsed suspension in like cases. *See, e.g.*, *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988) (finding that injunction rather than lease cancellation is appropriate remedy for procedural violations at lease issuance); *Northern Cheyenne Tribe v. Hodel*, 851 F.2d 1152, 1154-55 (9th Cir. 1988) (concluding that district court properly amended an injunction to provide for the suspension, but not cancellation, of coal leases issued in violation of NEPA and other legal requirements); *Mont. Wilderness Ass'n v. Fry*, 408 F. Supp. 2d 1032, 1038 (D. Mont. 2006) (concluding that despite an inadequate pre-leasing environmental analysis, a balance of the equities warranted suspending development of leases pending completion of remedial NEPA analysis). The BLM has the authority to direct suspensions to remedy procedural defects at lease issuance, even if no operational proposals are before the agency, and finds no prohibition to assenting to suspension in response to a request for suspension in like circumstances.

Lease suspension under these circumstances is consistent with the more general principle that suspensions are typically warranted when agency-created delays in completing necessary environmental analysis prohibit beneficial use. *Savoy Energy*, 178 IBLA at 322-23; BLM Manual 3160-10.06.2.21.B. In this instance, additional environmental analysis addressing the leasing decision will help assure that all potential environmental impacts associated with issuance of the leases are fully analyzed pursuant to NEPA procedures. Additional environmental analysis will assist BLM in identifying whether the leases should be voided, reaffirmed or subject to additional mitigation measures for site-specific development proposals. Therefore, suspension of the leases to perform additional environmental analysis on the leasing decision is in the interest of conservation and is warranted due to the abnormal delays in acting on the unit application and in processing and issuing decisions on any APDs caused by the BLM's need for that additional analysis. *Cf.*, *NevDak Oil and Exploration, Inc.*, 104 IBLA 133, 138 (1988) (indicating that suspension would be in the interest of conservation for purposes of Section 39 if it would "permit BLM to determine how to best protect other resources").

Interested parties have also argued that Ursa has not shown diligent efforts to develop the Leases and that the BLM cannot approve a suspension of operations and production unless a complete APD has been filed and approved on a lease. Commenters note that the BLM Manual provides a policy that suspensions will only be given in the interest of conservation of natural resources or in a *force majeure* case, "and when the lessee has diligently pursued lease development and has timely filed an application for suspension." 316-10.06. The BLM Manual also states that "[t]he suspension application must be preceded by a request from the operator to conduct leasehold activities." 3160-10.06.2.31.A. The applicant requesting

suspension must document its reasons in support of its request, and "should include evidence that activity has been attempted 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." 3160-10.06.2.31.A. 3. The manual lists as an example of circumstances when suspension is not normally granted as the case where APDs are "submitted incomplete or untimely (less than 30 days before lease expiration)." 3160-10.06.2.21.C.

While the guidance set forth in the BLM Manual indicates that lessees must support an application for suspension by showing diligent efforts at development, the BLM finds no absolute requirement for APDs to precede requests for suspension. No such requirement exists in the MLA and implementing regulation, which provides for suspension in the interest of conservation of natural resources (e.g., the prevention of environmental damage and conservation of the mineral resource). Nor is there an express prohibition in the BLM Manual 3160-10.

In fact, the IBLA has endorsed the practice of granting lease suspensions without the filing of APDs in appropriate circumstances. The IBLA's opinion in *River Gas Corporation*, 149 IBLA 239 (1999), involved a request for suspension of operations and production under Section 39 of the MLA on 66 oil and gas leases, with 17 leases being within an approved unit, and 49 outside the unit. An APD had been filed on only one of the 49 leases outside the unit area. Prior to the request for suspension, the BLM district office had communicated that no development on federal lands would be authorized prior to the preparation of an EIS for the area, including lands outside the unit. *Id.* at 241. Although the district office denied the request for suspension on the 48 leases without an APD, that decision was overturned at state director review. *See id.* at 242-43. The Deputy State Director reversed the district office's decision that would have required the filing of individual APD's for each lease, because "the District [Office] has made it very clear to RGC that no oil and gas activities will be allowed within the EIS area until completion of the EIS"… and "[f]iling individual APDs to establish a record would be unwarranted since the actions applied for would not be approved." *See id.* at 243. On appeal, the IBLA noted that the Deputy State Director "properly granted an SOP [suspension of operations and production] for the leases outside the Unit, because no operations or production can proceed until the EIS is completed." *Id.* at 245. Therefore, as set forth in *River Gas Corporation*, the Department has previously interpreted Section 39 to allow the BLM, in appropriate circumstances, to grant suspensions of operations and production in the interest of conservation even where no APD has been filed on a lease.

Under the unique circumstances of this situation, the full record shows that the Ursa has made adequate efforts at development sufficient to warrant a suspension while the BLM completes corrective NEPA work to determine whether the Leases should be voided, reaffirmed or subject to additional mitigation measures. The Leases were proposed for unitization in August 2012. After initial review, the BLM had found no geologic basis for denying the unit application. Nevertheless, a decision on the unit application was delayed by pending consideration and internal deliberation of the issues raised in comment from interest parties on that request. A decision on the unit application is now further delayed pending completion of corrective NEPA analysis addressing the decision to issue the leases.

Unitization, as a general matter, is the joint, coordinated operation of a petroleum reservoir by the owners of the tracts overlying the reservoir, without regard to lease boundaries. *See, e.g., Gas Development Corporation*, 177 IBLA 201, 208 (2009). The objective of unitization is to provide for orderly and efficient development and operation of a reservoir, and to prevent of waste of mineral resources. *See id.* Coordinated operation of a reservoir is accomplished through the allocation of production amongst unitized leases. After completion of an initial obligation well(s) capable of producing unitized substances in paying quantities, subsequent development of a unit proceeds in accordance with the schedule provided in a unit plan of operations. *See* 43 C.F.R. § 3186.1. Thus, in the normal course of events, after approval of a unit application an operator is required to only submit APD(s) for initial obligation well(s), the drilling of which, in general, must be commenced within six months after unit approval. *See id.* Then, if

obligation well(s) are drilled and production in paying quantities established, a unit operator will submit additional APDs at intervals as scheduled in unit plans of operations. *See id.* Typically, the logical and orderly development provided under a unit plan also has the benefit of lessening the overall environmental impacts of operations in the unit area by reducing the need for simultaneous surface disturbing activities and associated infrastructure (as authorized under APDs) on each leasehold.

The lack of an approved unit agreement will not, own its own, operate to bar a lessee from fulfilling lease responsibilities, and therefore by itself is ordinarily an insufficient reason for a suspension. *See* 43 CFR 3104.1(f); *Lario Oil & Gas Co.,* 92 IBLA 46, 51 (1986); *Jack J. Grynberg*, 88 IBLA 330, 335 (1985). In this case, Ursa's submission of the proposed unit agreement is not, on its own, a sufficient demonstration of diligent efforts to develop the Leases. As of this date, however, Ursa has submitted a complete APD for the unit obligation well, the decision on which will be delayed until completion of additional environmental analysis associated with the leasing decisions. Due to the unusual delay in acting on the unit application, the BLM's identification and communication of the need for additional NEPA analysis addressing the leasing decisions, and Ursa's attempt to address environmental issues with interested parties, the BLM finds that Ursa's submission of the unit request and proposed obligation well APD sufficient to demonstrate adequate diligence in developing the Leases. BLM has not acted on, and has communicated to Ursa that it will not act on the unit application (or any APDs) until additional NEPA analysis is completed to address the leasing decisions and determine whether the Leases should be voided, reaffirmed or subject to additional mitigation measures. The outcome of that analysis and of Ursa's negotiations with third parties may affect the decision on the unit application and the APD. Given the unusual circumstances presented here, the submission of additional APDs would be inefficient and would not significantly further the interests of conservation of natural resources. *See River Gas Corporation*, 149 IBLA at 243 (endorsing BLM's conclusion that where BLM had clearly communicated that no oil and gas activities would be allowed in an area until completion of an EIS, the filing of individual APDs "to establish a record would be unwarranted since the actions applied for would not be approved.") Accordingly, the BLM concludes that it would be unreasonable and inefficient for Ursa to submit APDs for all the Leases solely for the purpose building a record in support of a suspension request.

The BLM Manual directs the BLM to consider each case for suspension on its own merit.[1] 3160-10.06.2.21.B. The BLM finds that in consideration of the totality of the circumstances of this unique case (submission of the proposed unit agreement, the BLM's unusual delay in acting on the unit application, the BLM's identification and communication of the need for additional NEPA analysis addressing the leasing decisions, Ursa's efforts to negotiate with interested parties on environmental issues with the Leases, and the submission of a complete APD), Ursa has demonstrated adequate diligence and intent to develop all the Leases sufficient to warrant a suspension so that the BLM may complete environmental analysis to assist in determining whether the Leases should be voided, reaffirmed, or subject to additional mitigation measures prior to development.

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[1] For example, certain commenters note that in December 2012 the BLM, Colorado River Valley Field Office denied a request for suspension of operations and production for an oil and gas lease from WillSource Enterprise LLC (WillSource). In that request, WillSource provided as grounds for suspension that it suffered unavoidable delays due to U.S. Forest Service road requirements and a lack of a product market and pipeline concerns. The BLM denied the request because 1) as a factual matter the road requirements did not deny access to the only well on the lease, and 2) market access is not considered sufficient justification for a suspension in the interest of conservation. Hence, in that decision the BLM noted that neither the BLM nor the Forest Service had denied WillSource beneficial use of the lease, as claimed, and found that there was no justification to grant a suspension of operations and production. Here, Ursa has supplied very different reasons for suspension based on the unique circumstances of the Leases. As directed by the BLM Manual, the BLM has reached its decision on Ursa's request by considering the specific facts of this case.

An important factor supporting suspension in this case is the fact that Ursa is engaged in negotiations with local government and interested parties to address environmental concerns with the leases, including the potential purchase and retirement of the leases for conservation purposes. The outcome of these discussions would affect the leasing decision and site-specific NEPA analysis to be conducted for the Leases. A lessee's negotiation with third parties may not, by itself, provide sufficient reasons for granting suspension. *Cf., TNT Oil Co.*, 134 IBLA 201, 203 (1995) (affirming BLM's rejection of lessee's rationale for suspension due to ongoing negotiations as without foundation in fact). In this case, however, Ursa's attempts to negotiate with interested parties over environmental issues with the leases is one factor among several supporting a finding that is suspension is in the interest of conservation. The BLM finds that suspending leases to allow for additional time to allow for negotiations to address environmental concerns, and which would affect the scope of NEPA analysis, is in the interest of conservation of natural resources.

For the foregoing reasons, and in consideration of applicable laws, regulations, and guidance; and the totality of the circumstances, the BLM finds that the requested suspensions are in the interest of conservation of natural resources. Accordingly, the BLM hereby approves Ursa's suspensions pursuant to Section 39 of the MLA, 30 USC 209; 43 C.F.R. 3103.4 and 3165.1; and BLM Manual 3160-10. In making this decision, the BLM has also considered comment from interested parties, although all such comment may not be expressly addressed herein.

These suspensions are effective February 1, 2013, the first day of the month in which the request was received. These suspensions of operations and production for the above-referenced leases will be in effect until April 1, 2014, unless terminated earlier if the authorized officer determines that the suspensions would no longer be in the interest of conservation. In no case will an individual suspension remain in effect after the BLM has approved an APD and access to the leasehold is allowed. The suspensions may be jointly or individually terminated.

The BLM has determined that this approval of suspension of operations and production falls within the categorical exclusion from NEPA review provided in 516 DM 11.9 and the BLM NEPA Handbook H-1790-1, and that there are no extraordinary circumstances (43 C.F.R. 46.215 and 516 DM 2) that preclude use of the categorical exclusion. Documentation of the categorical exclusion and these determinations for this action is available on the BLM Colorado River Valley Field Office NEPA register available online at http://www.blm.gov/co/st/en/BLM_Information/nepa/gsfo.html under NEPA log number DOI-BLM-CO-N040-2013-00059-CX.

Rental payments will be suspended during the period of suspension of operations and production. Ursa may engage in casual use activities during the period of suspension. BLM will not authorize any ground-disturbing activities during the period of suspension. Any operations such as road construction, site preparation, or drilling taking place on a suspended lease will automatically terminate the lease suspension.

In accordance with 43 C.F.R. 3165.3, any adversely affected party contesting this decision may request an administrative review of this decision, before the State Director, either with or without oral presentation. This request, including all supporting documentation, shall be submitted in writing within 20 business days of the date this decision was received, or considered to have been received, by Ursa and shall be sent to: Colorado State Director, 2850 Youngfield Street, Lakewood, Colorado 80215-7076. The decision of the State Director may then be appealed to the Interior Board of Land Appeals in accordance with 43 C.F.R. 3165.4.

Please contact Steve Ficklin, Program Manager, at (970) 876-9006 with any questions.

Sincerely,

for Steve G. Bennett
Field Office Manager

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