United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
3165 (CO-922)
SDR CO-13-07, CO-14-14

AUG 14 2014

CERTIFIED MAIL – Return Receipt Requested

DECISION

Mr. Robert A. Ittner, Jr., Chair
Pitkin County Commissioners
530 E. Main Street
Aspen, CO 81611

Mr. Leo McKinney, Mayor
City of Glenwood Springs
101 West 8th Street
Glenwood Springs, CO 81601

Ms. Stacey Patch Bernot, Mayor
Town of Carbondale
511 Colorado Ave.
Carbondale, CO 81623

Upheld

By letter dated May 6, 2013, which was received in the Colorado State Office (CSO), Bureau of Land Management (BLM), on May 7, 2013, the Board of County Commissioners of Pitkin County, Mayor, City of Glenwood Springs, and the Mayor, Town of Carbondale (Pitkin County, et alia) request a State Director Review (SDR) of an April 9, 2013, decision of the BLM Colorado River Valley Field Office (CRVFO), approving a Suspension of Operations (SOP) for SG Interests I, Ltd. (SG) on eighteen (18) federal oil and gas leases in the Thompson Divide area of the White River National Forest. By letters dated February 12, 2013, and March 25, 2013, SG requested the SOP for the 18 federal oil and gas leases. The CRVFO approved the SOP in a decision letter that provided the SOP would be in effect until April 1, 2014, unless terminated earlier by the authorized officer (AO).

Pitkin County, et alia's request for an SDR, designated SDR CO-13-07, was considered filed in a timely manner, in accordance with 43 Code of Federal Regulations (CFR), Section 3165.3(b).

The BLM CSO sent Pitkin County, et alia a letter dated May 15, 2013, explaining the response time for the SDR would be extended to ensure an adequate evaluation of the case.

On January 14, 2014, SG submitted a renewed request for an SOP for the 18 leases. The CRVFO approved the SOP by letter dated March 31, 2014. The CRVFO decision letter provided the SOP would be in effect until April 1, 2016, or earlier, as determined by the AO.

By letter dated April 28, 2014, Pitkin County, et alia timely filed a request for SDR, designated SDR CO-14-14, of the March 31, 2014, decision of the BLM CRVFO approving the renewed request for SOP. In a letter dated May 30, 2014, the CSO explained again the response time for the SDR would be extended to address the issues raised in the request.

The CSO's decisions on Pitkin County, et alia's requests for SDR have been delayed, in part, because of the need to provide adequate time to review the unusually large amount of material submitted by interested parties in this matter, and to evaluate the complex factual and legal issues raised in the requests.

The BLM's SDR process is founded in the relatively simple "technical and procedural review" that the U.S. Geological Survey (GS) provided to oil and gas lessees or operators:

> If a lessee or operator exercises this review option, a decision will be given by the appropriate GS official within 10 working days... It will provide the lessee a method of obtaining review and a prompt decision from any decisions or requirements he considered incorrect pertaining to technical and procedural requirements. Legal issues will not be addressed by this review.

46 Fed. Reg. 56565 (Nov. 17, 1981).

When the BLM assumed oversight of oil and gas operations in 1983, Departmental regulations were re-designated and provided that the "appropriate BLM State Director" would conduct technical and procedural review. *See* 48 Fed. Reg. 36582 (Aug. 12, 1983). BLM regulations adopted in 1984 retained the technical and procedural review terminology. *See* 49 Fed. Reg. 37356 (Sept. 21, 1984). In 1987 the regulation was revised and the "technical and procedural Review" language was replaced with "administrative review," before the State Director. 52 Fed. Reg. 5384, 5395 (Feb. 20, 1987); *see also Southern Utah Wilderness Alliance*, 122 IBLA 283, 285 (1992).

Atypical of an ordinary SOP request, the CRVFO and CSO received extensive comments from interested parties on SG's request, including many that raised a variety of legal objections. The CRVFO's decision approving the SOP therefore addressed many of these legal issues. Consistent with earlier comments, Pitkin County, et alia's May 6, 2013, request for SDR advanced complex legal objections to the CRVFO's decision. Due, in part, to that complexity and the volume of supporting material submitted by interested parties, it has taken the CSO some time to provide an adequate evaluation of the SDR requests and issue its decision, much longer

than the 10 business days provided for the relatively simple technical and procedural review originally envisioned in the BLM's regulations.

The subject of the SDR CO-14-14, SG's renewed request for SOP and the CRVFO's March 31, 2014, decision approving it, set forth and rely on essentially the same rationales as the April 9, 2013, CRVFO decision and SG's SOP request that preceded it. Therefore, the issues and arguments in SDR CO-13-07 and SDR CO-14-14 will be addressed together in one SDR response.

The BLM's regulation at 43 CFR § 3165.3(b) allows for SDR of a BLM instruction, order, or decision issued under the 43 CFR Part 3160 regulations, by an "adversely affected party." This decision will not determine whether Pitkin County, et alia is adversely affected for purposes of the SDR regulation. The SDR response will instead address the merits of the issues raised in the requests for SDR.

Background

By letters dated February 12, 2013, and March 25, 2013, SG requested an SOP for 18 federal oil and gas leases[1] underlying National Forest System lands managed by the White River National Forest. The leases were sold and issued between June 1, 2003, and October 1, 2003. They were issued with the same National Environmental Policy Act (NEPA) defect identified by the Interior Board of Land Appeals (IBLA) in *Board of Commissioners of Pitkin County*, 173 IBLA 173 (2007) (*Pitkin County*). Before issuing the leases, the BLM did not prepare its own pre-leasing environmental analysis, but attempted to rely on Forest Service-prepared NEPA documentation to satisfy BLM's own, independent NEPA responsibilities. The BLM never adopted the Forest Service's pre-leasing NEPA documents, as allowed by regulation (40 CFR § 1506.3(c)). The leases were issued without the requisite NEPA review and therefore they are voidable at the discretion of the BLM based on supporting remedial analysis.

SG requested an SOP under Section 39 of the Mineral Leasing Act (MLA), 30 USC § 209. The request asserted that an SOP would be in the interest of conservation by providing additional time for: "1) BLM to conduct a leasing decision NEPA [National Environmental Policy Act] analysis on the Leases; 2) BLM to issue the amended Lake Ridge Unit approval and complete an APD [application for permit to drill] NEPA analysis on the Unit obligation well(s) and any APD outside the Unit or, if no Unit is formed, for BLM to complete NEPA on all of the Lease APDs; and 3) SG to explore negotiations with [local government and interested parties] in a good faith attempt to address their concerns." On May 7, 2013, Pitkin County, et alia submitted extensive comments on the request to the CRVFO and CSO.

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[1] Federal Oil and Gas Leases COC66687, COC66688, COC66689, COC66690, COC66691, COC 66692, COC66693, COC66694, COC66695, COC66696, COC66697, COC66698, COC66699, COC66700, COC66701, COC66702, COC66908, and COC66909, Garfield, Pitkin, Gunnison, and Mesa Counties, Colorado. All leases are within their primary terms.

The CRVFO ultimately approved an SOP for each of the 18 federal oil and gas leases by letter dated April 9, 2013. As noted in the approval letter, the SOPs were

> "effective February 1, 2013, for Leases COC66687 through COC66702 and March 1, 2013, for Leases COC66908 and COC66909, the first day of the months in which the requests were 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 AO 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 SOP also explained that the BLM will not authorize any ground-disturbing activities during the period of suspension, and that any operations such as road construction, site preparation, or drilling taking place on a suspended lease will automatically terminate the lease suspension.

In its May 6, 2013, SDR request, Pitkin County, et alia incorporated by reference extensive, earlier comments on SG's request for SOP. In March 13, 2013, comments, Pitkin County, et alia provided the following objections to the request for SOPs:

Section 39 of the MLA does not authorize the requested suspension because i) operator delay precludes suspension, ii) the request evinces a speculative purpose, iii) it is not in the interest of conservation to suspend leases issued in violation of law, and iv) the request identifies no recognized basis for suspension.

In addition, Pitkin County, et alia's May 6, 2013, SDR request raised the argument that the CRVFO's reliance on the IBLA's *River Gas* decision is unwarranted due to factual differences.

As a result of these objections, Pitkin County, et alia requested that the decision by the CRVFO to approve the SOPs be reversed and SG's request for suspension be denied.

Prior to the April 1, 2014, suspension termination date, SG submitted a renewed request for an SOP for the 18 leases. That request set forth essentially the same rationale for suspension as its 2013 request. For the same reasons as its April 9, 2013 decision, the CRVFO approved the renewed request for SOP by letter dated March 31, 2014. The CRVFO's letter provided that the SOP's would be in effect until April 1, 2016, or earlier, if the AO determines that the suspensions would no longer be in the interest of conservation or the environmental impact statement (EIS) referenced in the decision is complete and a Record of Decision has been signed regarding the status of the leases. The suspensions may be jointly or individually terminated at the discretion of the AO. The SOP of 2014 also explained that the BLM will not authorize any ground-disturbing activities during the period of suspension, and that any operations such as road construction, site preparation, or drilling taking place on a suspended lease will automatically terminate the lease suspension.

On April 28, 2014, Pitkin County, et alia timely filed a request for SDR (designated SDR CO-14-14), of the CRVFO's March 31, 2014, approval of the renewed request for SOP. Pitkin County, et alia's April 28, 2014, request, re-asserted essentially the same objections as its request of May 6, 2013:

1. The CRVFO's decision interprets the IBLA's *River Gas* decision too broadly and in conflict with prior decisions of BLM Colorado.
2. Section 39 of the Mineral Leasing Act does not authorize the requested suspension because i) operator delay precludes suspension, ii) the request evinces a speculative purpose, iii) it is not in the interest of conservation to suspend leases issued in violation of law, and iv) the request identifies no recognized basis for suspension.

Pitkin County et alia request that the BLM reverse the CRVFO's decision and reject both SG's original and renewed suspension requests.

Discussion

1. The CRVFO's Interpretation of the IBLA's River Gas Decision

Pitkin County, et alia assert that due to factual distinctions and the conflicting decisions of the BLM, Colorado, the CRVFO has inappropriately relied on the IBLA decision in *River Gas Corporation*, 149 IBLA 239 (1999).

In response to comment that the BLM cannot approve an SOP unless a complete application for permit to drill (APD) has been filed on a lease, the CRVFO found that in the *River Gas* decision the IBLA had "endorsed the practice of granting lease suspensions without the filing of APDs in appropriate circumstances." In that case the IBLA "note[d] in passing" that the BLM had "properly granted an SOP" on non-unitized federal leases for which no APDs had been filed. To the extent the CRVFO's decisions may have characterized that portion or the *River Gas* decision as anything beyond non-binding dictum, the CRVSO's decisions of April 9, 2013, and March 31, 2014, are hereby clarified to note that the portion of the decision discussed speaks for itself and does not bind or control the BLM's discretionary authority in this matter. There is no reversible error, however, in the CRVFO's discussion of the case in response to comments that BLM is prohibited from granting an SOP in the absence of an APD. Accordingly, the CRVFO appropriately discussed the case in response to comments that BLM is prohibited from granting an SOP in the absence of an APD.

Pitkin County, et alia also contend that *River Gas* is factually distinct because in that case there was no dispute that the company was diligently attempting to develop the leases at issue, no imminent lease expirations were involved, speculation was not an issue, and because the case involved a request for directed suspension. The company in *River Gas* was the lessee of record of 65 federal oil and gas leases, 17 of which were unitized. 149 IBLA at 239. Prior to the SOPs, the company had drilled 97 wells, none on federal leases, 79 of which were producing within and surrounding the unit. *Id.* When operations in the field passed from the exploratory to

development phase, the BLM determined that an EIS was necessary before development could proceed onto federal lands and notified the company that it would not approve any APDs. *Id.* The company then filed an application for an SOP for 66 leases, including 48 for which no APDs had been filed. *Id.* at 242-43. After initially denying the requests, the BLM ultimately granted SOPs for those the leases without APDs. *Id.* at 243. Before the IBLA, the company appealed the effective date of the SOPs. The IBLA characterized the SOPs as directed by the BLM, and held, in part, that the company was still required to submit applications for suspension. *Id.* at 249.

Based on the unique circumstances of this case, the CRVFO found an adequate demonstration on SG's part to develop the leases even though APDs had not been filed on all the leases. The CRVFO also found that the need for a NEPA analysis on the leasing decision would delay review of the unit application and APDs and that no leasehold activities will be authorized until that analysis is completed. In light of those similarities between this matter and *River Gas*, and because it did not appear to treat the decision as binding, there is no error with the CRVFO's discussion of the case in relation to the circumstances of SG's request and in response to comment.

Pitkin County, et alia also assert that reliance on *River Gas* is misplaced because the BLM, Colorado has distinguished the *River Gas* decision in denying other SOP requests. In a November 30, 2011, letter, the Little Snake Field Office (LSFO) denied an SOP to EOG Resources, Inc. (EOG), where a unit was formed but no wells were permitted, drilled, or producing. The decisions of field offices do not typically bind one another, and of course, the decisions of subordinate officers are not binding on the State Director. Regardless, the circumstances presented to the LSFO are distinct from those before the CRVFO. There, the LSFO apparently found no evidence of intent to develop the subject leases, and cited no unusual delay on the part of the BLM to consider, when acting on the request for SOP.

The other matter raised by Pitkin County, et alia is a March 19, 2012, SDR decision by the CSO denying a request for SOP by Great Northern Gas Company (Great Northern). SDR decisions are limited to the specific facts of the matter presented, and do not purport to create binding precedent or rules for subordinate field offices outside the case matter presented. Still, the circumstances of the Great Northern matter differ from those associated with SG's request. Although the operator in Great Northern had a pending unit proposal, it did not discuss lease termination with the BLM until just over 30 days before the termination date, and did not file an APD until 30 days before the lease was to expire.

For the reasons cited in its decision, the CRVFO determined that SG had, in light of all the factual circumstances (including unusual delay on BLM's part), demonstrated sufficient intent to develop the leases. In addition, the EOG and Great Northern matters did not involve the BLM's decision to conduct NEPA analysis on leasing decisions. The matters are factually distinct and therefore there is no error on the part of the CRVFO's discussion of *River Gas* based on the LSFO's disposition of the EOG request. Similarly, the CSO's decision in the Great Northern matter does not compel a different result for SG's request.

2. Whether Section 39 of the MLA Allows for Suspension in this Circumstance

i. Whether operator delay precludes suspension

Pitkin County, et alia argue that due to operator-created delays the BLM has not denied beneficial use of the leases and therefore IBLA decisions and the BLM Manual preclude assent to an SOP.

In its decisions, the CRVFO accurately restated and relied on the appropriate IBLA standard for granting suspension requests under Section 39 of MLA:

> (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))

The CRVFO also considered the applicable regulation (and corresponding requirement in the BLM Manual 3160-10.06) when it observed that 43 CFR 3103.4-4(a) provides: "A suspension of all operations and production may be directed or consented to by the AO only in the interest of conservation of natural resources." The CRVFO was also cognizant of the guidance set forth in the BLM Manual that an application for suspension "must be preceded by a request from the operator to conduct leasehold operations" and that an applicant must submit thorough documentation that "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." BLM Manual 3160-10.31.A. The CRVFO also noted that the BLM Manual states: "Each case must be considered on its own merit." 3160-10.2.21.B.

The CRVFO determined that the requested suspensions were in the interest of conservation of natural resources. That decision was based on "consideration of applicable laws, regulations, and guidance; and the totality of the circumstances." The CRVFO also found that in consideration of the totality of the circumstances, SG had demonstrated adequate diligence and intent to develop all of the leases sufficient to warrant a suspension. The CRVFO did not expressly find that its actions had denied all beneficial use of the leases.

The CRVFO based its determination that SG had demonstrated adequate diligence and intent to develop the leases, in part, on SG's submission of a unitization proposal and APDs. The CRVFO found that 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, and SG's attempt to address environmental issues with interested parties, were sufficient to demonstrate adequate diligence in developing the leases.

The requirements of the MLA and its implementing regulations, IBLA decisions, and previous Departmental interpretations, do not preclude BLM from considering the totality of factual circumstances when exercising its discretionary authority over a lease suspension request. Section 39 of the MLA and its implementing regulation provide the Secretary of the Interior, through the BLM, with wide discretion to assent to a suspension of operations and production "in the interest of conservation." 30 USC § 209; 43 CFR § 3103.4-4(a). The IBLA has also recognized the BLM's significant discretion in this area:

> When the lessee's inability to commence drilling prior to lease expiration cannot be attributed to any order, delay, or inaction by any Federal agency, the Secretary of the Interior is under no obligation to grant a suspension, but has the authority to do so in the exercise of his informed discretion after making the necessary finding that suspension is in the interest of conservation.

Prima Oil & Gas Co., 148 IBLA 45, 49 (1999). *See also Harvey E. Yates Co.*, 156 IBLA at 105 (recognizing that in addition to mandatory suspensions, the "Secretary also has discretionary authority to suspend a lease upon application by a lessee.")

The BLM's guidelines for exercising this discretion, found in the BLM Manual 3160-10, also provide the AO with sufficient discretion to consider all known, relevant factual circumstances related to the request. By its own terms, the Manual sets forth "policy" and "guidelines" that do not purport to bind without exception the AO's discretion to assent to a suspension request, or to exhaustively list every circumstance in which a suspension would be justified. Instead, as the CRVFO recognized, the BLM Manual directs that "[e]ach case must be considered on its own merit" and illustrates example circumstances that "normally" do and do not warrant suspension.

The CRVFO's decision gave due consideration to the relevant standards for granting a discretionary SOP, as set forth in statute, regulation, IBLA decisions, and BLM guidance. These requirements and guidance do not expressly preclude the AO from considering all relevant factual circumstances, including the effects of the BLM's actions, when acting on a discretionary request for SOP. Due to the considerable discretion afforded to the AO to assent to a request for an SOP in the interest of conservation, as explained herein, the CRVFO did not err in granting SG's request in light of all the factual circumstances of this case.

ii. Whether a speculative purpose precludes suspension

Pitkin County, et alia, assert that SG's SOP request is an attempt to hold its leases until more favorable market conditions exist, and therefore is precluded under the principle set forth in *Carbon Tech Fuels, Inc.*, 161 IBLA 147, 159 (2004) and *5M, Inc.*, 148 IBLA 36, 42 (1999). Their contention is largely based on economic analyses prepared by two consultants that conclude the leases are economically infeasible to develop under present and projected future market condition. SG has disputed the analyses.

We do not find the IBLA's decisions in *Carbon Tech Fuels, 5M*, or the other cases cited by Pitkin County, et alia in support of this argument to compel reversal of the CRVFO's decision.

Those cases involved requests for SOPs on coal leases and the unique history of "widespread holding of Federal coal leases for speculative purposes" addressed in the Federal Coal Leasing Act Amendments and section 7 of MLA, 30 USC § 207. *Carbon Tech Fuels*, 161 IBLA at 159; *see 5M, Inc.*, 148 IBLA at 43. *Carbon Tech Fuels* and *5M* addressed arguments from coal lessees that adverse economic conditions do not fall within the meaning of "in the interest of conservation" for purposes of a Section 39 SOP on a federal coal lease, arguments that both the BLM and the IBLA rejected.

By contrast, here the CRVFO determined that the requested suspensions were in the interest of conservation of natural resources. That decision was based on "consideration of applicable laws, regulations, and guidance; and the totality of the circumstances." The CRVFO's decision was based primarily on the grounds that suspension would allow time for additional NEPA analysis on the decision to issue leases. The CRVFO also found that in consideration of the totality of the circumstances, SG had demonstrated adequate diligence and intent to develop all of the leases sufficient to warrant a suspension.

The CRVFO's decision to grant the SOPs does not allow for SG to hold its leases for speculative purposes. The main purpose of the SOP is to allow the BLM additional time 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 for site-specific development proposals. No leasehold activities will be authorized until that NEPA analysis addressing the leasing decisions is completed. The 2014 decision on the lease extension requests is accordingly effective only for a period to allow for the completion of that process, until April 1, 2016, or earlier, if the AO determines that the suspensions would no longer be in the interest of conservation or the EIS referenced in the decision is complete and a Record of Decision has been signed regarding the status of the leases. The CRVFO's time-limited decision granting the SOP for the primary purpose of allowing additional NEPA does not violate the MLA, and any associated anti-speculation provisions or policies.

Although Pitkin County, et alia, have gone to great lengths to question the economic viability of the leases, for the reasons above we find no error in the CRVFO's decision based on these allegations.

iii. Whether suspension of leases issued in violation of law is in the interest of conservation.

Pitkin County, et alia contend that the CRVFO improperly suspended the leases because they are issued in violation of applicable laws and under conditions that the BLM has previously recognized as making them "invalid ab initio." Specifically, Pitkin County, et alia assert that the leases were sold in violation of NEPA and the Endangered Species Act (ESA), and without acknowledging the requirements of the 2001 Forest Service Roadless Rule.

The CRVFO's decision makes clear that the BLM has acknowledged that the leases were sold without BLM fulfilling its own independent NEPA obligation, as identified by the IBLA in *Pitkin County*. The decision reiterates its intent to undertake additional NEPA analysis on the

decision to issue the leases. In fact, the BLM has initiated this NEPA effort. *See* 79 Fed. Reg. 18577 (April 2, 2014). The CRVFO addressed this contention of Pitkin County, et alia in its decision and explained, with supporting case law, that the lack of NEPA compliance rendered the leases voidable at the discretion of the BLM based on supporting remedial analysis. As noted herein, the CRVFO found no prohibition under the MLA, BLM regulations and guidance, or case law, in suspending a lease that was sold and issued, through no fault of the lessee, with a curable, procedural defect. The CRVFO correctly observed that suspension is generally the BLM's initial and preferred first step in remedying a procedural fault in issuing a federal oil and gas lease, regardless of whether leasehold operations have been proposed. The CRVFO also relied on several federal court decisions that endorsed the practice of suspending, rather than cancelling, MLA leases if issued with curable, procedural defects such as lack of NEPA and ESA compliance. In light of the authority to direct suspensions to remedy NEPA defects at lease issuance, even where no operations proposals are before the agency, the CRVFO correctly determined that in like circumstances the BLM may assent to an SOP in response to a request. There is no error in the CRVFO's determination that the leases were voidable, and that legal status did not prevent the grant of an SOP.

Pitkin County, et alia has noted that the BLM previously invalidated the leases subject to the *Pitkin County* decision, which were sold under essentially the same circumstances as SG's leases. In response to the *Pitkin County*, BLM declared three leases invalid ab initio, and withdrew them effective from their date of issuance, and refunded the company's rental and bonus bids. The earlier decision declaring leases void ab initio was not challenged by the lessee and is not at issue. Careful consideration of the arguments of Pitkin County, et alia on this point, comments from SG expressing their view of the validity of the leases, and the reasoning of the CRVFO, we find no error in the CRVFO's determination that curable, procedural violations in issuing the leases makes them voidable rather than void ab initio, and that status did not preclude an SOP.

Pitkin County, et alia's claim regarding the scope or requirements of the Forest Service 2001 Roadless Rule will not be addressed in this SDR response. "[O]bjections raised with respect to he conformity of the Forest Service's actions either with its own internal operating procedures or with laws solely applicable to the Forest Service are not properly considered either by BLM or this Board." *Pitkin County*, 173 IBLA at 180 (quoting *Colorado Environmental Coalition,* 125 IBLA 210, 218 (1993).

iv. Whether the request identifies a recognized basis for suspension

As noted, the CRVFO determined that the requested suspensions were in the interest of conservation of natural resources. That decision was based on "consideration of applicable laws, regulations, and guidance; and the totality of the circumstances." The CRVFO also found that in consideration of the totality of the circumstances, SG had demonstrated adequate diligence and intent to develop all of the leases sufficient to warrant a suspension. The CRVFO, however, did not expressly find that its actions had denied all beneficial use of the leases.

The CRVFO based its determination that SG had demonstrated adequate diligence and intent to develop the leases, in part, on SG's submission of a unitization proposal and APDs. The CRVFO found that 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, and SG's attempt to address environmental issues with interested parties, were sufficient to demonstrate adequate diligence in developing the leases.

As explained, the requirements of the MLA and its implementing regulations, IBLA decisions, and previous Departmental interpretations, do not preclude BLM from considering the totality of factual circumstances when exercising its discretionary authority over a lease suspension request. Due to the considerable discretion afforded to the AO to assent to a request for an SOP in the interest of conservation, and for the reasons discussed herein, the CRVFO did not err in considering the totality of the circumstances in its decision.

In its arguments, Pitkin County, et alia contend that the MLA does not permit suspension of leases based on an unsuccessful unitization request. Relying on applicable regulation and IBLA case law, the CRVFO found that the BLM's delay in acting on the proposed unit agreement was not by itself sufficient to demonstrate diligent efforts to develop the Leases. The CRVFO instead found that submission of the unit proposal was one factor that showed SG's intent to develop its leases. The CRVFO's decision observed that the unitization proposal was submitted approximately two years prior to the leases' expiration dates and that after initial review the BLM had found no geologic basis for denying the unit application. A decision was instead delayed for consideration and internal deliberation on issues raised in comment from interested parties (the legal status of the leases due to NEPA deficiency at lease issuance).

The CRVFO's decision recognized that submission of a unitization proposal by itself is not, in the normal course of events, sufficient justification for lease suspension under Section 39 of the MLA. Rather, the decision considered the unit proposal and proposed obligation well APD as factors demonstrating "adequate diligence and intent to develop the leases." The CRVFO noted that the unit proposal was first submitted approximately two years before the lease termination dates, but BLM's decision was delayed for consideration of issues raised in public comment. The CRVFO's decision also described how typically after formation of a unit, APDs for the unitized leases are submitted in accordance with the unit plan of operations.

The CRVFO did not err in considering SG's prior submission of the unit agreement as some evidence of intent to develop the leases. The CRVFO found that under IBLA case law the unit proposal in itself was not sufficient justification to grant an SOP. The decision instead recognized the role that the BLM's unusual delay in acting on the unit proposal, and the reasons for that delay, may have played in SG's overall development plans.

Pitkin County, et alia also argue that the BLM's decision to conduct additional NEPA analysis on the leases does not support an SOP because it does not deny SG beneficial use of the leases. However, the CRVFO listed the need for additional NEPA analysis on the decision to issue the leases as its primary reason for granting the SOP. The decision stated that the BLM requires additional time to complete the effort, that review of the unit application and APDs is delayed

pending completion of that analysis and resolution of leasing decision issues, and that no leasehold activities will be authorized until that NEPA analysis is complete.

Pitkin County, et alia point out that an agency's need to conduct NEPA analysis may not mandate an SOP and argues that an SOP is only allowed where beneficial use is denied. *See Hoyl*, 129 F.3d 1377, 1384 (10th Cir. 1997) (routine NEPA compliance does not warrant suspension of leases because it is required as "part of the ordinary course of developing" a lease). That case, however, involved the question of whether the BLM was required to direct a suspension due to a pending NEPA review on a proposal to develop the lease. It did not address the issue presented here, whether the BLM's unusual need to conduct a remedial NEPA analysis on the very decision to issue a lease would support a discretionary SOP.

The CRVFO determined that the SOP was in the interest of conservation and found that suspension of the leases to perform additional NEPA analysis on the leasing decision is in the interest of conservation because

> 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.

As set forth above, the CRVFO's decision provided a reasoned explanation as to why the preparation additional NEPA analysis on the leases was in the interest of conservation and a suspension was justified. This finding is consistent with the interpretation of that phrase provided in the BLM Manual 3160-10, App. 1 (Department of the Interior Solicitor's Opinion, July 14, 1975). The preparation of environmental studies under NEPA for lease development proposals will not always mandate an SOP. The CRVFO did not err in its reasoning and determination that in this instance, the need to comply with NEPA (for the relevant leasing decisions), a statute with the very purpose of interjecting environmental considerations into agency decision-making, is in the interest of conservation of natural resources.

Last, with regard to this point, Pitkin County, et alia, also argue that SG's efforts at negotiating a compromise over its leases with other stakeholders does not support an SOP. The CRVFO's 2013 decision determined that the SOP was in the interest of conservation by allowing additional time for negotiations between SG and local governments and interested parties to address environmental concerns with the leases. The CRVFO correctly acknowledged IBLA case law indicating that negotiation with third parties does not typically provide sufficient reasons for granting an SOP. In this matter, however, the BLM understands that the parties negotiating with SG had as a primary purpose the protection of the natural values associated with lands within the leases, and were attempting to resolve environmental issues with the leases, including the possibility of buying and relinquishing the leases. Due to the purpose of those negotiations, and because (as the CRVFO pointed out), the outcome of those discussions may have affected the scope of the NEPA analysis to be conducted on the leasing decision, there is no error in the

CRVFO's 2013 decision that allowing more time for negotiations with the conservation-oriented parties was in the interest of conservation of natural resources.

The CRVFO's decision considered the relevant standards for granting a discretionary SOP, as set forth in statute, regulation, IBLA decisions, and BLM guidance. These requirements and guidance do not expressly require the AO to consider individual circumstances supporting a suspension request in isolation, or expressly preclude the AO from considering all relevant factual circumstances when acting on a discretionary request for SOP. Due to the considerable discretion afforded to the AO to assent to a request for an SOP in the interest of conservation, and for the reasons discussed herein, the CRVFO did not err in considering the totality of the circumstances in its decision. *See Hoyl*, 129 F.3d at 1385 (deferring to the IBLA's interpretation of Section 39 where the IBLA considered several factors, including non-dispositive factors, in exercising discretion under Section 39).

3. NEPA Compliance for the SOP

In its May 6, 2013, SDR request, Pitkin County, et alia contended that the BLM may not grant a suspension unless it first complies with NEPA. Pitkin County, et alia did not re-assert this argument in its April 28, 2014, request for SDR. In its decisions granting the SOPs, the CRVFO explained that it had determined its actions were within the categorical exclusion (CE) from NEPA review provided in 516 DM 11.9 and the BLM NEPA Handbook H-1790-1, and that there were no extraordinary circumstances under 43 CFR § 46.215 and 516 DM 2 that precluded its use. The CRVFO thoroughly documented those determinations in CE numbers DOI-BLM-CON040-2013-0058-CX and DOI-BLM-CO-N040-2014-0021-CX. For the reasons set forth in the CE, the CRVFO's determination that the CE was appropriate and no extraordinary circumstances preclude its use is accurate.

Pitkin County, et alia also asserted that the BLM should exercise its authority under Section 39 of the MLA to condition the SOP. *See Getty Oil Co. v. Clark*, 614 F. Supp. 904, 912 (D. Wyo. 1985) (upholding the BLM's imposition of a condition of the right to deny future drilling to assure compliance with the Wilderness Act). *Getty Oil* makes clear, however, that any authority to condition an SOP is entirely discretionary. In imposing such a condition, the BLM must provide a rational basis why a condition is necessary and "reasonably tailored to enable the effective protection of the environmental values pending further environmental study." *Id.* at 916.

In this instance, there is no error in the CRVFO exercise of discretion to grant the time-limited SOP without a condition reserving the right to deny future drilling. As explained by the CRVFO, SG's leases are voidable at the discretion of the BLM following additional NEPA analysis. Due to this status and the BLM's retention of authority to cancel or modify the leases, among other reasons, the SOP does not constitute an irreversible commitment of resources and will not predetermine future NEPA analysis. In addition, a condition similar to that applied in *Getty Oil* and urged by Pitkin County, et alia, does not appear necessary for SG's leases, since it would not appear to be required to ensure compliance with a non-discretionary statutory

mandate, and because the BLM already has the ability to cancel the leases due to their voidable status.

Finally, to the extent that other arguments raised by Pitkin County, et alia in its SDR requests are not specifically addressed in this decision, they have been considered and no grounds found to reverse the decision of the CRVFO.

Decision

After careful consideration, it is the decision of the State Director to affirm the decision to approve the issuance of the SOPs for the 18 leases. The decision by the CRVFO to approve the SOPs is upheld.

Appeal Rights

This decision may be appealed directly to the IBLA, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the information found in the enclosed Form 1842-1 (Attachment 3). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request), pursuant to regulation 43 CFR § 3165.4(c), for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision, to the IBLA, and to the appropriate Office of the Solicitor (see 43 CFR § 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

A petition for a stay of a decision of a State Director shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

If you have any questions regarding this response, contact Jerome Strahan, Branch Chief of Fluid Minerals at (303) 239-3753.

ACTING

Lonny R. Bagley
Deputy State Director
Energy, Lands & Minerals

Attachment
Form 1842-1, "Information on Taking Appeals to the Board of Land Appeals" (1 pp)

cc: Mr. Robert H. Guinn II, SG Interests I, Ltd.

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL..... A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL..... Bureau of Land Management, Colorado State Office
Division of Energy, Lands, and Minerals (CO-920)
2850 Youngfield Street, Lakewood, Colorado 80215

WITH COPY TO SOLICITOR... U.S. Department of the Interior, Regional Solicitor, Rocky Mountain Region
755 Parfet Street, Suite 151, Lakewood, Colorado 80215

3. STATEMENT OF REASONS Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR..... U.S. Department of the Interior, Regional Solicitor, Rocky Mountain Region
755 Parfet Street, Suite 151, Lakewood, Colorado 80215

4. ADVERSE PARTIES..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY..... Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ---------- Alaska
Arizona State Office --------- Arizona
California State Office ------- California
Colorado State Office -------- Colorado
Eastern States Office --------- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ---------- Idaho
Montana State Office --------- Montana, North Dakota and South Dakota
Nevada State Office ---------- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ---------- Oregon and Washington
Utah State Office ---------- Utah
Wyoming State Office -------- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)