United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Colorado State Office
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In Reply Refer To:
3165 (CO-922)
SDR CO-13-06, CO-14-12

CERTIFIED MAIL – Return Receipt Requested

DECISION

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Upheld

By letter dated May 6, 2013, which was received in the Colorado State Office (CSO), Bureau of Land Management (BLM), on May 6, 2013, Earthjustice, on behalf of Wilderness Workshop (WW) requested 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 Ursa Piceance, LLC (Ursa) on seven (7) federal oil and gas leases in the Thompson Divide area of the White River National Forest. By letter dated February 19, 2013, Ursa requested the SOP for the 7 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).

The request from WW for an SDR, designated SDR CO-13-06, was considered filed in a timely manner, in accordance with 43 Code of Federal Regulations (CFR), Section 3165.3(b).

The BLM CSO sent WW 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 17, 2014, Ursa submitted a renewed request for an SOP for the 7 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, WW timely filed a request for SDR, designated SDR CO-14-13, of the March 31, 2014, decision of the BLM CRVFO approving the renewed request for SOP. In a letter dated May 21, 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 WW'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 Ursa'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, WW'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-14-12, Ursa'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 Ursa's SOP request that preceded it. Therefore, the issues and arguments in SDR CO-13-06 and SDR CO-14-12 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 WW 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 letter dated February 19, 2013, Ursa requested an SOP for 7 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 May 27 and August 26, 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.

Ursa 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) Ursa intended to pursue discussions with various organizations in an effort to reach an agreement regarding a possible purchase or other disposition of the Leases which would be acceptable to all stakeholders." On May 7, 2013, WW submitted extensive comments on the request to the CRVFO and CSO.

The CRVFO ultimately approved an SOP for each of the 7 federal oil and gas leases by letter dated April 9, 2013. As noted in the approval letter, the SOPs were "effective February 1, 2013, the first day of the month 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.

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[1] Federal Oil and Gas Leases COC66706, COC66707, COC66708, COC66709, COC66710, COC 66711, and COC66712, Garfield, Pitkin, and Mesa Counties, Colorado. All leases are within their primary terms.

In the May 6, 2013, SDR request, WW provided the following objections to the issued SOPs.

1. BLM improperly granted the suspension based on the "totality of circumstances," even though none of the circumstances relied on would itself justify suspension.
2. Suspension was improper because the leases were sold in violation of applicable laws and under conditions that BLM has recognized as making them "invalid ab initio."
3. BLM violated NEPA by relying on a categorical exclusion to suspend the leases and not conditioning the suspension on reserving the right to deny all drilling on the leases.

WW requested the State Director reverse the decision by the CRVFO to approve the SOPs and deny Ursa's request for suspension.

Prior to the April 1, 2014, suspension termination date, Ursa submitted a renewed request for an SOP for the 7 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, WW timely filed a request for SDR (designated SDR CO-14-12), of the CRVFO's March 31, 2014, approval of the renewed request for SOP. WW's April 28, 2014, request, re-asserted the same objections as its request of May 6, 2013.

Discussion

1. The CRVFO's approval of the SOP based on the "totality of circumstances"

In its SDR requests, WW first asserts that the CRVFO improperly granted Ursa's request based on a totality of circumstances, even though none of the circumstances relied on would itself justify suspension. WW states that the IBLA recognizes only two circumstances in which BLM may grant an SOP under Section 39 of the MLA: Where unusual administrative delays "have the effect of denying the lessee timely access to the property," and to "prevent damage to the environment or loss of mineral resources." *Harvey E. Yates Co.*, 156 IBLA 100, 105 (2001). WW maintains that "BLM must find that: (a) Ursa has been denied beneficial use of its leases, and that (b) suspension will prevent damage to the environment or avoid a loss of mineral resources" and that "[n]either prerequisite for a suspension exists here." WW contends that the CRVFO's decision was improper because Ursa has not been denied beneficial use of the leases and because suspension does not conserve natural resources.
The CRVFO accurately restated and relied on the same 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, Ursa 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 Ursa had demonstrated adequate diligence and intent to develop the leases, in part, on Ursa'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 Ursa'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, are not so cramped to 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 know, 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 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 v. Babbitt*, 129 F.3d 1377, 1385 (10th Cir. 1997) (deferring to the IBLA's interpretation of statute where the IBLA considered several factors, including non-dispositive factor, in exercising discretion under Section 39).

In its arguments, WW asserts 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 Ursa's intent to develop its leases. The CRVFO's decision observed that the unitization proposal was submitted approximately one year 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 one year 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 Ursa'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 Ursa's overall development plans.

WW also argues that the BLM's decision to conduct additional NEPA analysis on the leases does not support an SOP because it does not deny Ursa 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.

WW points 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, at 1384 (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's determination that the need for additional NEPA analysis on the decision to issue the leases was, in light of the other factual circumstances, sufficient justification to grant the request for an SOP. The CRVFO's decision correctly stated that 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. The decision also identified several federal court decisions that endorsed the practice of suspending, rather than cancelling MLA leases if issued with a curable, procedural defect. The CRVFO also was correct in finding no prohibition under the MLA, BLM regulations and guidance, or case law, in suspending a lease that was sold and issued with a curable, procedural defect. In light of the authority to direct suspensions to remedy NEPA defects at lease issuance, even where no operations proposals are before the agency, in like circumstances the BLM may assent to an SOP in response to a request.

WW also faults the CRVFO's reliance on the IBLA decision in *River Gas Corporation*, 149 IBLA 239 (1999). WW asserts that the portion of the IBLA decision relied upon is non-binding dictum, that the situation in *River Gas* was factually distinct from Ursa's request, and that the BLM has previously distinguished the decision or denied other requests for an SOP in analogous circumstances.

In response to comment that the BLM cannot approve an SOP unless a complete 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." The CRVFO did not contend that the decision was binding or otherwise controlling. 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 of the *River Gas* decision as anything beyond non-binding dictum, the CRVFO'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.

WW also contends that *River Gas* is factually distinct because there was no dispute that the company was diligently attempting to develop the leases at issue there, even though no APDs had been filed on the majority of the leases suspended. 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 land and notified the company that it would not approve APDs. *Id.* After initially denying the requests, the BLM ultimately granted SOPs for those 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 Ursa'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, and since it did not characterize the *River Gas* decision as binding, there is no error with the CRVFO's discussion of the case in relation to the circumstances of Ursa's request and in response to comment.

WW also asserts that reliance on *River Gas* is misplaced because the CSO 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 second matter raised by WW 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, it may be noted that the circumstances of the Great Northern matter differ from those associated with Ursa'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 Ursa 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.

WW further contends the SOP is improper because it will not conserve natural resources. WW states that the SOPs do not protect the environment by preventing excessive or unplanned drilling in the area and do not prevent a loss of mineral resources. WW also asserts that the third "totality of the circumstances" factor cited by the CRVFO, Ursa's efforts at negotiating a compromise over its leases with other stakeholders, is not in the interest of conservation. 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.

The requirement that an SOP be "in the interest of conservation" is not limited to the two instances listed by WW. 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. 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). As discussed in the case law referenced in the CRVFO's decision and WW, 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.

The CRVFO's 2013 decision determined that the SOP was in the interest of conservation by allowing additional time for negotiations between Ursa 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 Ursa 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.

2. The Propriety of Suspending the Leases Sold in Violation of Applicable Law.

WW contends 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." WW asserts 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 WW 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. 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.

WW also points out that the BLM had invalidated the leases subject to the *Pitkin County* decision, which were sold under essentially the same circumstances as Ursa'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 WW on this point, comments from Ursa expressing their view of the validity of the leases, and the reasoning of the CRVFO results in 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.

WW's claims 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 the 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).

3. NEPA Compliance for the SOP.

WW asserts that the BLM's categorical exclusion (CE) for lease suspensions may not be used here because several extraordinary circumstances exist. In its decision granting the SOP, the CRVFO explained that it had determined its action was within the 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 documented those determinations in CEs numbered DOI-BLM-CON040-2013-0059-CX and DOI-BLM-CON040-2014-0022-CX. In the CEs, the CRVFO carefully and thoroughly documented the basis for the CE and its determinations that no extraordinary circumstances exist.

The primary basis for the CRVFO's determination that no extraordinary circumstances exist is that an SOP precludes beneficial use of a lease and therefore results in no significant environmental impacts to the resource values addressed in the various extraordinary circumstances. An SOP does not authorize any surface disturbance or other activity with the potential to cause adverse environmental impacts. The CRVFO noted that surface disturbing activity could only occur after preparation of site-specific environmental analysis under NEPA. Nevertheless, the CRVFO individually addressed the six circumstances presented in WW's SDR request and explained that the subject circumstances are not present or do not apply to the grant of SOPs on Ursa's leases. 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.

Last, WW contends that the CRVFO erred in not conditioning any suspension on reserving the right to deny drilling on Ursa's leases. WW's primary rationale for why a condition is necessary is that extending the leases represents an irreversible commitment of resources that will improperly predetermine its forthcoming NEPA analyses on the leases.

As WW points out, the BLM has authority under Section 39 of the MLA to condition an SOP in certain circumstances. *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 SOP without a condition reserving the right to deny future drilling. As explained by the CRVFO, Ursa'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 WW does not appear necessary for Ursa'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 WW in its SDR request 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 7 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. Don Simpson, Ursa Piceance LLC, 1050 17th Street, Suite 2400, Denver, CO 80265

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.