



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Montana State Office
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www.blm.gov/mt

In Reply Refer To:
SDR-922-13-03
MTM88205, et al
3165.3 (MT922.PL)

November 15, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. M. D. Jaeger)
Environmental and Regulatory Manager)
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Operating Corporation)
1125 17th Street, Suite 2310)
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SDR No. 922-13-03

AFFIRMED

Storm Cat Energy (USA) Operating Corporation (Storm Cat) requested a State Director Review (SDR) with oral presentation in a letter dated June 6, 2013 (Enclosure 1). The SDR was received by the Bureau of Land Management (BLM), Montana State Office on June 10, 2013. Storm Cat's request for administrative review by the State Director is based on a BLM Miles City Field Office (MCFO) decision dated May 23, 2013 (Enclosure 2), denying the suspension of thirty (30) Federal oil and gas leases in Montana which Storm Cat identified as being within Greater Sage-Grouse core or connectivity areas. Storm Cat also requested an extension of time to submit additional supporting documentation and to prepare for the oral presentation. An extension of time was granted through July 3, 2013, in a letter dated June 19, 2013 (Enclosure 3). The SDR request is considered timely filed in accordance with 43 CFR 3165.3(b), and assigned number SDR-922-13-03. This SDR was previously incorrectly assigned as SDR-922-13-02.

The BLM followed up with Storm Cat regarding their request for an oral presentation establishing a time and place for the oral presentation. The oral presentation was scheduled and oral arguments were presented to the BLM on July 30, 2013. Storm Cat's oral presentation reiterated information and arguments provided in their original written SDR (Enclosure 4), and Storm Cat also provided a flashdrive which contained additional supporting documentation (Enclosure 5) along with a series of maps depicting the area of the affected Federal oil and gas leases, and Greater Sage-Grouse habitat (Enclosure 6).

On August 2, 2013 (Enclosure 7), this office also received an e-mail containing some additional information on several things not mentioned at the oral presentation. Even though the record on this matter was closed following the oral presentation, this office re-opened the record to take into consideration several things provided in the e-mail.

BACKGROUND

There are thirty (30) Federal oil and gas leases that were identified under this suspension (Enclosure 8) comprising of approximately 27,890.41 acres. There are 24,820.41 acres identified as “Leases touching or in core areas¹, surrounded by core areas or immediately adjacent to core areas,” and 3,160 acres as “Leases outside of core area but within Hanging Woman project area.” The effective dates of these leases are: August 1, 1998; September 1, 1998; July 1, 1999; January 1, 2000; March 1, 2000; September 1, 2000; July 1, 2001; and May 1, 2005.

All these Federal oil and gas leases were issued pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226. The lease term is for ten (10) years and so long thereafter as oil and gas is produced in paying quantities. These Federal oil and gas leases were granted suspensions during the ten (10) year term; a suspension of operations and production on March 1, 2002, pending completion of an Environmental Impact Statement, and a suspension of operations and production on June 1, 2005, pending completion of a Supplemental Environmental Impact Statement. These suspensions have effectively extended the original ten (10) year lease term. The following are the expiration dates and number of affected leases:

<u>Expiration Date</u>	<u>Number of Affected Leases</u>
May 31, 2013	1
June 30, 2013	11
July 31, 2013	9
May 31, 2014	3
July 31, 2015	1
May 31, 2016	2
December 31, 2018	3

	30

There have been multiple record title holder’s since the effective date of these Federal oil and gas leases. On March 9, 2012, BLM approved assignments of the Federal oil and gas leases from JM Huber Corporation to Storm Cat Energy Acquisition LLC, effective March 1, 2012. Therefore, as of the date of filing, a request for a suspension of operations and production with the MCFO on April 29, 2013, Storm Cat was the majority record title holder on the subject Federal oil and gas leases.

Section 39 of the Mineral Lease Act (MLA), as amended, 30 U.S.C. § 209, authorizes the Secretary of the Interior or his delegated representative (BLM in this case) “for the purpose of encouraging the greatest ultimate recovery” of minerals, to suspend operations and production under a mineral lease “in the interest of conservation,” and to thereby extend the term of the

¹ See Washington Instruction Memorandum No. 2012-043, dated December 22, 2011, Greater Sage-Grouse Interim Management Policies and Procedures, section on **Definitions, CORE AREAS**, “The term “Core” is associated with state-designated areas identified as the most important for Greater Sage-Grouse. Some states utilize a distance surrounding the largest leks, while other states use other methods including designating all occupied habitat as Core.”

lease for the length of the suspension period. Section 39 provides the Secretary may “direct” or “assent to” a suspension of operations and production. *Id.* The BLM implementing regulations at 43 CFR 3103.4-4(a) likewise provide: “A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources.” *See also* BLM Manual 3160-10.06 (providing that “...when deemed necessary by the appropriate authority, [a suspension] will be given only in the interest of conservation of natural resources....”)

Section 39 of the MLA was intended “to provide extraordinary relief when the lessees are denied beneficial use of their leases.”²

The Interior Board of Land Appeals (IBLA) has construed section 39 as providing for suspensions either:

- (1) where some act, omission, or delay by a Federal agency, beneficial use of the lease has been precluded, such as where delays imposed upon the lessee due to administrative actions addressing environmental concerns have the effect of denying the lessee “timely access” to the property; or (2) in the interest of conservation, that is to prevent damage to the environment or loss of mineral resources.³

DISCUSSION

1. Stormcat’s claims regarding similar suspensions granted by the Buffalo Field Office (BFO).

On April 29, 2013, the MCFO received Storm Cat’s letter dated April 26, 2013 (Enclosure 9), requesting five (5) year lease suspensions on thirty (30) Federal oil and gas leases in Big Horn County, Montana. Attached to the letter was an exhibit entitled “Exhibit A” which provided a list of the affected Federal oil and gas leases and their corresponding lease expiration dates.

Storm Cat’s request for the suspension referenced decisions made and implemented by the BLM Wyoming State Office and the BFO regarding specific Federal oil and gas leases located on the Wyoming side on the acreage they currently held. Storm Cat’s request suggested that the BLM should apply the same criteria regarding lease suspensions in Montana as they had in Wyoming.

Storm Cat assumes the outcome of their suspension request should mirror the outcome in Wyoming because the circumstances are the same in each state. The record shows this is not the case. The basis for the BFO granting Storm Cat’s request for a suspension is the current status of the effective BFO RMP and specific BLM Wyoming policy regarding management considerations of Greater Sage-Grouse habitat for proposed activities until RMP updates are

² BLM Manual 3160-10, Appendix 2 at 7-8 (Solicitor’s Opinion, May 31, 1985). *See also* Solicitor’s Opinion, June 4, 1937, 56 I.D. 174, 195 (stating that section 39 “is clearly a relief section and, as such, it is to be liberally construed.”)

³ Savoy Energy, L.P., 178 IBLA 313, 322 (2010)

completed. In addition, the area in Wyoming subject to Storm Cat's leases was ravaged by fire which further decimated habitat occasioned by Greater Sage-Grouse. The disturbance created by recent fires pushed existing disturbance beyond the five (5) percent limit established by Wyoming BLM policy.⁴ The level of existing disturbance within Greater Sage-Grouse habitat in the areas of Wyoming leased by Storm Cat and the lack of updated Greater Sage-Grouse management direction in the effective BFO RMP are the underlying reasons why the BFO granted a suspension in Wyoming. Neither condition exists within Storm Cat's lease area in Montana subject to this SDR.

The BFO and MCFO both have a Resource Management Plan (RMP) that provides management direction for lands under the jurisdiction of each office. Typically, BLM State and Field Offices consult with each other regarding common issues; however, this does not guarantee implementation of the same decisions regarding the need to issue a lease suspension in the interest of conservation because local conditions and existing management direction in the RMP may warrant different outcomes.

This is where the RMP comes into play. Even though the MCFO is currently revising its RMP, there is an existing document that provides management direction for Greater Sage-Grouse habitat. The MCFO Final Supplement to the 2003 Statewide Oil and Gas EIS (FSEIS) amended the Powder River RMP and is the current land use document regarding conventional oil and gas and coal bed natural gas (CBNG) for the area where Storm Cat's Federal oil and gas leases are located. The decisions in the FSEIS do not prohibit a record title holder (lessee) or operator from conducting exploration or development activities on Federal oil and gas leases in the area of Storm Cat's Federal oil and gas leases.⁵

The FSEIS states that development in the Powder River Resource area would be done in a phased manner through restrictions imposed by the BLM. The phased approach is intended to reduce the overall cumulative impacts to any resource by managing the pace and place as well as the density and intensity of Federal CBNG development. In addition, screens would be used when reviewing proposals to identify impacts, develop mitigation measures and guide the decision making process.

The record also shows the MCFO is in the process of revising the governing RMP for lands and minerals under their jurisdiction, including the area subject to this SDR. We agree with the MCFO's finding that neither the FSEIS or the preferred alternative in the Draft RMP prevent Storm Cat from moving forward with exploration and development activities on Federal leases it holds. However, without a proposed action or intent through the filing of a Notice of Staking (NOS) or filing an Application for Permit to Drill (APD), Storm Cat never provided the MCFO the opportunity to evaluate Storm Cat's plans for the subject area, or even start the process.⁶

⁴ See Wyoming State Office, Instruction Memorandum No. WY-2012-019, dated February 10, 2012, Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Including the Federal Mineral Estate.

⁵ Also, refer to Washington Instruction Memorandum No. 2012-043, dated December 22, 2011, Greater Sage-Grouse Interim Management Policies and Procedures, section on **Leasable Minerals (Energy and Non-energy)**, Authorizations on Existing Leases (i.e., the lease has been issued and valid existing rights have been established).

⁶ The BLM Guidelines under the BLM Manual 3160-10, Suspensions of Operations and/or Production, Section .3 Procedures, .31 Federal leases (3), states:

The FSEIS for the MCFO does not prohibit a record title holder (lessee) or operator from conducting exploration and development activities on Federal oil and gas leases in this area. As stated in the MCFO letter dated May 23, 2013, and also in accordance with 43 CFR 3103.4-4, suspensions of operations and/or production may be granted in the “interest of conservation” of natural resources. In the present case, it is clear that beneficial enjoyment of the thirty (30) Federal oil and gas leases were not precluded by any act, omission, or delay by a Federal agency, and there is no evidence in the record to demonstrate a suspension is necessary “in the interest of conservation.”

Therefore, the MCFO properly denied the request for a suspension of the thirty (30) Federal oil and gas leases.

2. Stormcat’s claims that the current economic situation warrants granting a suspension.

Stormcat argues that the current economic situation with natural gas prices, and the current “market conditions” would simply not support drilling new CBNG wells. Storm Cat indicated that it needs a natural gas price of \$5.00 to \$6.00 per MCF to drill a new CBNG well but can produce wells down to as low as 10 MCF per day at current gas prices of \$3.00 per MCF. Therefore, the BLM should consider natural gas prices for granting five (5) year suspensions for areas with CBNG since it is a situation which is out of their control.

Storm Cat presented a series of quotations as noted on Enclosure 5 regarding the current trends as a “crystal ball” approach being made by various analyst in news columns. While we understand natural gas prices are still too low to inspire new drilling in many parts of the country, including the Powder River Basin; the decisions to obtain the leases that Storm Cat acquired from JM Huber Corporation on March 9, 2012, was a business decision. In fact, when Storm Cat obtained the lease rights, it was during a period of depressed natural gas prices; therefore, Storm Cat did have some control of the situation and could have foreseen that market conditions “could fluctuate with the possibility of an increase or decrease in profits due to a sudden change in general economic conditions. This was a risk assumed by Storm Cat at the time they acquired the leases.”⁷ The record shows Storm Cat was fully informed about the “market conditions” when they entered into the transaction to obtain the lease rights. In addition, we can find no law, regulations, or BLM policy, or legal precedent, that identifies “market conditions” as being a determining factor for granting a suspension of operations and production on Federal oil and gas leases.

We also see nothing in the record that demonstrates that Storm Cat filed with the MCFO either a Notice of Staking (NOS) or Application for Permit to Drill (APD) on any of its subject leases, or had any discussions prior to the submission of the suspension request with the MCFO about their

3. Documentation. The applicant requesting the suspension must submit thorough documentation of reasons for requesting a suspension. This 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.

⁷ Koch Exploration Co., 100 IBLA 352, 364 (1988).

development plans for their leases. The fact that no discussions had occurred with the MCFO, and no NOS or APD was filed with the MCFO is not attributable to any act, omission, or delay by the Federal agency, but rather simply, the process was never started by the leaseholder (Storm Cat). In the present case, it is clear that beneficial enjoyment of the thirty (30) Federal oil and gas leases was not precluded by any act, omission, or delay by a Federal agency, and there is no evidence in the record to demonstrate a suspension is necessary “in the interest of conservation.”

Therefore, the MCFO properly denied the request for a suspension of the thirty (30) Federal oil and gas leases.

DECISION

After careful review and consideration, we hereby **AFFIRM** the MCFO decision dated May 23, 2013, denying the request for the suspension of operation and production.

Therefore, in the absence of a request for a stay or the establishment of production to extend the lease terms, the twenty-one (21) Federal oil and gas leases with primary terms ending May 31, 2013; June 30, 2013; and July 31, 2013; have expired. The only exception is one (1) Federal oil and gas lease identified as MTM 88205. This lease is currently committed to the Deer Creek (CBNG) Unit which is operated by Summitt Gas Resources, Inc., and currently under a suspension of operations because the Deer Creek Unit obligations have been suspended. The remaining nine (9) Federal oil and gas leases continue to remain in effect until the end of their primary term.

This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and Form 1842 1 (Enclosure 10). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842 1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from is in error.

If you wish to file a Petition for a Stay of this Decision, pursuant to 43 CFR 4.21, the Petition 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 the Decision and to the Interior Board of Land Appeals 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

Except as otherwise provided by law or other pertinent regulation, 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.

/s/ Katherine P/ Kitchell

for Jamie E. Connell
State Director

10 Enclosures

- 1-Storm Cat SDR Request Letter Dated June 6, 2013 (1p)
- 2-MCFO Letter Dated May 23, 2013 (3 pp)
- 3-BLM Extension Letter June 19, 2013 (93 pp)
- 4-Storm Cat PowerPoint Presentation (45 pp)
- 5-Additional Supporting Economic Data (1p)
- 6-Federal Lease-Sage Grouse Habitat Area (3 maps)
- 7-E-Mail Dated August 2, 2013 (3 pp)
- 8-List of Federal Leases (1p)
- 9-Storm Cat Letter to MCFO Dated April 26, 2013 (3 pp)
- 10-Form 1842-1 – Notice of Appeal (2 pp)

cc: (w/encls.)

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