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In Reply Refer to:
3160 (921 Gamper)

MAY 29 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Lisa McGee
Wyoming Outdoor Council
937 Sandcherry Way
Jackson, WY 83001

SDR No. WY-2012- 020 (Part 2)

DECISION

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REMANDED

On February 12, 2012, the Bureau of Land Management (BLM), Wyoming State Office (WSO), timely received a request from the Wyoming Outdoor Council, Greater Yellowstone Coalition, Ms. Elaine Casteel and Mr. Ted Waldron, herein collectively referred to as WOC, for a State Director Review (SDR) in accordance with the regulations at 43 CFR 3165.3(b). WOC requested review of the BLM Lander Field Office (LFO) Manager's January 24, 2012 decision approving the Scott #2 Application for Permit to Drill (APD).

Specifically, WOC claims the Scott #2 APD, issued under Environmental Assessment WY-050-EA10-101, Finding of No Significant Impact and Decision Record (FONSI/DR), fails to comply with NEPA. WOC requests the State Director to remand the APD approval and direct the LFO to conduct additional NEPA analysis. Specifically, WOC asks that the [BLM] "require the Lander Field Office to supplement the Scott Well #2 EA. Any and all relevant down-hole, subsurface, geologic and hydrologic information should be included in the supplement as well as a thorough discussion of the operation standards to which the company will adhere and additional safeguards the BLM could require of the company. It should also disclose and discuss the potential (or unlikelihood) of that the well would be fracked."

On June 29, 2012, the WSO issued a stay on the approval of the Scott #2 APD and continued the suspension of operations on all the Federal oil and gas leases contained within the Carrot Unit Agreement pending a final SDR decision.

BACKGROUND

Hudson Group, LLC. (Hudson) filed an APD for the Scott #2 well with the BLM, LFO on October 4, 1999. This APD was returned without approval on October 6, 2011, for failure to address deficiencies rendering the APD incomplete.

A new APD was filed on October 27, 2011, requesting approval of the same, previously proposed action. The specific proposal includes drilling an oil well and installing associated facilities on Federal oil and gas lease WYW146470 located in Township 43 North, Range 107 West, Section 28.

The Scott #2 well is located within the Shoshone National Forest (SNF), United States Department of Agriculture Forest Service (USFS), and is subject to the 1986 Shoshone National Forest Land and Resource Management Plan. The Scott #2 well proposal also includes a request for construction of an access road across BLM-managed surface. The BLM's decision was to determine whether to authorize Hudson to conduct exploration, drilling and production operations to access and produce Federal minerals, and whether to authorize an access road to the well across BLM surface.

On June 9, 2011, WOC appealed the Forest Service decision under 36 CFR Part 215. The Shoshone Forest Supervisor AFFIRMED the decision of the Wind River District on July 25, 2011. Of the four issues WOC asked the SNF to consider in their review, one was "failure of the agency to include any down-hole information in the EA." WOC states that in [SNF's] decision denying [the] appeal, SNF concluded that "It is not the responsibility of the Forest Service to analyze down-hole information."[1]

On January 24, 2012, the LFO issued a decision authorizing the development of the Federal mineral estate under the Scott #2 APD consistent with the Forest Service, Wind River District's April 25, 2011, decision to authorize surface use, which was based on the EA completed for the 1999 Scott #2 APD. On December 29, 2011 Hudson again requested a suspension of the leases committed to the Carrot Unit Agreement for conservation purposes while the NEPA analysis was being completed on the second APD submittal and to accommodate the multiple timing restrictions that were to be placed on the APD if approved. On January 9, 2012, LFO granted the suspension with an effective date of December 1, 2011.

DISCUSSION

WOC argues that BLM failed to include all relevant subsurface information in the Scott Well #2 EA and that the BLM had a responsibility to provide adequate down-hole information in the Scott Well #2 EA prior to authorizing the APD.

WOC contends that "the public was not fully informed of the potential risks drilling of the Scott Well #2 could pose to ground and surface water and were not given any details regarding safeguards that the BLM would require to protect water resources."

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[1] Cited as: Recommendation for Scott Well #2 Decision Notice Appeal 11-02-10-0029 at unnumbered p. 7 (Exhibit 4.)

Furthermore, WOC alleges "[f]ailure to include any information about the Scott Well #2 down-hole drilling proposal (e.g. depth of target formation, casing depth, location and depth of aquifer(s), and types of drilling muds and chemicals that would be used, etc.) and failure to include a robust disclosure and analysis of the project's potential impacts to surface and groundwater violated NEPA." Finally, WOC concludes that "[t]he lack of basic information about water resources, and absolutely no mention whatsoever about subsurface drilling plans, fracking risk and associated chemical constituents, and the down-hole operational safeguards BLM would impose is wholly inadequate to meet NEPA's 'hard-look' standard."

BLM Response

Before we can make a decision as to the adequacy of the NEPA analysis, we must first address two points related to proprietary information and BLM's obligations for actions that are located on lands administered by the USFS.

Proprietary Data

Within WOC's request for SDR, they provide information regarding several conversations and/or meetings between the interested public and BLM officials regarding the Scott #2 well proposal. WOC asserts that BLM claimed that 1) some of the information was proprietary and 2) this kind of information is never included in NEPA documents, or if it is, then it is only within environmental impact statements, not EAs.[2]

We agree with WOC that a NEPA document must contain "...sufficient detail in the description of the activities so that the effects of the proposed action may be compared to the effects of the alternatives" (NEPA Handbook, Page 43).

In NEPA documents, BLM provides specific information (such as a completion technique, geologic information, etc.) to ensure "sufficient detail" for public disclosure and impacts analysis. If an applicant has designated certain information as confidential, where the applicant believes that information to be protected from public disclosure, BLM's regulations require BLM to make an independent determination of whether such information may be disclosed (see 43 CFR 2.23(b)(6)).

An overview of the rules governing disclosure of information can help to clarify this issue. In 1998, the BLM adopted final rulemaking that eliminated 43 CFR 3162.8 ("Confidentiality") (FR Vol. 63, No. 190, 52946). In eliminating this portion of our regulations, the new rules were proposed to:

> *...conform several mineral resource regulations to the regulations implementing the [FOIA]... By cross-referencing the Department's FOIA regulations, the regulatory amendments adopted in this final rule will protect geophysical and geologic data to the extent that the applicable law, FOIA, allows protection.*

[2] Cited as Personal communication dated 6/1/11 and is noted in documents filed with USFS upon appeal within Exhibit 3

The Department's FOIA regulations are the controlling rules for determining what information can be released or withheld. When a request is made externally for release of information, BLM would require a FOIA request, review the records, consult with the Solicitor's Office, and withhold any information subject to the nine FOIA exemptions (Exemption 3 - statutory nondisclosure provisions; Exemption 4 - commercial/financial information and trade secrets; and Exemption 9 - geologic and geophysical information - most likely apply to portions of 3160 permits). The 1998 FR publication went on to state:

> *The rule requires marking the confidential material solely to help the review of material for disclosure or protection under FOIA. It will be to the advantage of the submitter to mark the material it considers confidential to reduce the possibility of it being disclosed inadvertently...*
>
> *The BLM is responsible for determining whether it is appropriate to withhold information... even in the absence of marking or separate submission.*

In 2002, the Department issued new rules (FR Vol. 67, No. 203, 64527) that revised the Department's FOIA regulations to provide regulations in "plain language, question and answer format." This revision led to regulations focused on providing guidance to the public in submitting a FOIA request. These new regulations (now in effect) state:

> *If in the course of responding to a FOIA request, a bureau cannot readily determine whether the information obtained from a person is commercially or financially sensitive information, the bureau will obtain and consider the views of the submitter of the information and provide the submitter an opportunity to object to any decision to disclose the information."* (43 CFR 2.24).

The regulations at 43 CFR 3100.4(b) requires the following of operators:

When you submit data and information under this part 3100, and parts 3110 through 3190 of this chapter, that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all such data and information confidential to the extent allowed by 2.13 of this title....

Additionally Onshore Order #1 states that the BLM will post the APD (or NOS if applicable) for 30 days, except for information deemed confidential[3] and 43 CFR 3162.3-1(g) states that "For Federal lands, upon receipt of the Application for Permit to Drill or Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: The company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing

[3] The BLM will post the APD or Notice of Staking in an area of the BLM Field Office having jurisdiction that is readily accessible to the public and, when possible, electronically on the internet. If the surface is managed by a Federal agency other than the BLM, that agency also is required to post the notice for at least 30 days. This would include the BIA where the surface is held in trust but the mineral estate is federally owned. The posting is for informational purposes only and is not an appealable decision. The purpose of the posting is to give any interested party notification that a Federal approval of mineral operations has been requested. The BLM or the FS will not post confidential information.

the affected lands and the location of all tracts to be leased and of all leases already issued in the general area; and any substantial modifications to the lease terms."

We note for the record that the original submittal of the Scott #2 APD was marked "CONFIDENTIAL"; however, the resubmittal of the Scott #2 APD was not marked with this same disclaimer. In review of the nine (9) FOIA exemptions, it is exemption number nine (9), release of geologic information, which could exempt such information from release.[4] We also note that this well is identified as a "wildcat". As such, release of downhole drilling information, specifically the depth and target formation, could cause competitive harm to the applicant. Information of this type can also preclude release under exemption criterion number four (4). However, because courts have repeatedly rejected claims of competitive harm when advanced by agencies without supporting documentation from the submitters, indicating that the release of such information would indeed cause them financial hardship, BLM would not withhold information contained within the APD based on criterion number 4 that a submitter had not designated as confidential. Therefore, we must conclude that without the operator specifically identifying information within their submittal as confidential, BLM was under no obligation to withhold such information from public release and/or disclosure.

NEPA analysis on lands managed by the USFS

A national Memorandum of Understanding[5,6] between the BLM and the USFS and our NEPA Handbook provide regulatory structure for BLM's interaction with the USFS for proposals located on USFS administered lands. These documents provide specific guidance regarding the responsibilities of both agencies.

Pertinent to this SDR, the subject MOU[7] provides that BLM will:

> 1. Serve as co-lead or cooperating agency for environmental analyses for oil and gas leasing availability, and as co-lead or cooperating agency for environmental analyses required for APDs and related Special Use Permits, field or area-wide oil and gas exploration or development projects, and Sundry Notices;
>
> 2. Provide petroleum engineers, geologists, and other resource specialists as necessary on interdisciplinary teams performing environmental review and analysis for leasing and operations, especially with respect to down-hole operations and related ground water issues.

A petroleum engineer associated with the Wind River/Bighorn Basin[8] participated as a member of the Interdisciplinary Review Team, providing comments on the EA and assisted in the response to public comments.

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[4] We note that the record does not include any documentation that any member of the public attempted to review the drilling plan, nor was the APD incorporated by reference into the NEPA analysis. The Surface Use Plan was posted to the USFS, SNF, website.

[5] BLM MOU WO300-2006-07

[6] A project specific MOU does not appear to have been crafted to further clarify the specific roles and responsibilities for the drafting of this EA.

[7] Page 3-4

[8] The Lander Field Office, responsible party for the APD approval, is part of the Wind River/Bighorn Basin District.

BLM's NEPA handbook provides that in cases where there is a joint NEPA document, BLM must issue its own FONSI and DR, as it did in this case. It also indicates that BLM must undertake its own review of the environmental record/review to ensure that all issues have been adequately addressed and that no new information exists.

CEQ Guidance Regarding NEPA Regulations as it relates to cooperating agency status states that:

> *The CEQ regulations specifically address the question of adoption only in terms of preparing EIS's. However, the objectives that underlie this portion of the regulations -- i.e., reducing delays and eliminating duplication -- apply with equal force to the issue of adopting other environmental documents. Consequently, the Council encourages agencies to put in place a mechanism for [48 FR 34266] adopting environmental assessments prepared by other agencies. Under such procedures the agency could adopt the environmental assessment and prepare a Finding of No Significant Impact based on that assessment. In doing so, the agency should be guided by several principles:*
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> - *First, when an agency adopts such an analysis it must independently evaluate the information contained therein and take full responsibility for its scope and content.*

NEPA's Hard-Look requirements

WOC argues that "the public was not fully informed of the potential risks drilling of the Scott Well #2 could pose to ground and surface water and were not given any details regarding safeguards that the BLM would require to protect water resources" [and the] "[f]ailure to include any information about the Scott Well #2 down-hole drilling proposal (e.g. depth of target formation, casing depth, location and depth of aquifer(s), and types of drilling muds and chemicals that would be used, etc.) and failure to include a robust disclosure and analysis of the project's potential impacts to surface and groundwater violated NEPA." WOC further argues that "[t]he lack of basic information about water resources, and absolutely no mention whatsoever about subsurface drilling plans, fracking risk and associated chemical constituents, and the down-hole operational safeguards BLM would impose is wholly inadequate to meet NEPA's 'hard-look' standard."

BLM's NEPA Handbook 1790-1 provides the following guidance as it relates to the BLM's mandate under NEPA to take a "Hard-Look" at the environmental impacts arising from project analysis: "The effects analysis must demonstrate that the BLM took a "hard-look" at the impacts of the action. The level of detail must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives. Furthermore, a "**hard-look**" is a reasoned analysis containing quantitative or detailed qualitative information."

In Powder River Basin Resource Council 144 IBLA 319 (June 18, 1998) IBLA states:

> *[1] It is well established that a BLM decision to proceed with a proposed action, absent preparation of an EIS, will be affirmed and held to be in accordance with section 102(2)(C) of NEPA where the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental*

impacts, and made a convincing case that no significant impact will result there from or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Cabinet Mountains Wilderness v. Peterson. 685 F.2d 678, 681-82 (D.C. Cir. 1982). An appellant seeking to overcome such a decision must carry its burden of demonstrating, with objective proof, that BLM failed to or did not adequately consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by section 102(2) (C) of NEPA. Southern Utah Wilderness Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993).

We will follow the above referenced BLM policy (Handbook) and precedent IBLA and court decisions to help us determine whether the LFO took the requisite hard-look required by NEPA.

As detailed within the Environmental Assessment (WY-50-EA10-101), based on scoping, the IDT classified the identified issues as Key or Non-Key. "Key issues are those that identify a cause and effect relationship to the proposal. These key issues are used to analyze environmental effects, develop project design features, and develop alternatives. Non-key issues are those that are already decided by law, the Forest Plan or other regulation; are not supported by scientific evidence; are opinions or positions; or do not have a cause and effect relationship to the proposal (outside the scope)." (EA page 5). By definition then, Key issues were those that had been determined to require sufficient discussion and analysis. The subject EA (page 6), identifies "effects [of] the proposed activities on ground and surface water" as a Key Issue. The specific issue identified included (relevant to this SDR): Drilling and production activities could result in direct and indirect contamination of ground and surface water. The EA (pages 6-7) provided that in order to analyze the potential effects the following indicators would be used: Connectivity of the drilling borehole to groundwater and how well project design features provide mitigation.

BLM signed a FONSI and DR on January 24, 2011 authorizing the drilling and production of the Scott #2[9]. Within the FONSI, the LFO indicated that:

The Shoshone National Forest's analysis of the impacts associated with the proposed surface use shows that adverse impacts to the surface ownership/land use and grazing; socioeconomics/environmental justice; cultural/paleontological resources and Native American religious concerns; soils/watershed; water resource; air quality; vegetation/wetland/noxious weeds; wildlife/fisheries; threatened , endangered, candidate, and special status species; visual resources; transportation; and from the use of hazardous materials, if any, would all be minor, short term, necessary and due impacts. Potentially, substantial positive economic impacts could result for the operator, and local, state, and federal governments.

The FONSI further concluded that:

Based on my review of the analysis of the Scott #2 Oil Well Project Environmental

[9] As a technicality, we find that nowhere in the FONSI or DR does LFO specifically say they are adopting the FS NEPA document as their own analysis. We assume that this was their intent, but in the future, language should be included in the FONSI/DR with this specifically addressed.

Assessment (EA), I have determined that the BLM Proposed Action, that is, to approve the exploration and drilling operations of the well to recover federal mineral estate as authorized by the Shoshone National Forest and the use of an access route across BLM managed lands, is in conformance with the approved Lander Resource Management Plan (1987) (LRMP) and will not have any significant impact on the human, natural and physical environment. Therefore, an environmental impact statement is not required.

Within the DR, LFO noted that:

The decision to approve the Proposed Action is based on the following: 1) consistency with resource management plan and land use plan; 2) national policy; 3) agency statutory requirements; 4) relevant resource and economic issues; 5) application of measures to avoid or minimize environmental impacts; 6) finding of no significant impact; and 7) public comments.

Specific to this SDR, the LFO Manager found that:

4. Relevant Resource and Economic Issues
Potential environmental impacts from the Scott #2 well project proposal to surface and subsurface resources identified in the Environmental Assessment are considered minor and all deemed acceptable with mitigation. The economic benefits derived from the implementation of the Proposed Action in the form of continuing employment opportunities, equipment, services, and potential revenues should production occur are considered.

5. Application of Measures to Avoid or Minimize Environmental Impacts
Federal environmental protection laws, such as the Clean Air Act, and the National Historic Preservation Act, apply to all lands and are included as part of the standard oil and gas lease terms and the terms and conditions of the APD and Sundry Notice documents. The adoption of these measures identified in Chapter 2.0 and 4.0 of the Scott #2 well project EA provide practicable means to avoid or minimize potential environmental impacts.

Within Section 3.7 of the Scott #2 EA, Water Resources, discussion is provided as to the relevant geologic formations in the area that are sources of usable ground water (page 37)[10]. It is further noted that springs and seeps do occur within the project area (not within the project footprint) and that: "the groundwater emerges primarily at the contacts of major geologic formations." The EA further acknowledges (page 37) that there are known water rights located downstream of the project area; rights exist for both surface and groundwater including irrigation, storage, and domestic water supply and acknowledges that, per State of Wyoming regulation, protection must be afforded to all underground water bodies, whether they are being used or not. Water being used is to be protected for its intended use and uses for which it is suitable.

[10] Per the EA: There are contacts between the Wiggins and Teepee Trail formations and the Teepee Trail and Aycross formations. Additionally, there are lithologic contacts within the Wind River Formation. Groundwater also surfaces within Quaternary-age glacial and landslide alluvial deposits.

43 CFR 3162.5-2 requires that: "The operator shall isolate freshwater-bearing and other usable water containing 5,000 ppm or less of dissolved solids and other mineral bearing formations and protect them from contamination."

Further, for BLM-authorized actions, Onshore Order #2 (Federal Register / Vol. 53, No. 223 Friday, November 18, 1988 Effective date: December 19, 1988)[11] requires:

> *The proposed casing and cementing programs shall be conducted as approved to protect and/or isolate all usable water zones, lost circulation zones, abnormally pressured zones, and any prospectively valuable deposits of minerals.*

From a review of the EA, the DSD cannot determine where these springs and seeps may occur (i.e. upgradient/downgradient) in relationship to the project footprint, nor can the DSD determine where these appropriated water rights are in relationship to the proposed project.

Further, the DSD is unable to find any description of the drilling proposal to determine if any of the water-bearing formations (i.e. currently being used and/or containing usable waters) are targeted for production. As such, we cannot determine from the record that the well's completion and/or production operations will isolate and protect usable water zones as required by 43 CFR 3162.5-2(d)[12] or if the proposed action will cause a classified water use (as defined by WDEQ Chapter 8 Rules) to become unusable. We do note that there is detailed technical review materials located in the BLM well file.

The DSD has also been provided a copy of information that had been provided to the USFS for inclusion into the EA describing downhole geologic conditions at the site-specific well location. This document is undated but we have confirmed no such language exists within the subject EA. Per our BLM/USFS MOU (see below for agency responsibilities), and per NEPA, BLM was required to conduct an independent evaluation of the EA, and ensure that the relative downhole information and impact analysis of the drilling/completion plan was adequate. We agree that this has not occurred and this issue is remanded to LFO with instructions to include the geologic conditions and drilling/completion plan in the EA.

> ***Sec. 1501.6 Cooperating agencies.***
>
> *The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a*

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[11] This Order details the Bureau's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian lands (except Osage Tribe) and for abandonment immediately following drilling. The purpose also is to identify the enforcement actions that will result when violations of the minimum standards are found, and when those violations are not abated in a timely manner. This Order is based upon the assumption that operations have been approved in accordance with 43 CFR Part 3160 and Onshore Oil and Gas Order No.1.

[12] *Protection of freshwater and other minerals.* The operator shall isolate freshwater-bearing and other usable water containing 5,000 ppm or less of dissolved solids and other mineral-bearing formations and protect them from contamination.

cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

1. *Request the participation of each cooperating agency in the NEPA process at the earliest possible time.*
2. *Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.*
3. *Meet with a cooperating agency at the latter's request.*

(b) Each cooperating agency shall:

4. *Participate in the NEPA process at the earliest possible time.*
5. *Participate in the scoping process (described below in Sec. 1501.7).*
6. *Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.*
7. *Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.*
8. *Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.*

Chemical Disclosure and Hydraulic Fracturing Risk

A review of the EA, APD, and COAs attached to the approved permit show that Hudson has not proposed any completion methods at this time. As such, LFO noted that completion operations were not addressed in the approved permit and subsequently requires that Hudson submit for prior approval "the completion plans, including which zones/formations will be tested, stimulation proposals, and the proposed production methods. Any operations involving plugging back, squeeze jobs (abandonment of perf's), or casing repair and remedial cementing operations require prior approval from the Lander BLM Field Office"[13].

Without this information, BLM cannot reasonably foresee what will occur should commercial shows of gas and/or oil be found during the drilling of the subject well. We note for the record, that there are no producing gas/oil wells within one (1) mile of the proposed action which would allow extrapolation by the BLM to inform its analysis. We find that WOC has not provided any information in their appeal that would suggest that BLM had adequate information for analysis. As such, LFO properly excluded this issue from detailed NEPA analysis and is affirmed on this point. If a completion proposal is received from Hudson, BLM is obligated to undertake an appropriate level of analysis to ensure that the operation is technically adequate and will not result in significant impacts to the environment.

[13] Approved APD, Site Specific Drilling Conditions of Approval, number 8.

DECISION

Based on our review, the WSO hereby REMANDS the decision to approve the Scott #2 Well to the LFO for additional analysis. The LFO is instructed to complete additional disclosure and analysis as necessary to ensure that information regarding downhole operations (including drilling and completions), and any potential impacts to water resources is disclosed in the NEPA record. A new FONSI/DR will be required.

Hudson may not proceed with any surface disturbing activities associated with the APD until this additional analysis is completed by LFO concluding with a new FONSI/DR.

In addition, termination of the lease suspension decision and the requirement that Hudson undertake active drilling operations under Federal Unit agreement WYW153453X are held in abeyance until the LFO issues a new decision on the APD upon remand; terms for lifting the lease suspension and unit drilling requirements will be decided by LFO and the Wyoming Reservoir Management Group upon issuance of the remand decision by LFO. Prior to lifting the lease suspension, LFO will forward any new decision to the Wyoming DSD (920) for review and concurrence prior to approval.

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, Part 4 and Form 1842-1 (copy attached). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your 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 (pursuant to regulation 43 CFR 3165.4(c)) for a stay of the effectiveness of this Decision during the time that your appeal is being reviewed by the Board, 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. A copy 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 (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 of 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/ Larry Claypool

Larry Claypool
Deputy State Director
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