

February 21, 2020

Steven Hall, Acting Deputy State Director, Energy, Lands and Minerals
Peter Cowan, Fluid Minerals Program Lead
BLM Colorado State Office
2850 Youngfield Street
Lakewood, CO 80215
Via email

RE: Huntsman Unit COC 74403X and Oil and Gas Leases COC 70002, 70006, 63886, 63888, 63889, and 78843

Dear BLM Officials,

We write to thank you for the in-person meeting at the State Office on January 24, 2020. Based on that conversation we are providing some follow-up and clarification on items below.

We still request a formal response to our Nov. 18, 2019 letter explaining why BLM should deny the request filed by SG Interests to expand the Huntsman Unit.¹ Based on our in-person conversation it is clear that SG's application for expansion of the Huntsman Unit remains incomplete. BLM issued a letter to SG on Sept. 18, 2019 notifying the company of preliminary approval for the unit expansion, directing the company to give notice to involved parties with affected interests and to provide them with 30 days to object, and then directing the company to submit a request for final approval at the end of that 30 day period. Four and a half months later, SG still has not submitted a final request. BLM should take the opportunity to return the application to SG unapproved. This is just the latest example of SG's dilatory administration of the leases and the unit.

For reasons discussed below and in prior correspondence on this issue, BLM should also deny SG's request because the Huntsman Unit has expired, and the leases in that unit should have also expired², and because the leases that the company wants added to the unit have properly expired as well. Further, BLM has never given the hard look (or any look) required under NEPA to the leases subject of this letter, and the agency must now cancel the leases or else undertake that hard look before extending the leases to facilitate development.

I. The Huntsman Unit Properly Expired and Cannot be Expanded.

BLM should deny expansion of the Huntsman Unit because the Unit expired years ago. We outlined the basis for this expiration in a letter sent to BLM in October of 2019. Basically, the

¹ Wilderness Workshop et al., Letter to Steven Hall et al. "RE: Huntsman Unit COC 74403X and Oil and Gas Leases COC 70002, 70006, 63886, 63888, 63889, and 78843," Nov. 18, 2019, attached as Exhibit 1.

² See id., at 4-10 detailing why leases COC 63886, 63888, and 63889 have properly expired.

Huntsman Unit expired by its own terms before any unit suspension was requested or granted.³ When BLM approved the Huntsman Unit, the agency made clear that no extensions would be granted beyond October 16, 2010 to commence the initial obligation well other than for “Unavoidable Delay” pursuant to Section 25 of the unit agreement.⁴ The letter further provided that “[a]ny extension granted for ‘Unavoidable Delay’ requires convincing written justification and documentation **prior to the critical date** and is limited to 30 days, with possible renewal for 30 day-periods, if the delay is extensive, with timely written documentation for each extension.”⁵ No such requests were filed to support extension until long after the unit had expired by its own terms.⁶

Nonetheless, BLM sent a response letter to us on November 22, 2019 asserting that the Huntsman Unit was properly suspended. The agency’s letter failed to cite any authority to support its conclusion. Our in-person conversation on January 24th also failed to uncover any authority in law or regulation that would allow BLM to suspend this unit after it had already expired by its own terms and in contravention of BLM’s own conditions of approval for the unit. In fact, BLM did not have authority to suspend the Huntsman Unit after that unit had expired. At that point, there was nothing left for BLM to suspend. Any decision to suspend the unit post-expiration is ultra vires and has no legal effect. See e.g., 43 C.F.R. § 3165.1 (suspension requests must be filed prior to the expiration date).

BLM’s November 22nd response letter relies upon the suspension of leases in the Huntsman Unit to support its post-expiration decision to suspend the operator’s unit obligations. This reliance is misplaced. Lease and unit suspensions are independent administrative actions. IBLA has rejected claims that lease suspensions also suspend the unit agreements. J.W. McTiernan, 136 IBLA 241, 246 (1996). Lease responsibilities are distinguishable from unit duties. Koch Exploration Co., 100 IBLA 352, 363-4 (1988)(Section 39 of the MLA provides no authority for suspension of obligations imposed by a unit agreement); see also Ruby Drilling Co., 119 IBLA 210, 214 (1991)(suspension of leases and of drilling obligations imposed by unit agreements involve unique considerations). BLM’s suspension of the unitized leases does not mandate suspension of SG’s obligation to comply with requirements of the unit agreement. 136 IBLA 241, 246 (1996). The only thing that could relieve a unit operator of those obligations is a unit suspension. Here, though, the unit expired before it was ever suspended and also before a request to suspend unit obligations was ever filed. As stated above, BLM has no authority to revive a unit agreement that expired by its own terms, and the agency’s reliance on factors like the lease suspension is unpersuasive post-

³ Wilderness Workshop et al., Letter to Jamie Connell et al., “RE: Expiration of the Huntsman Unit and Leases COC 63886, 63888 and 63889,” Oct. 11, 2019, at 2-4 (attached as Exhibit 2).

⁴ See Jerome D. Strahan, Acting Chief, Branch of Fluid Minerals Division of Energy, Lands, and Minerals, Bureau of Land Management, Colorado State Office, Final Certification-Determination for the Huntsman Unit (In Reply Refer to: CO-922 3180 Final Huntsman Unit – COC74403X), April 16, 2010 (attached as Exhibit 3).

⁵ *Id.* (emphasis added).

⁶ BLM’s approval of the Huntsman Unit also confirmed automatic termination of the Unit if the obligation well was not timely drilled. See *id.* (“Pursuant to 43 CFR 3183.4(b) and Section 9 of the unit agreement, if the Public Interest Requirement is not fulfilled, the unit will be declared invalid and no lease committed to this agreement shall receive the benefits of 43 CFR 3107.3-2 and 3107.4.”).

hoc rationalization. The Huntsman Unit cannot be expanded now because it properly expired several years ago. Accordingly, BLM should formally confirm that the Huntsman Unit expired and deny SG's unit expansion request.

II. Leases Proposed for Inclusion in the Huntsman Unit also Properly Expired.

Our November 18th letter also explained that the leases SG requested be added to the Huntsman Unit have also expired. We previously provided detailed explanation of the facts and law requiring that BLM stop managing these leases as valid existing rights in July of 2017.⁷ However, when we met in-person on January 24th officials seemed unfamiliar with the relevant facts, so we thought it important to revisit them here and to include our July correspondence as an attachment.

Leases COC 70002, 70006, and 78843 have never been drilled. Instead, SG has tried to save them from expiration by grouping them into units.⁸ Before this latest attempt to add the leases to the Huntsman Unit, SG included these leases in the Henderson Gulch Unit. As discussed in our July 27th letter, SG failed to prosecute diligent drilling within that unit before the leases expired.⁹ The leases should have expired as originally scheduled because there was no well or diligent drilling, neither on these leases nor other leases in the unit, to hold them over the leases' expiration date.¹⁰ Even after the leases should have expired, SG failed to prosecute diligent drilling that could extend them.¹¹ Ultimately, SG's failure to diligently develop the Henderson Gulch Unit resulted in its automatic termination. As discussed in our November 18, 2019 letter, this rendered leases in the Unit ineligible for any extensions by way of inclusion in the unit, and provides yet another reason that the leases should have expired.¹² Rather than continuing to manage leases COC 70002, 70006, and 78843 as valid and adding them to the Huntsman Unit, BLM officials should familiarize themselves with these facts and confirm that the leases have expired.

III. BLM Has Never Satisfied NEPA Obligations on the Subject Leases.

⁷ Wilderness Workshop et al., "Amended request for State Director Review of Decision suspending operations and production on oil and gas lease COC 70006 and Request for State Director Review of the subsequent termination of that decision" July 27, 2017, attached as Exhibit 4.

⁸ This is also true of lease COC 70003, which also should have expired.

⁹ See Exhibit 4, at 5-11.

¹⁰ Id., at 1-7. See also Solicitor's Opinion on Oil and Gas Lease Suspensions, 92 Interior Dec. 293, 298, (1985)(a unit agreement does not "alter the underlying lease term that will expire if the operator is not diligently drilling at the end of the primary term, or has not completed a well capable of production in paying quantities prior to expiration of leases committed to the unit. In fact, the unitization provisions of the Act, 30 U.S.C. § 226(j), require a discovery of oil or gas under the terms of the unit agreement prior to lease expiration.")

¹¹ Exh. 4, at 7-11 (detailing last minute filings, significant last-minute changes to drilling plans (including a last-minute change in target formation), failure to drill over the lease expiration date, drilling subsequent to the lease expiration date with unauthorized drilling techniques, and a BLM shutdown order requiring unauthorized drilling to stop entirely).

¹² See Exhibit 1, at 1-2; see also Exhibit 4 at 5-11 (BLM dismissed this SDR without addressing the merits).

At our in-person meeting we briefly discussed the applicability of NEPA to the Huntsman Unit and the leases discussed in this letter. BLM officials confirmed their reliance on a Federal Register Notice from 1994 proposing to adopt a Forest Service EIS to show compliance with NEPA prior to selling the subject leases. However, that Notice is not a final agency decision, and it does not satisfy the agency's obligations under NEPA. In the past, BLM has declared leases void ab initio after similar deficiencies were exposed.¹³ Here too, BLM's lack of pre-lease NEPA makes these leases subject to cancellation. If BLM opts not to cancel the leases—which is the appropriate course of action—the outstanding NEPA violation requires that a thorough NEPA review be conducted now, before making any further decisions that facilitate the leases' development. BLM has undertaken remedial NEPA in similar cases.¹⁴

Further, there is significant new information and changed circumstances that BLM must consider now before extending these leases for future development. See S. Utah Wilderness Alliance v. Norton, 457 F.Supp.2d 1253, 1266 (2006)(remanding BLM leasing decisions because the agency failed to consider new information and changed circumstances). Implementation of the 2001 and Colorado Roadless Rules are two examples of new information and changed circumstances, but there are many others as well. For example:

- stale programmatic analyses for the BLM and Forest Service managed resources at issue;
- additions and modifications to the federal endangered and threatened species list and guidance;
- major changes to the National Ambient Air Quality Standards;
- the development and deployment of new oil and gas drilling and production technologies;
- new estimates of recoverable oil and gas resources in the area;
- legislative proposals to withdraw the subject lands from availability for mineral leasing introduced in Congress;
- new information related to climate change and the potential impact of limiting fossil fuel development on public lands to achieve climate goals; and
- a new statewide migration corridor initiative.

Before making discretionary decisions that have the effect of keeping these undeveloped leases from expiring, BLM should undertake a transparent public process in which the agency takes a hard look at whether these old leases comply with applicable laws and regulations, including the terms of the leases and unit agreements themselves. As part of that process, BLM should

¹³ See e.g., Board of Commissioners of Pitkin County and Wilderness Workshop, 173 IBLA 173 (2007) (remanding BLM leasing decisions for failure to undertake pre-lease NEPA); see also BLM, Colorado State Office, Decision: Oil & Gas Leases Withdrawn; Invalid Ab Initio Refunds Authorized (In Reply Refer To: CO-922(KZ) COC67538 COC67540 COC67541 Oil & Gas), Aug. 12, 2009 (attached as Exhibit 5) (BLM's subsequent decision declaring the leases "invalid ab initio," withdrawing them from the date of issuance, and formally cancelling the leases).

¹⁴ See Previously Issued Oil and Gas Leases in the White River National Forest, Record of Decision (BLM/CO/PL-17/001), USDO, BLM, CRVFO (Nov. 17, 2016) (modifying 13 leases, cancelling 25, and reaffirming 24 leases), available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/65550/90705/109026/Final_PIL_EIS_ROD_11-17-2016.pdf (last accessed 2/6/20).

consider conditioning any discretionary decision on new stipulations that ensure adequate protection of natural resources, including roadless values.

During our in-person meeting BLM officials questioned their authority to modify lease terms. There should be no question on this issue: when making discretionary decisions, BLM has authority to modify lease terms to bring the leases into compliance with applicable laws and regulations (including, e.g., approving lease and unit suspensions or granting requests for unit expansions).

For example, on the adjacent White River National Forest, BLM recently modified a handful of leases and canceled others where the leases were issued without compliance with NEPA and other statutes. See N.14 supra (BLM's ROD for the previously issued leases on the White River National Forest resulted in modification of 13 leases, cancellation of 25, and no change to another 24 leases). The White River National Forest example is not unique. BLM has on several occasions made a discretionary decision to suspend leases to consider voiding them or adding new terms where compliance with NEPA or other statutes were in question. See e.g., Declaration of Kent Hoffman, Deputy State Director, Division of Lands and Minerals, BLM, Utah State Office, November 19, 2019 (attached as Exhibit 6). BLM has also considered lease modifications in circumstances where significant new information on natural resource values arose that the agency failed to consider previously. See e.g., Three Suspended Leases in Millard County, UT EA (DOI-BLM-UT-9100-2012-001-EA), USDO, BLM, Utah State Office, June 2012 (attached as Exhibit 7). Further, Federal District Courts and the IBLA have upheld BLM's broad authority to condition discretionary decisions—going so far as to confirm that the agency may reserve the right to deny all drilling on a lease as a condition of suspension if such drilling would result in unacceptable impacts to natural resource values. Getty Oil Co. v. Clark, 614 F. Supp. 904, 918-19 (D. Wyo. 1985); see also Sierra Club et al., 80 IBLA 251, 264 (1984).

IV. Extending These Leases Condone Speculation.

All of this should be considered along with the wealth of evidence confirming that the leaseholder is more interested in holding these leases for speculative purposes than in diligently developing them.¹⁵ SG has held these leases, in some cases, for nearly 20 years. The company held them through periods when gas prices reached historic highs, and chose not to develop the leases. Now, with gas prices at historic lows, the company has said it doesn't intend to develop leases like these on the National Forest.¹⁶ Instead, SG is relying on unitization and suspension to

¹⁵ IBLA has upheld discretionary BLM decisions denying lease extensions where leaseholders have not engaged in diligent drilling because allowing leases to expire or eliminating them from a unit is consistent with the public interest and granting such extensions may constitute "favorable treatment of a select few operators' and sets a bad precedent." Koch Exploration Co., 100 IBLA 352, 356 (1988)

¹⁶ See Dennis Webb, Gas developer focused on existing leases, Grand Junction Daily Sentinel (Jul. 3, 2019)(SG's Robbie Guinn notes that the company's focus is on the Bull Mountain Unit, and that due to low gas prices: "As far as expanding farther out into the forest, it's not warranted at this time."), attached as Exhibit 8. In other cases, BLM refused to issue leases where a bidder did not intend to diligently develop them. See Brian Maffly, BLM pulls back oil and gas leases bought by Utah activist, author Terry Tempest Williams, Salt Lake Tribune (Oct. 20, 2016)("A primary

keep these leases from expiring. This tactic also has the benefit of absolving the company requirements to pay rentals for the leases. BLM cannot continue to facilitate (and subsidize)¹⁷ this speculation.

Conclusion:

Based on information provided here and in our previous correspondence, it is clear that: (1) the Huntsman Unit expired by its own terms due to SG's failure to drill a unit obligation well or timely request a suspension; (2) BLM's putative suspensions of the Huntsman Unit and relevant leases were untimely and unlawful; (3) the leases within the Huntsman Unit legally expired due to lack of production in paying quantities or diligent development; (4) the leases sought to be added to the Huntsman Unit also expired due to lack of production in paying quantities or diligent development; and (5) all of the leases discussed in this letter have never been given the hard look (or any look) required under NEPA.

Consequently, BLM should: (1) deny the requested expansion of the Huntsman Unit; (2) confirm that the Huntsman Unit expired; (3) confirm that the leases within the Huntsman Unit expired; and (4) confirm that the leases SG has requested be added to the Huntsman Unit have expired. If BLM declines to acknowledge that these leases and the Huntsman Unit are no longer valid, BLM's outstanding NEPA violation requires it to either cancel the leases or else undertake a full and transparent NEPA process that provides a hard look at the environmental consequences of facilitating oil and gas development in a Roadless Area. As part of that process the agency must consider applying updated lease stipulations or conditions of approval to protect the invaluable resources that will be impacted by development of these leases.

Should BLM continue to manage the Huntsman Unit as valid and proceed to consider expansion of the Unit, we ask the agency to provide a response to our concerns citing specific regulations that allow for the post-expiration suspension of the Unit and continued management of expired leases as valid existing rights.

Sincerely,

Peter Hart, Staff Attorney
Wilderness Workshop

requirement of the Mineral Leasing Act is that the lessee of an oil and gas lease be reasonably diligent in developing its lease. Ms. Terry Tempest Williams of Tempest Exploration indicated on several occasions that the company has no intention of developing the two leases. BLM, therefore, had little choice other than to deny the lease offers,' said an agency spokesman.") (available online at <https://archive.sitrib.com/article.php?id=4467584&itype=CMSID> (last accessed 2/10/20).

¹⁷ See Jayni Hein et al., Look Before You Lease: Reducing Fossil Fuel Dominance on Public Lands by Accounting for Option Value, Institute for Policy Integrity, Jan. 2020, (attached as Exhibit 9) and available online at https://policyintegrity.org/files/publications/Option_Value_Report.pdf (last accessed 2/20/20).

P.O. Box 1442 Carbondale, CO 81623
970.963.3977 (office)
peter@wildernessworkshop.org

Exhibits:

1. Wilderness Workshop et al., Letter to Steven Hall et al. "RE: Huntsman Unit COC 74403X and Oil and Gas Leases COC 70002, 70006, 63886, 63888, 63889, and 78843," Nov. 18, 2019
2. Wilderness Workshop et al., Letter to Jamie Connell et al., "RE: Expiration of the Huntsman Unit and Leases COC 63886, 63888 and 63889," Oct. 11, 2019
3. Jerome D. Strahan, Acting Chief, Branch of Fluid Minerals Division of Energy, Lands, and Minerals, Bureau of Land Management, Colorado State Office, Final Certification-Determination for the Huntsman Unit (In Reply Refer to: CO-922 3180 Final Huntsman Unit – COC74403X), April 16, 2010
4. Wilderness Workshop et al., "Amended request for State Director Review of Decision suspending operations and production on oil and gas lease COC 70006 and Request for State Director Review of the subsequent termination of that decision" July 27, 2017
5. BLM, Colorado State Office, Decision: Oil & Gas Leases Withdrawn; Invalid Ab Initio Refunds Authorized (In Reply Refer To: CO-922(KZ) COC67538 COC67540 COC67541 Oil & Gas), Aug. 12, 2009
6. Declaration of Kent Hoffman, Deputy State Director, Division of Lands and Minerals, BLM, Utah State Office, November 19, 2019
7. Three Suspended Leases in Millard County, UT EA (DOI-BLM-UT-9100-2012-001-EA), USDOJ, BLM, Utah State Office, June 2012
8. Dennis Webb, Gas developer focused on existing leases, Grand Junction Daily Sentinel (Jul. 3, 2019)
9. Jayni Hein et al., Look Before You Lease: Reducing Fossil Fuel Dominance on Public Lands by Accounting for Option Value, Institute for Policy Integrity, Jan. 2020