

June 20, 2023

Doug Vilsack, State Director
Bureau of Land Management
Colorado State Office
Denver Federal Center, Building 40
PO Box 151029
Lakewood, CO 80215
Via email: blm_co_statedirector@blm.gov

Re: Request for State Director Review of decision suspending operations on oil and gas leases COC 69999 (COCO105387780), 70000 (COCO105388815), and 78845 (COCO105691193)

Dear Director Vilsack:

Wilderness Workshop, the Center for Biological Diversity, The Wilderness Society, High Country Conservation Advocates, and Citizens for a Health Community (collectively “petitioners”) respectfully request State Director Review of the May 22, 2023 decision by BLM’s Fluid Minerals Branch Chief approving a new Section 17(i) suspension of operations on oil and gas leases COC 69999 (COCO105387780), 70000 (COCO105388815), and 78845 (COCO105691193).¹ Leases COC 69999, 70000, and 78845² are also referred to herein as the Clear Fork leases because they overlap the Clear Fork inventoried roadless area within the Thompson Divide.

Wilderness Workshop (WW) is a nonprofit organization based in Carbondale, Colorado. WW’s mission is to protect and conserve the public lands and natural resources of the Roaring Fork Watershed, the White River National Forest, and adjacent public lands. WW’s service area includes public lands on the Grand Mesa Uncompahgre and Gunnison National Forests (GMUG) at the headwaters of the North Fork of the Gunnison, in the area commonly referred to as the Muddy Country or the Clear Fork. WW is one of a number of local stakeholders working to protect the Thompson Divide from oil and gas development, including the area affected by the suspension decision at issue here. WW’s members also use and enjoy the areas affected by the decisions.³

The Center for Biological Diversity (“Center”) is a non-profit environmental organization dedicated to the preservation, protection, and restoration of biodiversity, native species, and

¹ BLM, Suspension of Operations Approved (In Reply Refer To: 3160 (LLCON05000) COCO105507619 (COC 013600) COCO105729198 (COC 013601) COCO105653040 (COC 013602) COCO105603803 (COC 013935) COCO105491310 (COC 016187) COCO105387780 (COC 069999) COCO105388815 (COC 070000) COCO105691193 (COC 078845) (May 22, 2023) attached as Exhibit 1.

² Lease COC 78845 was segregated out of lease COC 70002 after BLM approved the Trail Gulch Unit. Some documents cited herein reference COC 70002 because they predate the segregation or notice of the segregation.

³ Wilderness Workshop’s “Thompson Divide” webpage, available at <https://wildernessworkshop.org/thompson-divide/> (last accessed June 16, 2023).

ecosystems. The Center is headquartered in Tucson, Arizona, with offices in Denver and Crested Butte, Colorado, numerous other states, and Mexico. The Center uses science, policy, and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive. The Center has and continues to actively advocate for increased protections for species and their habitats in Colorado. The Center has over 84,000 members, nearly 3,000 of whom live in Colorado, and some of whom recreate within the specific lease areas.

The Wilderness Society (TWS), founded in 1935, works to protect America's wilderness and wildlife and to develop a nationwide network of wild lands through public education, scientific analysis and advocacy. Our goal is to ensure that future generations will enjoy the clean air and water, wildlife, beauty and opportunities for recreation and renewal that pristine forests, rivers, deserts and mountains provide. TWS has over 21,000 members and supporters in Colorado and more than one million members and supporters nationwide. TWS members have a long-standing interest in the protection and management of our public lands, including Roadless Areas, and are concerned about the impacts of mineral leasing and development on Colorado's wildlands. TWS members use the disputed lease lands for hunting, fishing, hiking, backpacking, photography, wildlife viewing, and other recreational, aesthetic, and educational purposes. Roadless Areas are a priority for the National Forest Action Center at TWS and TWS is actively involved in protecting Roadless Areas throughout Colorado and the nation.

High Country Conservation Advocates (HCCA), formerly known as High Country Citizens Alliance, is located in Crested Butte, Colorado and has over 800 members. HCCA was founded in 1977 to protect the health and natural beauty of the land, rivers, and wildlife in and around Gunnison County now and for future generations. For 40 years HCCA has engaged on public lands issues, and has participated in natural gas development issues in Gunnison County for over a decade to prevent irreparable harm to its members' interests. HCCA is a grassroots organization that collaborates with local stakeholders and policymakers, applies sound science, educates, and upholds the environmental laws affecting our community.

Citizens for a Healthy Community ("CHC") is a grass-roots organization with more than 500 members formed in 2010 for the purpose of protecting people and their environment from the impacts of oil and gas development in the North Fork Valley and Delta County region. CHC's members and supporters include organic farmers, ranchers, vineyard and winery owners, sportsmen, realtors, and other concerned citizens impacted by oil and gas development.

Petitioners are adversely affected by the challenged decision, which extends the life of undeveloped Federal oil and gas leases COC 69999, 70000, and 78845. Petitioners have longstanding interests and a history of engagement in the management of these leases.⁴ By

⁴ See e.g., High Country Citizens' Alliance et al., Lease Sale Protest (July 26, 2006) (Petitioners protested the sale of these leases in 2006) (attached as Exhibit 2); WW et al., Comments on GE's [Gunnison Energy's] requested Suspension of Operations and Production on Leases COC 69999, 70000, 70002 (May 30, 2017) (Petitioners also submitted comments on GE's suspension request) (attached as Exhibit 3); WELC et al., Scoping Comments – Proposed Action: North Fork Mancos Master Development Plan for Oil and Gas Exploration and Development,

preventing the leases from expiring, BLM's decision makes it substantially likely that the economic, aesthetic, recreational and organizational interests of petitioners and their members will be harmed. See Three Forks Ranch Inc., 171 IBLA 323, 329 (2007); Order, Natural Resources Defense Council, et al., IBLA 2012-272 (May 1, 2013); Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982). The suspension decision extending these leases was approved to allow the operator time to finalize development plans and to get approval for those plans making development of these leases and all of the related impacts reasonably foreseeable. Petitioners' members stand to be injured by any development of these leases. Further, as discussed below, BLM's decision relies on the false premise that the leases are still valid existing rights. In fact, the leases properly expired already. And BLM's decision to continue managing the expired leases as valid existing rights represents an immediate harm to petitioners' members whose public lands are encumbered with these oil and gas leases that provide no benefit to them.

This request for review is timely filed pursuant to 43 C.F.R. §§ 3165.3 and 3185.1 (incorporating Section 3165.3). Petitioners received notice of the decision on May 25, 2023 via email from the Fluid Minerals Branch Chief at BLM's Colorado State Office.⁵ Petitioners request an oral presentation with the State Director pursuant to the same regulations.

The BLM decisions suspending leases COC 69999, 70000, and 78845 should be vacated and reversed, for several reasons. First, BLM failed to satisfy the requirements of NEPA in suspending the leases. Second, Section 17(i) suspensions are not available on leases that do not have wells capable of production. Third, the leases expired long before BLM issued this recent suspension decision. Fourth, the leaseholder has not shown requisite care and diligence developing the subject leases to support the suspension decision. Fifth, the suspension decision contravenes sound public policy.

I. BLM's suspension decision fails to comply with NEPA.

According to correspondence with the decisionmaker, BLM's most recent suspension decision was granted without any NEPA compliance at all.⁶ And, while lease suspensions may be eligible for categorical exclusion, Department regulations at 43 C.F.R. § 46.205(c) require that the

Gunnison and Delta Counties, Colorado (DOI-BLM-CO-N040-2017-050-EA) (March 22, 2017) (Petitioners filed comments on the North Fork Mancos Master Development Plan, which BLM relies upon for justification of its suspension despite no mention of the leases in that plan) (attached as Exhibit 4). The record includes numerous other documents reflecting petitioners' longstanding interest and engagement in the management of these leases, and several more are cited herein.

⁵ See email from Kemba K. Anderson, Fluid Minerals Branch Chief, Bureau of Land Management, to Peter Hart, Wilderness Workshop, Re: [EXTERNAL] Re: Leases COC 69999, 70000, and 78845 in the Thompson Divide (May 25, 2023 at 9:22 AM) (with the lease suspension decision attached) (attached as Exhibit 5).

⁶ See email from Kemba K. Anderson, Fluid Minerals Branch Chief, BLM to Peter Hart, Wilderness Workshop, Re: [EXTERNAL] Re: Leases COC 69999, 70000, and 78845 in the Thompson Divide (June 2, 2023 at 11:22 AM) ("There is no NEPA requirement for a suspension. Under Section 17(i) and 39 of MLA and 43 C.F.R. §§ 3103.4-4 and 3165.1, it allows the authorized officer the discretion to approve a suspension of a lease. As you know, it has taken BLM some time to complete the supplemental EA for North Folk Mancos MDP. Based on that rationale, the decision was to suspend the leases affected by the MDP until the supplement is final.") (attached as Exhibit 6).

“extraordinary circumstances” at 43 C.F.R. § 46.215 be reviewed for applicability. See 516 DM 11.9. Here, there is no record that BLM actually applied a CX or considered potential exceptions that may have made the CX unavailable. This failure is compounded because 1) existing NEPA does not support extension of the leases; and 2) extraordinary circumstances may exist that render use of a categorical exclusion improper.

a. Existing NEPA Analyses Do Not Support BLM’s Extension of the Leases.

NEPA requires that when BLM makes oil and gas leasing decisions, the agency’s “assessment of all ‘reasonably foreseeable’ impacts [] occur at the earliest practicable point. . . .” N.M. ex rel. Richardson v. BLM, 565 F.3d 683, 717-18 (10th Cir. 2009).

Here, while the leaseholder, Gunnison Energy (GE), has not made a diligent effort to drill the Clear Fork leases, BLM has provided more time for the company to develop them. Extension of these leases makes development and all of the associated impacts reasonably foreseeable. Indeed, the entire purpose of this suspension is to prevent its leases from expiring and thus allow for future development. If development of the leases were not reasonably foreseeable, the company would not need this extension. Before extending the life of the leases by suspending them, BLM must analyze and disclose the environmental impacts that may result from that extension.⁷

In addition, the analysis must include all reasonable alternatives. New Mexico, 565 F.3d at 708. These should include, at least: (a) allowing the leases to expire, (b) canceling them outright because they were issued in violation of NEPA (see below), and (c) barring all surface disturbance on the leases.

A thorough NEPA analysis is especially important now because BLM failed to prepare a site-specific analysis before issuing the leases in 2007.⁸ Also, the existing NEPA documents BLM and the Forest Service relied upon to sell the leases are inadequate at this point.⁹

⁷ Importantly, BLM cannot rely on the NFMMDP EA to claim impacts have been adequately analyzed. Development of leases COC 69999, 70000, and 78845 was never considered in that analysis. Further, that analysis was vacated and remanded. See A Cmty. v. United States Dep’t of Interior, Civil Action No. 21-cv-01268-MSK, 2022 U.S. Dist. LEXIS 91492, at *2-3 (D. Colo. May 19, 2022) (“After the Plaintiffs filed their opening brief, the Agencies filed the instant Motion to Remand (# 21). The Agencies report that ‘[b]ased on additional review and evaluation, [they had] identified substantial concerns with the NEPA analysis underlying the [] approval decisions, including the analysis of the potential impact of the new wells on emissions of greenhouse gasses such as methane.’ The Agencies explain that they intend to ‘prepare [a] supplemental NEPA analysis for the [Plan]’ and engage in public notice and comment procedures for that analysis.”). The supplemental EA was recently released for public comment and it still does not disclose or analyze potential impacts of developing the lease COC 69999, 70000, and 78845. See Exhibit 41.

⁸ See Wilderness Workshop et al., Amended request for State Director Review of Decision suspending operations and production on oil and gas leases COC 69999, 70000, and 70002 and Decision suspending obligations and tolling the term of the Trail Gulch Unit (COC 78145X) (Oct. 6, 2017) (attached as Exhibits 7 and 8). Again, BLM has never responded to the merits of deficiencies highlighted in this SDR, including the fact that BLM never conducted its own analysis or issued a ROD before selling the subject leases.

⁹ See e.g., Letter from HCCA et al. to Scott Armentrout, GMUG Forest Supervisor, Re: Oil and Gas Leasing in the Forest Plan Revision (Sept. 13, 2016) (attached as Exhibit 9).

Both the Uncompahgre Field Office, which manages the minerals under the suspended leases, and the GMUG National Forest are revising management plans due to stale and outdated existing plans. Even if BLM could claim to have relied on those plans for issuance of the leases, they are outdated and do not support the extension of the Clear Fork leases by suspension because the foreseeable direct, indirect, and cumulative impacts from developing these leases were not considered.

For example, existing plans and analyses dramatically underestimated the amount of oil and gas development in the area and never considered the amount of existing development, much less future development.¹⁰ The plans never considered technological advances that have changed the way oil and gas is developed (e.g., the wide-spread use of multi-stage hydraulic fracturing and horizontal drilling), and the resources that are now technologically accessible. The existing plans also failed to consider new information on the amount of oil and gas that exists in the Piceance Basin, which may be 40 times more than was previously estimated. And, critically, existing plans fail to acknowledge or analyze the climate impacts associated with developing oil and gas leases.

It has been 30 years since completion of the Oil and Gas Amendment on the GMUG, and over 40 years since completion of the Forest Plan to which that amendment was appended. The Uncompahgre Field Office recently updated its RMP, but the agency has agreed to revise it again based on legal challenges to its oil and gas analysis and decisions.¹¹ Conditions on public lands encumbered by these leases and conditions within the oil and gas industry have changed dramatically in ways that were not anticipated or considered by the agencies during the most recent plan revisions. In addition to those issues discussed above, we are aware of at least twelve new areas where there is important new information or circumstances, including, for example, changed roadless inventories, administrative and proposed legislative withdrawals on nearby lands, unique and prime farmlands that could be impacted, new or changed statuses of threatened and endangered wildlife that were not considered in BLM's suspension decisions, and, of course, contemporary climate science which strongly suggests the need to curb fossil fuel production on public lands to meet emissions targets.

This significant new information and these changed circumstances were not adequately considered in existing plans or when BLM issued leases COC 69999, 70000, and 78845, and BLM is required to consider them now under NEPA before extending the leases to facilitate development.

b. Extraordinary circumstances exist.

¹⁰ *Id.* at 2-6 (providing detail on the inadequacy of existing plans).

¹¹ Dennis Webb, GRAND JUNCTION DAILY SENTINEL, *Oil, gas leasing on hold in BLM office pending revisions in management plan* (Aug. 13, 2022), available at https://www.gjsentinel.com/news/western_colorado/oil-gas-leasing-on-hold-in-blm-office-pending-revisions-in-management-plan/article_15e29614-1a90-11ed-9211-ef857b074f3f.html (last accessed June 16, 2023) (attached as Exhibit 10). See also *Western Slope Conservation Center et al., v. BLM*, Case No. 20-cv-02787-REB (Doc. 46-1) (Oct. 17, 2022).

Granting a suspension alters the status quo by preventing the leases from expiring and thus preserving GE's right to drill in the Thompson Divide. Under these circumstances, BLM was required to prepare a NEPA analysis addressing the reasonably foreseeable impacts of that decision before suspending the leases. Pit River Tribe v. U.S. Forest Serv., 469 F.3d 768, 782-83 (9th Cir. 2006); see also, California ex rel. California Coastal Comm'n v. Norton, 311 F.3d 1162, 1174 (9th Cir. 2002) (reversing suspension decision that extended life of leases where no NEPA analysis done).

A categorical exclusion for lease suspensions would be improper here because several extraordinary circumstances exist, including the following.

(A) “Have significant impacts on such natural resources and unique geographic characteristics as . . . wilderness areas, prime farmlands . . . or other ecologically significant or critical areas.” BLM NEPA Handbook Appendix 5 at 2.2.

This extraordinary circumstance arises because of the inventoried roadless within the leases, the leases' overlap with the Thompson Divide, and the location of the leases in the North Fork Valley watershed, as well as numerous other environmental values. The suspension changes the status quo by preventing the leases from expiring and thus makes significant impacts from future drilling reasonably foreseeable. Those significant impacts preclude application of the categorical exclusion. See Sierra Club v. Dep't of Energy, 255 F. Supp. 2d 1177, 1185 (D. Colo. 2002); California, 311 F.3d at 1176-77.

There is no genuine dispute today that the Thompson Divide represents an “ecologically significant or critical area.” In fact, the Forest Service and BLM recently submitted an application requesting that the Secretary of the Interior withdraw the Thompson Divide from all forms of entry, appropriation, and disposal under the public land laws; location, entry, and patent under the mining laws; and operation of the mineral leasing, mineral materials, and geothermal leasing laws for this purpose:

to protect and preserve cultural, agricultural, ranching, wildlife, air quality, recreational, ecological, and scenic values in the Thompson Divide area of Colorado from potential impacts that may arise from the exploration and development of federally owned minerals.¹²

The application notes “[t]he appeal of the Thompson Divide area includes its singularity as a special place. It holds a combination of characteristics that makes a place special and unique.”¹³ It is “valued as a recreation setting due in part to the clean air, clear night skies, and the quiet and

¹² See U.S. Forest Service, Scoping Letter soliciting comments on the proposed administrative withdrawal of Thompson Divide (May 3, 2023) (attached as Exhibit 11), available at <https://www.fs.usda.gov/project/?project=63679> (last accessed June 16, 2023).

¹³ U.S. Forest Service and BLM, Application/Petition for Thompson Divide Area Withdrawal Garfield, Gunnison, and Pitkin Counties in Colorado, at 2 (attached as Exhibit 12), available at <https://usfs-public.app.box.com/v/PinyonPublic/file/1221475700196> (last accessed June 15, 2023).

the remoteness from the sights and sounds of human development.”¹⁴ The application highlights roadless areas within the Divide and clean water flowing from its headwater streams.¹⁵ It also confirms that sensitive values in the Divide could be incompatible with mineral development:

...values could be compromised if developed by additional mineral extraction related activities. Additional wells and associated pads, roads, pipelines and other infrastructure could change the scenic and natural character. This could detract from the landscape, visual attractiveness, and sense of vastness that make recreating and ranching in the area a notable experience.¹⁶

It goes on to say that communities have expressed concerns about the impacts of oil and gas development since it takes “an average of 70-150 truckloads per day to move a typical drill rig to a site...”¹⁷ And it notes that the requested withdrawal would protect rivers and streams “from the impacts of mineral extraction.”¹⁸

Much of the Divide was closed to future leasing by the adjacent White River National Forest in 2015.¹⁹ And there are legislative proposals for permanent withdrawal of the area currently under consideration in the U.S. Senate.²⁰ These proposals are based on concerns that mineral development is not compatible with the ecological and other unique characteristics of the Thompson Divide. But BLM has not considered that here.

A new report published in June of 2023 found that “Nearly half of the Thompson Divide withdrawal area comprises some of the most high-value landscapes for wildlife across the entirety of Colorado. In particular, the withdrawal area is superlative for its intact ecosystems and density of at-risk species.”²¹

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ *Id.* at 3.

¹⁹ U.S. Forest Service, White River National Forest, Final ROD for Oil and Gas Leasing on Lands Administered by the White River National Forest (Dec. 3, 2015) (attached as Exhibit 13), available at <https://www.fs.usda.gov/project/?project=29938> (last accessed June 18, 2023) (last accessed June 20, 2023).

²⁰ See H.R.3437 - 118th Congress (2023-2024): Colorado Outdoor Recreation and Economy Act, H.R.3437, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/3437> (last accessed June 20, 2023); S.1634 - 118th Congress (2023-2024): Colorado Outdoor Recreation and Economy Act, S.1634, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/1634> (last accessed June 20, 2023). See also U.S. Senator, Michael Bennet’s CORE Act website, <https://www.bennet.senate.gov/public/index.cfm/coreact> (last accessed June 14, 2023); Press Release from the Office of Senator Michael Bennet, *Ahead of Colorado Public Lands Day, Bennet, Hickenlooper, Neguse Reintroduce CORE Act to Protect Public Lands, Safeguard Outdoor Recreation, and Boost Economy* (May 17, 2023), available at <https://www.bennet.senate.gov/public/index.cfm/press-releases?id=ECB3437B-1C38-4108-8079-D880F2617B5E> (last accessed June 16, 2023).

²¹ Center for American Progress, Ecosystem Benefits of the Thompson Divide Mineral Withdrawal (June 13, 2023) (attached as Exhibit 14), available at <https://www.americanprogress.org/article/ecosystem-benefits-of-the-thompson-divide-mineral-withdrawal/> (last accessed June 14, 2023).

The study evaluated land values using these indicators: ecological intactness, ecological connectivity, imperiled species richness, and climate accessibility. Based on the findings, “nearly half of the Thompson Divide proposed withdrawal area is in the 75th percentile for at least one of these ecological characteristics compared with the rest of the state.”²² Again, BLM failed to consider the unique character of the Thompson Divide in its decision or in any of the applicable plans that it is relying on to support this suspension decision.

There is also no dispute that the North Fork Valley represents “prime farmland” and that existing, continued, and foreseeable oil and gas development may impact that resource. Indeed that was a primary concern of those who objected to BLM’s proposal to lease 30,000 acres in the Valley in 2012. Again, though, BLM has never considered the potential impacts that gas development may have on this resource.

(B) “Have highly controversial environmental effects or . . . involve unresolved conflicts concerning alternative uses of available resources.” BLM NEPA Handbook Appendix 5 at 2.3.

As noted above, development of the roadless lands within the Thompson Divide and the North Fork Valley is highly controversial and the use of these public lands for oil and gas development is the subject of unresolved conflicts. For example, BLM received thousands of public comments after scoping GE’s NFMMDP proposal. Commenters raised issues related to controversial environmental effects and unresolved conflicts concerning alternative uses of resources.²³ The NFMMDP was subsequently challenged in court and remanded to agencies due to inadequate analysis. Citizens for A Healthy Community et al v. United States Department of Interior et al, Civil Action No. 21-cv-01268-MSK, 2022 U.S. Dist. LEXIS 91492 (D. Colo. May 19, 2022). See N.7 supra.

BLM recently released a supplemental EA for the NFMMDP. However, serious unresolved concerns remain. Comments submitted by petitioners show that BLM still has not taken the requisite hard look at the impacts of all related past, present, and reasonably foreseeable future GHG emissions and climate impacts related to oil and gas development. See e.g., Exhibit 41 at 1-35, 40-41. The supplemental EA also contains no discussion or analysis related to development of the Clear Fork leases, or the substantive issues raised herein.²⁴ And BLM has failed to consider reasonable alternatives to approving more oil and gas development in the area.²⁵

The UFO RMP was also challenged in Court and as a result BLM is committed to revising its oil and gas analysis, including which lands should be open and closed to new leasing, and the agency has committed not to sell any new oil and gas leases in the planning area until that revision is complete. See Western Slope Conservation Ctr. v. BLM, Civil Action No. 20-cv-02787-REB,

²² Id.

²³ See e.g., Exhibits 2, 3, 4, 7, 9, and 15.

²⁴ See WELC et al., Comments on Supplemental EA (DOI-BLM-CO-G020-2023-0003-EA) and Underlying Revised Preliminary EA (DOI-BLM-CO-N040-2017-0050-EA): North Fork Mancos Master Development Plan (June 16, 2023), at 46-60 (attached as Exhibit 41).

²⁵ Id., at 61-70.

Settlement Agreement (Doc. 46-1) (Oct. 17, 2022); see also N.11 supra. This begs the question of whether oil and gas development is even appropriate in the Clear Fork area, and whether suspending leases for the purpose of development actually serves the public or the interest of conservation. Again, though, BLM did not consider this issue before extending the Clear Fork leases with suspensions.

Moreover, BLM has never adequately analyzed the impacts that the controversial practice of hydraulic fracturing will have on this area. The advent of hydraulic fracturing since 1993 raises significant new controversies over the environmental impacts of drilling. BLM must analyze those impacts here. See Center for Biological Diversity v. Bureau of Land Management, 937 F. Supp. 2d 1140 (N.D. Cal. 2013).

Similarly, BLM's decision to issue these leases did not consider cutthroat trout in the nearby streams as listed species under the ESA as currently required by FWS.²⁶

(C) “Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.” BLM NEPA Handbook Appendix 5 at 2.5.

Suspending these leases will allow them to remain in force and make oil and gas development in the Thompson Divide reasonably foreseeable. Any assertion that suspending the leases “will maintain the status quo” and “does not authorize surface disturbance” fails for numerous reasons discussed throughout this petition. The decision extends the leases for the purpose of development that would not occur without the suspension. Any development of the leases may have direct, indirect, or cumulative effects that have never been considered by BLM.

(D) “Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.” BLM NEPA Handbook Appendix 5 at 2.6.

The suspension is directly related to future development of the area by preventing the leases from expiring without being drilled. The cumulative effect of enabling the leases to be developed will cause significant environmental harms that have never been considered or disclosed to the public as required by NEPA.

(E) “Have significant impacts on properties listed or eligible for listing, on the National Register of Historic Places ...”

This suspension makes it reasonably foreseeable that development will occur in an area with important historic and cultural resources that have not been surveyed by BLM.

(F) “Have significant impacts on species listed or proposed to be listed, on the List of Endangered or Threatened Species ...”

²⁶ See WELC et al., NFMMDP Scoping Comments (attached as Exhibit 4), at 98-102; see also Exhibit 41 at 59, 80.

As discussed above, BLM has not considered whether the foreseeable development of the leases resulting from an extension of the lease terms will impact listed species in the area. There is significant new information related to listed species that the agency did not consider when selling these leases.

(G) “Violate a Federal law . . . imposed for the protection of the environment.” BLM NEPA Handbook Appendix 5 at 2.9.

As noted above, this suspension violates the Mineral Leasing Act and other laws.

(H) “Contribute to the introduction, continued existence, or spread of noxious weeds.” BLM NEPA Handbook Appendix 5 at 2.12.

One of the most pervasive problems with oil and gas development is its role in spreading noxious weeds into previously undisturbed areas. The GMUG Oil and Gas Leasing Amendment includes no discussion of this issue at all. In dismissing this extraordinary circumstance, the Field Office again erred by addressing the suspension in isolation without considering the reasonably foreseeable development that the suspension makes possible. Sierra Club, 255 F. Supp. 2d at 1185. BLM does not question that the reasonably foreseeable development enabled by extending the lease will contribute to the introduction and spread of noxious weeds.

II. Section 17(i) suspensions are unavailable for these undrilled leases.

Additionally, Section 17(i) suspensions are available only for leases that have a well capable of production or allocated production from a well capable of production under the terms of a unit agreement.²⁷ But the production must predate lease expiration, or the leases must qualify for a statutory extension:

Leases committed to these [unit] agreements are subject to the same requirements as regular leases, that is, the leases expire at the end of the primary term unless they qualify for a statutory extension or unless actual production or a well capable of production in paying quantities exists at the end of the primary or extended term.²⁸

As discussed below, leases COC 69999, 70000, and 78845 have no wells capable of production, nor was there a well capable of production within the Trail Gulch Unit before the leases expired. GE’s drilling of the Trail Gulch 1090 30 H2 well, the unit well, was not undertaken with due care and diligence to qualify the leases for a statutory extension (see infra). Consequently, the May 22, 2023 17(i) suspension decision was made in error and should be reversed.

²⁷ Refer to Appendix 2 of MS 3160-10, rel. 3-150. See also BLM, IM 2023-012 – Suspensions of Operations and/or Production (Nov. 18, 2022), available at <https://www.blm.gov/policy/im-2023-012> (last accessed June 16, 2023); Savoy Energy, LP, 178 IBLA 313, 325 (2010).

²⁸ Refer to Appendix 2 of MS 3160-10, rel. 3-150.

- III. Leases COC 69999, 70000, and 78845 properly expired before BLM issued the suspension.

As a primary matter, the leases properly expired long before BLM issued this recent suspension decision. BLM has no authority to suspend an oil and gas lease that has already expired.²⁹ BLM should take affirmative steps to confirm proper expiration of the leases and vacate the May 22, 2023 suspension decision because granting a suspension of expired leases exceeds the agency's authority.

- a. BLM's 2017, 2018, 2019, and 2020 lease suspension decisions were improper, should be reversed, and the leases should be closed.

Leases COC 69999, 70000, and 78845 were issued in May of 2007 for ten-year terms and scheduled to expire on May 31, 2017.³⁰ During the ten-year term of the leases, the leaseholder made no effort to develop them. Instead, the company waited until just weeks before the leases were set to expire and filed an eleventh-hour suspension request, based on a last-minute drilling proposal for a new well located on a completely different federal lease.³¹ The new proposed well was intended to be a unit holder well for the Trail Gulch Unit (TGU), which BLM had not even approved when the lease suspension was requested. Then, also before BLM had approved the TGU, GE asked BLM to suspend that too.

The ploy here was transparent to most observers. GE was using BLM's suspension and unit regulations to hold leases that it had not developed, without any firm plans to develop them. Public comments and appeals were filed exposing the fact that GE's requests were not based on

²⁹ See Ridgeway Arizona Oil Corp. 181 IBLA 232, 246 N.12 (2011) ("the Secretary cannot suspend a lease (or consent to a period of nonproduction) if the lease has already expired; upon expiration, "the lease ends totally and there is nothing in existence for the Department to suspend." citing Jones-O'Brien, Inc., 85 I.D. 89, 94-95 (1978) (Secretarial opinion); John March, 98 IBLA 143, 146-47 (1987); Fuel Resources Development Co., 69 IBLA 39, 41 (1982); Teton Energy Co., 61 IBLA 47, 49 (1982); Tenneco Oil Co., 44 IBLA 171 (1979); American Resources Management Co., 40 IBLA 195, 198 (1979).

³⁰ See N.2 supra (lease COC 78845 was segregated out of lease COC 70002. Some documents cited herein reference COC 70002 because they predate the segregation or notice of the segregation).

³¹ GE's suspension request relied on a drilling permit application for the Trail Gulch 1090 30 H1 well on a lease issued long ago, in 1971, and that was already drilled and has been held by production since 1981. The company used this drilling proposal on an existing pad, targeting a lease with proven production, to keep leases it has no actual plans to develop from expiring. The drilling permit application was filed less than a month before the Clear Fork leases expired even though such late-term filings do not support grant of suspension. See Nevdak O&P, 104 IBLA 133, 139, (1988) (denial of suspension is appropriate when APD was filed less than 30 days prior to lease expiration date). Later, GE abandoned its drilling proposal and changed the unit well to the Trail Gulch 1090 30 H2—a permit that had not even been filed when the Clear Fork leases properly expired. See e.g., NFMMDP Supplemental EA DOI-BLM-CO-G020-2023-0003-EA (May 9, 2023) at 8 ("In September 2019, following GMUG's draft decision to approve surface use of NFS lands for the project, GELLC submitted APDs for the proposed H2, H3, and H4 wells on the same pad. In October 2019, GELLC withdrew the H1 APD.") (on file with BLM and the U.S. Forest Service). See also id., at 2 N.1 ("GELLC later replaced the proposed H1 well with another well, the H6, because of the inability to reach the intended H1 bottomhole due to an intervening lease.").

unavoidable delays that could justify late term lease suspensions or suspension of the proposed unit. The comments showed that the requests were a speculative scheme to hold leases the company failed to drill during the primary term.³² The comments and appeal also clearly explained how BLM's suspension of the leases violated applicable law and policy.³³

BLM ignored the comments and granted all of GE's requests. BLM then dismissed appeals to the State Director on standing grounds without addressing substantive concerns.³⁴ Subsequently, BLM compounded errors made in its 2017 suspension decisions by improperly extending those decisions in 2018, 2019, and 2020. Through the years, petitioners continued to monitor the leases with FOIA requests, FOIA lawsuits seeking public information the agency tried to withhold, and by submitting comments.³⁵

BLM attributed the suspensions to unavoidable delay, though delays were caused entirely by GE's own planning decisions. During the four years that the leases and unit were suspended after BLM's 2017 decisions, GE changed and modified the rushed drilling proposals that it had filed only to support its suspension requests. The significant changes made during this period, including abandoning the drilling proposal used to secure the original lease suspension and changing the unit well altogether, underscore just how unprepared GE was to drill when it requested the lease suspensions.³⁶ GE also met with BLM multiple times to confirm what the company would need to do to hold the Clear Fork leases without actually drilling on them.³⁷ Even despite all these changes and GE's transparent motive to keep leases COC 69999, 70000, and 78845 from expiring, still today the company has no actual plan to drill the leases.

To date, BLM never addressed the substantive and procedural issues raised in our comments and the 2017 State Director Review Request. Nonetheless, evidence continues to pile up confirming

³² See Wilderness Workshop et al., Comments on the requested suspension of federal oil and gas leases COC 69999, 70000, 70002 (May 30, 2017) (attached as Exhibit 3); see also Wilderness Workshop et al., Request for State Director Review of Decision suspending operations and production on oil and gas leases COC 69999, 70000, and 70002 and Decision suspending obligations and tolling the term of the Trail Gulch Unit (COC 78145X) (June 20, 2017) at 19 (attached as Exhibit 15).

³³ Id.

³⁴ Suzanne Mehlhoff, Deputy State Director, Division of Energy, Lands and Minerals, USDO, BLM, Colorado State Office, Decision dismissing SDR (In Reply Refer To: 3165 (CO-922) SDR CO-17-09 Leases COC69999, COC70000, COC70002 Trail Gulch Unit, COC78145X) (Feb. 9, 2018) ("...it is the decision of the State Director to dismiss the Associations' request for SDR for lack of standing.") (attached as Exhibit 16).

³⁵ Numerous FOIA requests and comment letters are on file with BLM. See also Wilderness Workshop v. BLM, Civil Action No. 2022-cv-1216-AMP (D. Colo. May 2, 2022).

³⁶ The unit well was changed from the 1090 30 H1 to the 1090 30 H2. See also N.31 supra (detailing several of GE's changes of plan and presenting evidence showing the company was nowhere near ready to drill when it first requested suspension of the Clear Fork leases).

³⁷ See e.g., GE letter to BLM "Re: Lifting of SOP dated May 22, 2020 Federal Oil and Gas Leases COC69999, COC70000, and COC78845 (Segregated out of COC70002) Trail Gulch Unit – COC78145X, Gunnison County, Colorado" (May 27, 2021) ("GE intends to fulfill all of its obligations for the Trail Gulch Unit and the unit leases by commencing the drilling of the unit obligation well prior to the extended unit lease expirations. To ensure these obligations are met to your satisfaction, please provide written confirmation that you agree with the lease expiration date above at your earliest convenience.") (attached as Exhibit 17).

GE has not managed the subject leases with the due care and diligence that would support giving the company more time to hold the leases. BLM should consider issues raised in our comments and our SDR along with GE's continued failure to exercise due care and diligence, and reverse the improper suspension decisions made in 2017-2020. The agency could then confirm proper expiration of these leases as required by law.³⁸

b. GE's last-minute drilling rush failed to keep the leases from expiring.

Even if BLM chooses not to reverse the improper suspension decisions made in 2017, 2018, 2019, and 2020, the leases properly expired shortly after the 2020 suspension terminated because GE's last-minute drilling rush failed to qualify the leases for extension under 43 C.F.R. § 3107.1. Without an extension, the leases expired long before BLM's May 22, 2023 suspension decision was issued.

On May 3, 2021, the 2020 suspension for leases COC 69999, 70000, and 78845 expired when BLM issued approval for the Trail Gulch 1090 30 H2 well—the new unit holder well for the Trail Gulch Unit targeting minerals under a different lease. This APD approval terminated the suspensions on the first day of June and left GE until June 30, 2021 to diligently drill a unit well to hold the Clear Fork leases from expiration.³⁹ GE failed to drill a well prior to this deadline, and failed to initiate actual drilling or diligently prosecute that drilling as required by 43 C.F.R. § 3107.1. Even after drilling began, GE still did not have all of the approvals in hand that it needed to drill and produce from the well. Drilling was halted on several occasions to deal with accidents, including blowouts, spills, and fires.

An oil and gas lease is eligible for a two-year extension where “actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at the end of the primary term” or if the lease is part of an approved unit plan of development or operation “upon which such drilling takes place.” 43 C.F.R. § 3107.1; see also 30 U.S.C. § 226(e). To qualify for an extension, a leaseholder must get necessary approvals to drill, then commence actual drilling, and diligently prosecute that drilling.

Before any drilling can take place, operators must have necessary approvals in hand. Drilling for oil and gas without approval on leased Federal or Indian land is a violation of 43 C.F.R. § 3162.3-1(c). This prohibition includes not just drilling, but also any surface disturbance prior to approval of an APD. See BLM, Permanent Instruction Memorandum 2016-001, Drilling Without Approval (DWOA), Sept. 30, 2016.⁴⁰ Compliance with applicable laws and regulations is also required prior to drilling. See e.g., id., at Attachment 2. Surface use plans, including stormwater plans, location of production facilities, location and types of water supply, construction materials (including sand), ancillary facilities, and plans associated with operations, are requirements of a complete

³⁸ GE would have no legitimate damage claim, as the company still has no firm plan to develop leases COC 69999, 70000, and 78845.

³⁹ See email from Steven B. Hall, Communications Director, BLM, to Jamie E. Connell, State Director, BLM “Re: Trail Gulch Unit Obligation Well (North Fork Mancos Master Development Plan)” (June 15, 2021) (attached as Exhibit 18).

⁴⁰ Available at <https://www.blm.gov/policy/pim-2016-001> (last accessed June 19, 2023)

drilling application and must be submitted to BLM for agency approval prior to drilling. See BLM, Onshore Oil and Gas Operations: Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations, 72 Fed. Reg. 10308, 10330-10333 (March 7, 2007) (to be codified at 43 C.F.R. pt. 3160).⁴¹

Where a lessee fails to take all actions required by regulation before drilling operations commence, any drilling actually undertaken does not constitute "diligent prosecution" of "actual drilling operations" in good faith under 43 C.F.R. § 3107.2-3, and the lessee is therefore not entitled to an extension of his oil and gas lease. Richard P. Smoot, 39 IBLA 1, 6 (1979) (citing Daisy E. Hook, 21 IBLA 147, 148 (1975)). If an operator has approval to drill, regulations define "actual drilling operations" as those "conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts." 43 C.F.R. § 3107.1. Preparatory work preliminary to actual drilling is not sufficient. Inexco Oil Co., 20 IBLA 134, 139 (1975).

The Interior Board of Land Appeals (IBLA) made clear that certain activities do not qualify as actual drilling operations adequate to extend a lease. For example, preparatory or preliminary work including moving or rigging up equipment, or drilling the "rat" hole is not considered "actual drilling operations." See Estelle Wolf et al., 37 IBLA 195, 197 (1978) ("Where a lessee has taken only preliminary steps toward drilling but has not actually commenced drilling into the ground before the end of the lease term, the preparatory work is insufficient to permit an extension of the lease.... [w]e adhere to the position that "actual drilling operations" as used in 30 U.S.C. § 226(e) (1976), and 43 C.F.R. § 3107.2-1(a) do not commence until penetration of the ground by a drilling bit.") (citation omitted).

BLM guidance adds to the list of activities that do not constitute "actual drilling." For example, installation of the blowout preventer (BOP) and related equipment should precede actual drilling operations to assure well control and safety, and such equipment "shall be in place and operational prior to drilling..." BLM, Onshore Oil and Gas Order No. 2, Drilling Operations, 53 Fed. Reg. 46798 (Nov. 18, 1988) (codified at 43 C.F.R. Part 3160).⁴² The BLM Handbook says: "Spudding a well on a lease is normally not sufficient to extend the lease term for diligent drilling over the expiration date." BLM Manual Handbook 3100-1, Oil and Gas Adjudication Handbook, at Glossary, p. 18.

If a leaseholder has commenced "actual drilling" prior to the end of a lease term, that drilling must also be diligently prosecuted. IBLA has held that various actions of a lessee occurring subsequent to the expiration date of a lease failed to exhibit the necessary diligence so as to earn the extension provided by the statute, even though drilling operations were being conducted over the end of the primary term. See, e.g., Thelma M. Holbrook, 75 I.D. 329, 331, 334 (1968)

⁴¹ Available at https://www.blm.gov/sites/blm.gov/files/Order_1_2007.pdf (last accessed June 19, 2023).

⁴² "Commencement of drilling without the approved BOPE installed, unless otherwise approved, shall subject the operator to immediate assessment under 43 C.F.R. § 3163.1(b)(1)." 53 Fed. Reg. 46798 (Nov. 18, 1988) codified at 43 C.F.R. § 3164.1.

(drilling was not diligent that relied on State approvals issued well after the lease's expiration date); Classic Mining Corp., 37 IBLA 338, 342 (1978) ("Appellant's failure to obtain prior approval for the change in its approved hole and casing arrangements is itself a sufficient basis upon which to deny appellant's lease extension."); id., at 344 ("Appellant's failure to comply with the regulation clearly shows that its drilling operations were undertaken principally to obtain an extension of its lease and not undertaken in good faith."); D.L. Cook, 20 IBLA 315, 317 (1975) (diligence requires a bona fide intent to complete a producing well and a showing that drilling was expeditiously carried forward). Moreover, "drilling on the last day of the lease term must be followed 'by a showing that the operation was thereafter expeditiously carried forward.'" D.L. Cook, 20 IBLA at 317 (operator failed to expeditiously carry forward with drilling after expiration date of the lease).

The BLM handbook explicitly notes that "plugging operations to abandon a previously drilled well do not constitute diligent drilling operations." BLM Manual Handbook 3017-1, Continuation, Extension, or Renewal of Leases, p. 7.

- i. GE failed to commence actual drilling prior to expiration of the leases.

Preparatory work, including spudding a well, does not constitute "actual drilling" sufficient to extend the lease term. See Inexco Oil Co., 20 IBLA at 139 (preliminary steps towards drilling held not qualifying); see also BLM Manual Handbook 3100-1, Oil and Gas Adjudication Handbook, at Glossary, p. 18 ("Spudding a well on a lease is normally not sufficient to extend the lease term for diligent drilling over the expiration date."). Installing a blowout preventer (BOP) is also considered a preliminary step that must be undertaken prior to actual drilling. BLM, Onshore Oil and Gas Order No. 2, Drilling Operations ("[the BOP] shall be in place and operational prior to drilling...").⁴³

Here, BLM records show that actual drilling was not undertaken prior to lease expiration at midnight on June 30, 2021. The Trail Gulch well was not even spud until 2:20 on June 30th.⁴⁴ Spudding a well is not actual drilling sufficient to extend a lease term.

Preparatory activities continued into July. For example, surface casing was not cemented until July 3rd, and a BOP was not installed until after that.⁴⁵ Records suggest the BOP was not tested until July 13th at the earliest.⁴⁶ These activities are necessary precursors to actual drilling.

⁴³ Id.

⁴⁴ Email from Tyson Johnston, VP, Land and Regulatory, Gunnison Energy to Stephen Garcia, BLM (July 6, 2021 at 4:34PM) (attached as Exhibit 19); see also COGCC, Report on TGU 1090 30 H2 Well (July 8, 2021) (indicating GE did not spud surface casing until late on June 30th) (attached as Exhibit 20).

⁴⁵ See id.; see also BLM, CRVFO "Memo: Potential Extension of Leases by Diligent Drilling" (In Reply Refer to: COC69999, COC70000, COC78845) (attached as Exhibit 21). Note that the dates listed for various activities in these filings are inconsistent. Nonetheless, the dates are all consistently after the lease expiration deadline.

⁴⁶ Colorado Oil and Gas Conservation Commission (COGCC), Field Operations Notice providing 24-hour notice of a BOP test scheduled for 7/13/21 (July 12, 2021) (attached as Exhibit 22).

The record makes it unclear that GE was even able to comply with these delayed timelines. Nearly two weeks after the company was required to commence actual drilling operations, GE still had not cemented the well and tested the BOP. In a July 12, 2021 email from GE to BLM, GE highlighted that “the setting of casing, cementing, and post-bop testing has been delayed due to downhole issues surrounding a stuck bottom hole assembly.”⁴⁷

This evidence shows that actual drilling did not commence until July, after the leases expired. GE’s failure to commence actual drilling prior to the leases’ expiration renders them ineligible for extension under 43 C.F.R. § 3107.1. Consequently, BLM’s suspension of the leases in May of 2023, just like all prior suspensions of the leases, occurred after they expired and violated law and is therefore a nullity, just like the leases.

- ii. GE failed to diligently prosecute drilling operations as required by law.

Even if GE had commenced “actual drilling” prior to expiration of leases COC 69999, 70000, and 78845, the company failed to diligently prosecute drilling operations as required to justify extension of the leases.

IBLA caselaw requires that an operator demonstrate drilling operations were diligently pursued and expeditiously carried forward. IBLA specifically looks at the totality of the circumstances around the drilling:

To qualify for the extension the evidence must show that actual drilling operations were diligently pursued on the leasehold on the last day of the lease, with bona fide intent to complete a producing well, as demonstrated by circumstances, e.g., by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

D.L. Cook, 20 IBLA at 317. The IBLA in D.L. Cook goes on to explain that: “the bona fide intent of the lessee and the diligence with which he carries out that intent must be tested in accordance with the regulation not only by the activity in progress at midnight of the last day, but by what transpires subsequently.” Id. (citing Thelma M. Holbrook, 75 I.D. 329 (1968)); see also Charles M. Goad, 25 IBLA 130, 134 (1976) (stating: “[W]e examine not only the procedures he was following on that day but also his later performance to determine whether his “last day” activities were undertaken in good faith.”).

The days and months after midnight on June 30, 2021 do not paint the picture of a diligent operator. First, the company plugged the original 1090 30-H2 well in mid-July. When GE stopped drilling the bore hole for the unit well, any chain of diligence that may have existed ended. See Charles M. Goad, 25 IBLA at 134 (holding that an operator was not diligent when he stopped

⁴⁷ Email from Tyson Johnston, VP, Land and Regulatory, Gunnison Energy to Alexander Provstgaard et al., BLM (July 12, 2021 at 2:19 PM) (attached as Exhibit 23).

drilling after seeking lease extension). When GE installed a concrete plug in the unit well, the company was no longer diligently drilling. BLM Manual Handbook 3017-1, Continuation, Extension, or Renewal of Leases, p. 7 (“plugging operations to abandon a previously drilled well do not constitute diligent drilling operations.”). That should mark the end of any lease extension inquiry.

GE did proceed to drill again, but the company needed an entirely new permit to do so. On July 19th, GE applied for a new drilling permit. The record suggests that the company then began drilling the new well before the permit was granted on July 29th.⁴⁸ Drilling without approval is not diligent drilling and impermissible under agency regulations.⁴⁹ Subsequently, the new well was also plugged and abandoned—once again ending any claim of diligence.

GE submitted yet another new drilling permit application on August 2nd.⁵⁰ The application was approved on August 5th.⁵¹ GE then drilled another new well. By this time, the operator was two drilling permits removed from the permit that was supposed to hold leases COC 69999, 70000, and 78845 in the Trail Gulch unit. Plugged wells and the need for permits to drill new wells show that GE failed to diligently prosecute drilling operations on the extension well. The originally well was never completed to support extension of the leases.

Additionally, a saga of accidents and mishaps undermine any claim that GE was operating with due care and diligence in drilling these wells. On July 1, 2021, GE reported a significant loss of circulation that required shutdown of operations.⁵² On September 13, 2021, a contractor’s pump truck caught fire during operations on the wellsite.⁵³ Operations were shut down and everyone was evacuated from the site. In addition to a fire, at least one spill on the wellpad resulted in release of an unknown amount of fluid. Then, on October 2, 2021 at 5:30am, a truck driver lost his load coming down the access road, which resulted in a snubbing unit and its trailer sliding off the road and coming to a rest 100 feet below the road. To retrieve the trailer, and without completing any NEPA whatsoever, the U.S. Forest Service allowed GE to construct a temporary road to retrieve the snubbing unit and trailer.⁵⁴ On November 10, 2021 between midnight and 6:00am, the Trail Gulch Unit well experienced a significant spill, resulting in a report to the Colorado Oil and Gas Conservation Commission (COGCC) and forcing the company to shut in the well.⁵⁵ In January, GE reported release of hydrogen sulfide from the location.⁵⁶ These represent just a handful of the incidents that have occurred at the Trail Gulch pad. Nonetheless, these fires,

⁴⁸ COGCC, Application for Permit to Drill Approval (July 29, 2021) (attached as Exhibit 24).

⁴⁹ See pp. 13-14 *supra*.

⁵⁰ COGCC, Application for Permit to Drill Approval (Aug. 5, 2021) (attached as Exhibit 25).

⁵¹ *Id.*

⁵² COGCC, Field Operations Notice (July 2, 2021) (attached as Exhibit 26).

⁵³ COGCC, Accident Report (Nov. 2, 2021) (attached as Exhibit 27).

⁵⁴ See COGCC, Accident Report photos (attached as Exhibit 29).

⁵⁵ COGCC, Spill/Release Report (supplemental) (Jan. 19, 2022) (“Lost SCADA around midnight. Incident occurred between midnight and 06:00. Well shut in @ 06:23 and secured by 2 x 2-9/16” 10M upper & lower master valves. Sand and possibly water on location surface. Some sand blow off-location to the northeast.”) (attached as Exhibit 28).

⁵⁶ COGCC, Field Operations Notice (Jan. 14, 2022) (attached as Exhibit 30).

spills, and accidents that resulted in evacuations and shut-downs, and resulted in contamination and remediation and new roads being built to retrieve equipment, evidence an absence of due care and diligence.

Based on this record, it is clear that various actions of GE subsequent to the expiration date of the leases failed to exhibit the necessary diligence so as to earn the extension provided by the statute. Since the leases were ineligible for extension under 43 C.F.R. § 3107.1, they expired before BLM's May 2023 suspension decision. Consequently, the suspension decision was made in error.

IV. The Leaseholder failed to show requisite care and diligence in developing the leases.

Even if the leases had not expired, BLM may only direct or consent to Section 17(i) suspensions in cases where the lessee is prevented from operating or producing from the lease, despite the exercise of care and diligence, by reason of *force majeure*, that is, matters beyond the reasonable control of the lessee.⁵⁷ As discussed above, no effort has ever been made to develop the Clear Fork leases and drilling within the Trail Gulch Unit was not undertaken with due care and diligence. Consequently, it was improper for BLM to approve a suspension for the Clear Fork leases under Section 17(i).

GE's failure to begin actual drilling and the company's failure to diligently prosecute that drilling are adequate grounds to deny an extension in this case. But there is additional evidence underscoring the company's lack of diligence and preparedness and undermining any argument that leases COC 69999, 70000, and 78845 qualified for the suspension BLM granted on May 22, 2023.⁵⁸

Prior to drilling on federal land an operator must have an approved APD, including a drilling plan and a surface use plan of operations, among other requirements. 43 C.F.R. §§ 3162.3-1(c)-(f). The drilling plan and the surface use plan are critical to assist agency officials, engineers, geologists, and the public in ascertaining the impacts of a drilling proposal.⁵⁹ And, while drilling plans may be

⁵⁷ BLM, IM 2023-012 (Suspension of Operations and/or Production) (Nov. 18, 2022), available at <https://www.blm.gov/policy/im-2023-012> (last accessed June 19, 2023); see also BLM Handbook 3160-10 (Suspension of operations under Section 17 may be directed or consented to "where a lessee is prevented from operating on the lease, despite the exercise of due care and diligence..."), available [here](#).

⁵⁸ Importantly, the Trail Gulch Unit agreement does not alter the underlying lease terms of the Clear Fork leases. So, when GE failed to commence actual drilling operations and diligently prosecute those operations over the expiration date of the leases, the leases expired and were no longer subject of the Trail Gulch Unit Agreement. BLM's April 17, 2023 decision to suspend unit obligations under the Trail Gulch Unit and tolling the initial 5-year term for the unit occurred too late, after the leases had already expired, and did nothing to prevent the Clear Fork leases from expiring.

⁵⁹ The drilling plan is a critical, detailed, and multi-faceted component of the APD that allows BLM engineers and geologists to complete an appraisal of the technical adequacy of, and environmental effects associated with, the proposed project. Drilling plans must describe the drilling program, the surface and projected completion zone location, pertinent geologic data, expected hazards, and proposed mitigation measures to address such hazards. 43

modified with the approval of the authorized officer, they are supposed to be finalized and approved prior to surface disturbing activities and drilling. 43 C.F.R. § 3162.3-1(e); see also BLM, Permanent Instruction Memorandum 2016-001, Drilling Without Approval (DWOA), Sept. 30, 2016⁶⁰; see also Onshore Order 1.

The record shows that GE was focused on getting an extension for leases in the Trail Gulch Unit that were scheduled to expire. There are records in late May and early June in which representatives of GE were asking what they would have to do to keep the leases from expiring.⁶¹ There are also emails in the record immediately after the leases should have expired in which GE is asking BLM officials for confirmation that an extension would be granted.

The record also shows that the company did nothing to develop the Clear Fork leases and the least possible to keep the leases from expiring. When the leases were scheduled to expire in 2017, GE asked BLM to unitize them with other leases that had already been developed, then filed an APD on another lease in the unit (not COC 69999, 70000, or 78845) that was already held by production. That APD did not even target minerals under any of these leases that were scheduled to expire. GE used the 1090 30 H1 APD to request a suspension of the Clear Fork leases, and subsequently withdrew that APD altogether.⁶² Nonetheless, the suspension was extended for several years before expiring in May of 2021 when BLM approved a permit to drill the 1090 30 H2 well (which was not even proposed until 2019—two years after the Clear Fork leases properly expired).⁶³ At that point, the company should have been prepared to drill. It had had ten years to figure out how to develop these leases, and another four years to finalize drilling plans while the leases were suspended. Nonetheless, the company still had not secured all approvals necessary to drill and complete the Trail Gulch Unit well before the leases expired and before it started drilling.

For example, while the leases expired at the end of June and drilling began in July, GE still had not determined how it was going to move sand and water to the drill site at that time. Significant amounts of sand and water are necessary for fracking and completing a well, but GE had no viable plan to get those resources to the wellsite when it started drilling. It was not until after the

C.F.R. § 3162.3-1(e). The surface use plan provides the BLM with information needed to ensure safe operations, adequate protection of the surface resources, groundwater, and other environmental components in areas where the BLM manages the surface. The surface use plan of operations shall contain information specified in applicable orders or notices, including the road and drillpad location, details of pad construction, diagrams showing all production facilities, information concerning water supply for drilling, methods for containment and disposal of waste material, plans for reclamation of the surface, and other pertinent data as the authorized officer may require. See 43 C.F.R. § 3162.3-1(f).

⁶⁰ See pp. 13-14, 17, N.42, N.49 supra.

⁶¹ See email chain between GE and BLM re. “Trail Gulch Unit OGL Extension date confirmation” (attached as Exhibit 31); see also emails from Tyson Johnston, VP, Land and Regulatory, GE to Larry Sandoval, BLM (June 11, 2021 at 2:04PM) (“In anticipation of receiving our drill-over extension...” and “I will have a request for extension prepared and submitted immediately...” and “We will be conducting drilling operations over June 30th and continue such operations until drilling of the entire well is complete (roughly July 20th).”) (attached as Exhibit 32).

⁶² See N.31 supra.

⁶³ Id.

leases had expired that the company proposed a workable plan and asked for BLM's approval.⁶⁴ In early August, BLM and GE were still trying to figure out where on the wellpad sand would be stored.⁶⁵ At the same time BLM was still trying to nail down emissions and truck trip estimates for GE's sand haulage that had not been previously approved.⁶⁶ Emails in the record indicate BLM and GE were still wrestling with questions about GE's water needs and use for the Trail Gulch well, and how to get that water onsite. It was not until mid-August that BLM approved GE's proposal for sand haulage.⁶⁷ It was September when GE finally sent BLM the water share agreement detailing where the water would come from that was necessary for completion of the Trail Gulch unit well.⁶⁸

Compliance with the Endangered Species Act and consultation with the U.S. Fish and Wildlife Service (USFWS) were necessary for the leaseholder's haulage plans as well, but USFWS was not even approached for approval until a month and a half after the leases should have expired.⁶⁹

The record also shows that the leaseholder was still finalizing a stormwater management plan in September, months after the leases expired and drilling began.⁷⁰

This evidence clearly shows that, despite years of time to prepare, GE was still unprepared to drill the Trail Gulch unit well when leases COC 69999, 70000, and 78845 expired. The company's failure to acquire necessary approvals before the leases expired and before it began drilling are yet another example of the company's failure to diligently develop these leases. These are not circumstances beyond the lessee's control as required for a Section 17(i) suspension, but instead circumstances caused by the lessee's own lack of diligence. Without the requisite "exercise of care and diligence" from the leaseholder, it was improper for BLM to suspend the leases.

V. BLM's suspension decision contravenes the public interest.

⁶⁴ Emails between Allen Crockett, BLM, and Mary Bloomstran, Edge Environmental re: sand and water delivery (July 29-30, 2021) (discussing sand delivery options that differ from what was previously proposed and indicating that Gunnison still hadn't provided their final plan) (attached as Exhibit 33).

⁶⁵ Emails between Allen Crockett, BLM, and Mary Bloomstran, Edge Environmental, and Tyson Johnston, GE reflecting evolving plans about where to store proppant sand necessary to frack the well and necessary approvals (Aug. 10, 2021) (attached as Exhibit 34).

⁶⁶ Email from Allen Crockett, BLM, and Mary Bloomstran, Edge Environmental (Aug. 1, 2021) ("I need to really nail down whether the truck emissions from GJ (or Fruita) were actually included in the air modeling, in GHGs.") (attached as Exhibit 35); *see also* emails between Mary Bloomstran, Edge Environmental, and Allen Crockett, BLM re: Trail Gulch emissions (Aug. 9, 2021) (attached as Exhibit 36); emails between Forrest Cook, BLM and Allen Crockett, BLM re: emissions from sand haulage (Aug. 9, 2021) (attached as Exhibit 37).

⁶⁷ BLM, DNA Approving Truck Haulage of Proppant Sand from Grand Junction, Colorado, to the Gunnison Energy TGU 1090 #30-H2 Well (Aug 25, 2021) (on file with BLM).

⁶⁸ Email from Tyson Johnston, GE, to agency officials (Sept. 8, 2021) (attached as Exhibit 38).

⁶⁹ Memo from Allen Crockett, BLM, to Ann Timberman, USFWS re: "Revision to Appended Biological Assessment for the North Fork Mancos Master Development Plan, Gunnison and Delta Counties, Colorado" (August 16, 2021) (attached as Exhibit 39).

⁷⁰ Emails between Tyler Johnston, GE, and agency officials with details on the revised stormwater management plan and asking for agency approval (Sept. 1, 2021) (attached as Exhibit 40).

The practice of extending lease terms through suspensions in the absence of diligent pursuit of lease development does not constitute sound public policy, as it benefits private interests at the expense of the American public. The Wilderness Society has studied this matter in depth, including through a comprehensive review of all suspended federal oil and gas leases in 2015 and a report and associated white paper describing how lease suspensions can and often do interfere with BLM’s multiple use mandate and cheat taxpayers of income from leasing and development.⁷¹ The report demonstrates the need for BLM to more faithfully apply its guidance regarding lease suspensions and deny suspension requests when they are not in the interest of the American public.

Recognizing the problems associated with indiscriminate lease suspensions and the need for sound public policy to address these problems, the White House *Blueprint for a Secure Energy Future* (March 30, 2011) appropriately directed that lease extensions should be reserved for operators that are “demonstrating diligent exploration and development” – not a tool for operators to hold interests in public land. See Exhibit 44, at 12. The issue also came up during the 2012 presidential debates when then President Barack Obama explained that “[y]ou had a whole bunch of oil companies who had leases on public lands that they weren’t using. So what we said was you can’t just sit on this for 10, 20, 30 years, decide when you want to drill, when you want to produce, when it’s most profitable for you. These are public lands. So if you want to drill on public lands, you use it or you lose it.” See Commission on Presidential Debates, October 16, 2012 Debate Transcript, at 6 (attached as Exhibit 45).

In 2018, the U.S. Government Accountability Office (GAO) released Report 18-411, entitled, “BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures.”⁷² The GAO found that BLM’s poor management of lease suspensions may inappropriately relieve leaseholders of diligence requirements, rob revenue from public coffers, and tie up public lands under lease that may be valuable for other uses.⁷³

BLM responded to recommendations from the GAO with guidance in 2019 and in 2022. The Instruction Memorandum (IM) issued in 2019 required BLM officials to provide a valid reason for suspensions and to consistently monitor lease suspensions.⁷⁴ The 2022 IM “reiterates and emphasizes specific policies that offices must consider when processing suspension requests

⁷¹ The Wilderness Society, *Land Hoarders: How Stockpiling Leases is Costing Taxpayers* (Dec. 15, 2015) (attached as Exhibit 42), and White Paper Appendix (attached as Exhibit 43). Both documents are available at <https://www.wilderness.org/articles/blog/land-hoarders-oil-and-gas-companies-are-stockpiling-your-public-lands> (last accessed June 19, 2023).

⁷² U.S. Government Accountability Office, *Report to Congressional Requesters, Oil and Gas Lease Management: BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures* (June 2018) (attached as Exhibit 46). Available at <https://www.gao.gov/products/gao-18-411> (last accessed June 19, 2023).

⁷³ *Id.* at 25 (With improved management “BLM could better ensure that federal lands are not being inappropriately kept from development—potentially foregoing revenue—or from other valuable uses of public lands.”)

⁷⁴ BLM, *Permanent Instruction Memorandum 2019-007, Monitoring and Review of Lease Suspensions* (June 14, 2019), available at <https://www.blm.gov/policy/pim-2019-007> (last accessed June 19, 2023).

and when monitoring lease suspensions to ensure that lease suspensions are warranted.”⁷⁵ The 2022 IM confirms that suspensions granted for GE’s Clear Fork leases were improper. “In general, the BLM should not grant a suspension for a lease where the applicant cites, as the basis for the suspension, a pending APD filed less than 90 days prior to the expiration date of the lease.”⁷⁶ The guidance notes that leaseholders are “responsible for timely filing required plans and necessary applications. Lessees and operating rights owners should not assume the BLM will grant a suspension merely to relieve them of their obligations of diligence and timeliness when complying with these and related requirements.”⁷⁷ This guidance serves to underscore the impropriety of suspending these undeveloped leases.

As demonstrated in this petition, GE is quite apparently utilizing lease suspensions as a loophole to retain federal leases past their contractual terms, to the detriment of the American public.⁷⁸ Even if GE ultimately intends to develop these leases, the company should not be exempt from the statutory requirement that it diligently pursue development within the 10-year lease term. GE is flouting regulations governing federal oil and gas leases as well as Congressional intent for the orderly development of federal minerals. GE’s ability to develop these leases, as well as the TGU, have not been impaired for any reason other than the company’s own actions. Rather than reward this malpractice, BLM must adopt sound public policy and reverse its decisions to suspend these leases and let them expire.

Conclusion:

The BLM decisions suspending leases COC 69999, 70000, and 78845 should be vacated and reversed, for several reasons. First, BLM failed to satisfy the requirements of NEPA in suspending the leases. Second, Section 17(i) suspensions are not available on leases that do not have wells capable of production. Third, the leases expired long before BLM issued this recent suspension decision. Fourth, the leaseholder has not shown requisite care and diligence developing the subject leases. Fifth, the suspension decision contravenes sound public policy.

Thank you for your consideration, and we look forward to scheduling an oral presentation,

⁷⁵ BLM, Instruction Memorandum 2023-012, Suspensions of Operations and/or Production (Nov. 18, 2022), available at <https://www.blm.gov/policy/im-2023-012> (last accessed June 19, 2023).

⁷⁶ *Id.* (note that BLM Handbook 3160-10 lists “Circumstances That Normally do not Warrant Suspensions”, including “Applications for Permit to Drill (APD’s) submitted incomplete or untimely (less than 30 days before lease expiration)”, available at <https://www.blm.gov/sites/default/files/docs/2022-03/MS-3160-10%20Rel.%203-150.pdf> (last accessed June 19, 2023)).

⁷⁷ *Id.* (citing *Vaquero Energy Inc.*, 185 IBLA 233, 237 (2015)).

⁷⁸ Petitioners are concerned that this case is just one more example of a Federal oil and gas leaseholder hoarding public land leases without diligently developing them. GE appears to be using the exact same tactics that have been used by other leaseholders in the Thompson Divide. For example, several years ago, SG Interests, another Federal oil and gas leaseholder with undeveloped interests in the Thompson Divide, failed to propose any drilling on its leases until the leases were near expiration. In the 11th hour, the company requested a unit to try to hold thousands of acres, filed a few pretextual and incomplete drilling proposals, and then requested that BLM suspend its leases.

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Exhibit list:

1. BLM, Suspension of Operations Approved (In Reply Refer To: 3160 ...) (May 22, 2023)
2. High Country Citizens' Alliance et al., Lease Sale Protest (July 26, 2006)
3. WW et al., Comments on GE's requested Suspension of Operations and Production on Leases COC 69999, 70000, 70002 (May 30, 2017)
4. WELC et al., Scoping Comments – Proposed Action: North Fork Mancos Master Development Plan for Oil and Gas Exploration and Development, Gunnison and Delta Counties, Colorado (DOI-BLM-CO-N040-2017-050-EA) (March 22, 2017)
5. Email from Kemba K. Anderson, Fluid Minerals Branch Chief, Bureau of Land Management, to Peter Hart, Wilderness Workshop, Re: [EXTERNAL] Re: Leases COC 69999, 70000, and 78845 in the Thompson Divide (May 25, 2023 at 9:22 AM)

6. Email from Kemba K. Anderson, Fluid Minerals Branch Chief, BLM to Peter Hart, Wilderness Workshop, Re: [EXTERNAL] Re: Leases COC 69999, 70000, and 78845 in the Thompson Divide (June 2, 2023 at 11:22 AM)
7. Wilderness Workshop et al., Amended request for State Director Review of Decision suspending operations and production on oil and gas leases COC 69999, 70000, and 70002 and Decision suspending obligations and tolling the term of the Trail Gulch Unit (COC 78145X) (Oct. 6, 2017)
8. Exhibits for Final Amended SDR State Director Review Trail Gulch Unit (Oct. 6, 2017)
9. Letter from HCCA et al. to Scott Armentrout, GMUG Forest Supervisor, Re: Oil and Gas Leasing in the Forest Plan Revision (Sept. 13, 2016)
10. Dennis Webb, GRAND JUNCTION DAILY SENTINEL, *Oil, gas leasing on hold in BLM office pending revisions in management plan* (Aug. 13, 2022)
11. U.S. Forest Service, Scoping Letter soliciting comments on the proposed administrative withdrawal of Thompson Divide (May 3, 2023)
12. U.S. Forest Service and BLM, Application/Petition for Thompson Divide Area Withdrawal Garfield, Gunnison, and Pitkin Counties in Colorado
13. U.S. Forest Service, White River National Forest, Final ROD for Oil and Gas Leasing on Lands Administered by the White River National Forest (Dec. 3, 2015)
14. Center for American Progress, Ecosystem Benefits of the Thompson Divide Mineral Withdrawal (June 13, 2023)
15. Wilderness Workshop et al., Request for State Director Review of Decision suspending operations and production on oil and gas leases COC 69999, 70000, and 70002 and Decision suspending obligations and tolling the term of the Trail Gulch Unit (COC 78145X) (June 20, 2017)
16. Mehlhoff, Deputy State Director, Division of Energy, Lands and Minerals, USDO, BLM, Colorado State Office, Decision dismissing SDR (In Reply Refer To: 3165 (CO-922) SDR CO-17-09 Leases COC69999, COC70000, COC70002 Trail Gulch Unit, COC78145X) (Feb. 9, 2018)
17. GE letter to BLM "Re: Lifting of SOP dated May 22, 2020 Federal Oil and Gas Leases COC69999, COC70000, and COC78845 (Segregated out of COC70002) Trail Gulch Unit – COC78145X, Gunnison County, Colorado" (May 27, 2021)
18. Email from Steven B. Hall, Communications Director, BLM, to Jamie E. Connell, State Director, BLM "Re: Trail Gulch Unit Obligation Well (North Fork Mancos Master Development Plan)" (June 15, 2021)
19. Email from Tyson Johnston, VP, Land and Regulatory, Gunnison Energy to Stephen Garcia, BLM (July 6, 2021 at 4:34PM)
20. COGCC, Report on TGU 1090 30 H2 Well (July 8, 2021)
21. BLM, CRVFO "Memo: Potential Extension of Leases by Diligent Drilling" (In Reply Refer to: COC69999, COC70000, COC78845)
22. Colorado Oil and Gas Conservation Commission (COGCC), Field Operations Notice providing 24-hour notice of a BOP test scheduled for 7/13/21 (July 12, 2021)
23. Email from Tyson Johnston, VP, Land and Regulatory, Gunnison Energy to Alexander Provstgaard et al., BLM (July 12, 2021 at 2:19 PM)
24. COGCC, Application for Permit to Drill Approval (July 29, 2021)

25. COGCC, Application for Permit to Drill Approval (Aug. 5, 2021)
26. COGCC, Field Operations Notice (July 2, 2021)
27. COGCC, Accident Report (Nov. 2, 2021)
28. COGCC, Spill/Release Report (supplemental) (Jan. 19, 2022)
29. COGCC, Accident Report photos
30. COGCC, Field Operations Notice (Jan. 14, 2022)
31. Email chain between GE and BLM re. "Trail Gulch Unit OGL Extension date confirmation" (June 2021)
32. Emails from Tyson Johnston, VP, Land and Regulatory, GE to Larry Sandoval, BLM (June 11, 2021 at 2:04PM)
33. Emails between Allen Crockett, BLM, and Mary Bloomstran, Edge Environmental re: sand and water delivery (July 29-30, 2021)
34. Emails between Allen Crockett, BLM, and Mary Bloomstran, Edge Environmental, and Tyson Johnston, GE reflecting evolving plans about where to store proppant sand necessary to frack the well and necessary approvals (Aug. 10, 2021)
35. Email from Allen Crockett, BLM, and Mary Bloomstran, Edge Environmental (Aug. 1, 2021)
36. Emails between Mary Bloomstran, Edge Environmental, and Allen Crockett, BLM re: Trail Gulch emissions (Aug. 9, 2021)
37. Emails between Forrest Cook, BLM and Allen Crockett, BLM re: emissions from sand haulage (Aug. 9, 2021)
38. Email from Tyson Johnston, GE, to agency officials (Sept. 8, 2021)
39. Memo from Allen Crockett, BLM, to Ann Timberman, USFWS re: "Revision to Appended Biological Assessment for the North Fork Mancos Master Development Plan, Gunnison and Delta Counties, Colorado" (August 16, 2021)
40. Emails between Tyler Johnston, GE, and agency officials with details on the revised stormwater management plan and asking for agency approval (Sept. 1, 2021)
41. WELC et al., Comments on Supplemental EA (DOI-BLM-CO-G020-2023-0003-EA) and Underlying Revised Preliminary EA (DOI-BLM-CO-N040-2017-0050-EA): North Fork Mancos Master Development Plan (June 16, 2023)
42. The Wilderness Society, Land Hoarders: How Stockpiling Leases is Costing Taxpayers (Dec. 15, 2015)
43. TWS, Land Hoarders White Paper Appendix
44. White House *Blueprint for a Secure Energy Future* (March 30, 2011)
45. Commission on Presidential Debates, October 16, 2012 Debate Transcript
46. U.S. Government Accountability Office, Report to Congressional Requesters, Oil and Gas Lease Management: BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures (June 2018)