



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003-1828

In Reply Refer to:
3160 (921 Gamper)

JUN 29 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

SDR No. WY-2012-020 (Part 1)

DECISION

STAY ISSUED

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

Specifically, WOC claims the Scott #2 APD, issued under Environmental Assessment WY-050-EA10-101, Finding of No Significant Impact and Decision Record (FONSI/DR), fails to comply with NEPA. WOC requests the State Director to remand the APD approval and direct the LFO to conduct additional NEPA analysis.

WOC has not requested an oral presentation or requested a stay of the APD approval. Per a February 23, 2012 phone conversation between WOC representative Lisa McGee and Merry Gamper, WSO, WOC did not request a stay of operations believing the WSO had adequate time to issue a decision before the expiration of timing limit conditions of approval restricting surface disturbing activities. Because timing restrictions on surface disturbing activities expire July 1, 2012 and the WSO requires additional time to adequately consider the issue raised in WOC's SDR request, the WSO considers it appropriate to stay approval of the Scott #2 APD and continue the suspension of operations on all the Federal oil and gas leases contained within the Carrot Unit until this SDR is resolved.

DISCUSSION

In analyzing whether a stay of the APD approval is warranted, the WSO evaluates four criteria; as noted in IBLA 2009-246² failure to satisfy any one of the criteria is sufficient justification to not issue a stay.

1. The relative harm to the parties if the stay is granted or denied

Here, WOC did not request a stay, but WSO has determined that it requires additional time to undertake an appropriate analysis of this SDR. Hudson, through its attorneys (Bjork, Lindley, and Little)³ has indicated it would be amenable to a stay decision if the decision carries forward the lease suspensions under Federal unit agreement WYW153453X and relieved the requirement to drill the obligation well no later than September 1, 2012. Based on Hudson's communication, it would not be harmed by a stay to allow BLM adequate time to complete the SDR process.

2. The likelihood of the appellant's success of the merits

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

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

² IBLA 2009-246, The Cloud Foundation, Inc., et al., page 3.

³ See email dated 6/28/12 @ 2:05pm from Rob Mathes to Merry Gamper: After consultation with our client, the Hudson Group, LLC, we do not believe the Hudson Group will be unduly prejudiced by a stay of the BLM's approval of the APD for the Scott #2 well pending the completion of a State Director Review so long as the BLM State Office: (1) Issues a suspension of operations and production on all the federal oil and gas leases contained within the Carrot Unit, BLM Serial No. WYW-153453X, as the Scott #2 is the initial obligation well for the unit and the interest of conservation would not be served by requiring Hudson to file additional APDs within the unit at this time; and (2) the BLM State Office authorizes a modification of Hudson's obligation to drill the initial obligation well pursuant to Section 9 of the Carrot Unit Agreement (Drilling to Discovery) via its authority pursuant to Section 25 of the Unit Agreement (Unavoidable Delay). Hudson further understands that an additional suspension request will be considered in the event the State Director Review is completed and other timing limitations remain in place precluding operations.

WSO notes that the submitted APD was not marked “confidential”, allowing all information regarding the proposed Scott #2 well to be available for review by the public. WSO also notes that while the Surface Use Plan of Operations is posted on the Shoshone Forest website⁴, information regarding the downhole operations was not incorporated by reference nor discussed in the proposed action description of the EA.⁵ While LFO has provided geologic and engineering review sheets with the submitted administrative record for this SDR, WSO has not had adequate time to review the record and determine whether there is a likelihood of success on the merits and therefore this factor is not a basis for our decision to issue a stay.

3. The likelihood of immediate and irreparable harm if the stay is not granted

If the WSO does not issue a stay prior to a review of the record, the unit obligation to begin drilling the Scott #2 well prior to September 1, 2012, may result in the Scott #2 well being completed before the WSO can complete the SDR process. The purpose of NEPA is to provide for informed decision-making and the WSO believes it appropriate to maintain the status quo while determining whether the LFO undertook the proper level of environmental analysis in approving the APD.

4. Whether the public interest favors granting the stay

The EA discloses extensive and long-standing interest in this project by both the environmental community and members of the general public. Evidence of this includes a Town of Dubois town meeting with members of the LFO, and a published scoping notice which resulted in nearly 43,000 comments. Additionally, at least 75 comment responses are provided in Appendix A of the EA. There is public interest in ensuring the environmental analysis of the Scott #2 APD is adequate and it does not appear that the public interest would be harmed by staying approval of the APD until this SDR is completed.

DECISION

Based on our review of the record under the four required elements for a stay, the WSO finds that the issuance of a Stay of the approval of the Scott #2 APD by the Lander Field Office is appropriate and is hereby ordered. Hudson may not proceed with any surface disturbing activities associated with the APD until this SDR is resolved.

In addition, termination of the lease suspension decision and the requirement that Hudson undertake active drilling operations under Federal Unit agreement WYW153453X are held in abeyance until the WSO issues a final decision on this SDR. Terms for lifting the lease suspension and unit drilling requirements will be decided at the time the SDR is resolved.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (copy attached). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your receipt of this decision. The appellant has the burden of showing that the Decision appealed from is in error.

⁴ http://www.fs.fed.us/nepa/nepa_project_exp.php?project=30027

⁵ Scott #2 EA, Proposed Action, Section 1.1; EA at 3

If you wish to file a petition (pursuant to regulation 43 CFR 3165.4(c)) for a stay of the effectiveness of this Decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. A copy of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success of the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.



Larry Claypool
Deputy State Director,
Minerals and Lands

Attachment

1 – Form 1842-1

cc:

Richard Vander Voet (FM, LFO)
Steve Dondero (WRBB, DO)
J. David Chase
WY-BLM Reservoir Management Group
Gamper (WY-921)
SDR File

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United States Forest Service
Shoshone National Forest
Wind River Ranger District
Rick Metzger, District Ranger
P.O. Box 186
Dubois, Wyoming 82513

BACKGROUND

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

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

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

On January 24, 2012, the LFO issued a decision authorizing the development of Federal mineral estate under the Scott #2 APD consistent with the Forest Service, Wind River District's April 25, 2011 decision to authorize surface use, which was based on the EA completed for the 1999 Scott #2 APD. On June 9, 2011, WOC appealed the Forest Service decision under 36 C.F.R Part 215. The Shoshone Forest Supervisor AFFIRMED the decision of the Wind River District on July 25, 2011.

On December 29, 2011 Hudson again requested a suspension of the lease for conservation purposes while the NEPA analysis was being completed on the second APD submittal and to accommodate the multiple timing restrictions that were to be placed on the APD if approved. On January 9, 2012, LFO granted the suspension with an effective date of December 1, 2011.

Per an order of the authorized officer, the suspension is set to expire on July 1, 2012. Furthermore, lease WYW146470 is committed to Federal Unit WYW153453X; consistent with the lease suspension WY-BLM's Reservoir Management Group has set a condition of the Federal unit agreement requiring that drilling of the first well (obligation) must commence prior to September 1, 2012, or the unit will dissolve.

Conditions of Approval attached to the approved APD by the Forest Service preclude surface disturbing activities through June 30, 2012.¹

¹ http://www.fs.fed.us/nepa/nepa_project_exp.php?project=30027
Scott#2 Decision Record, Appendix A