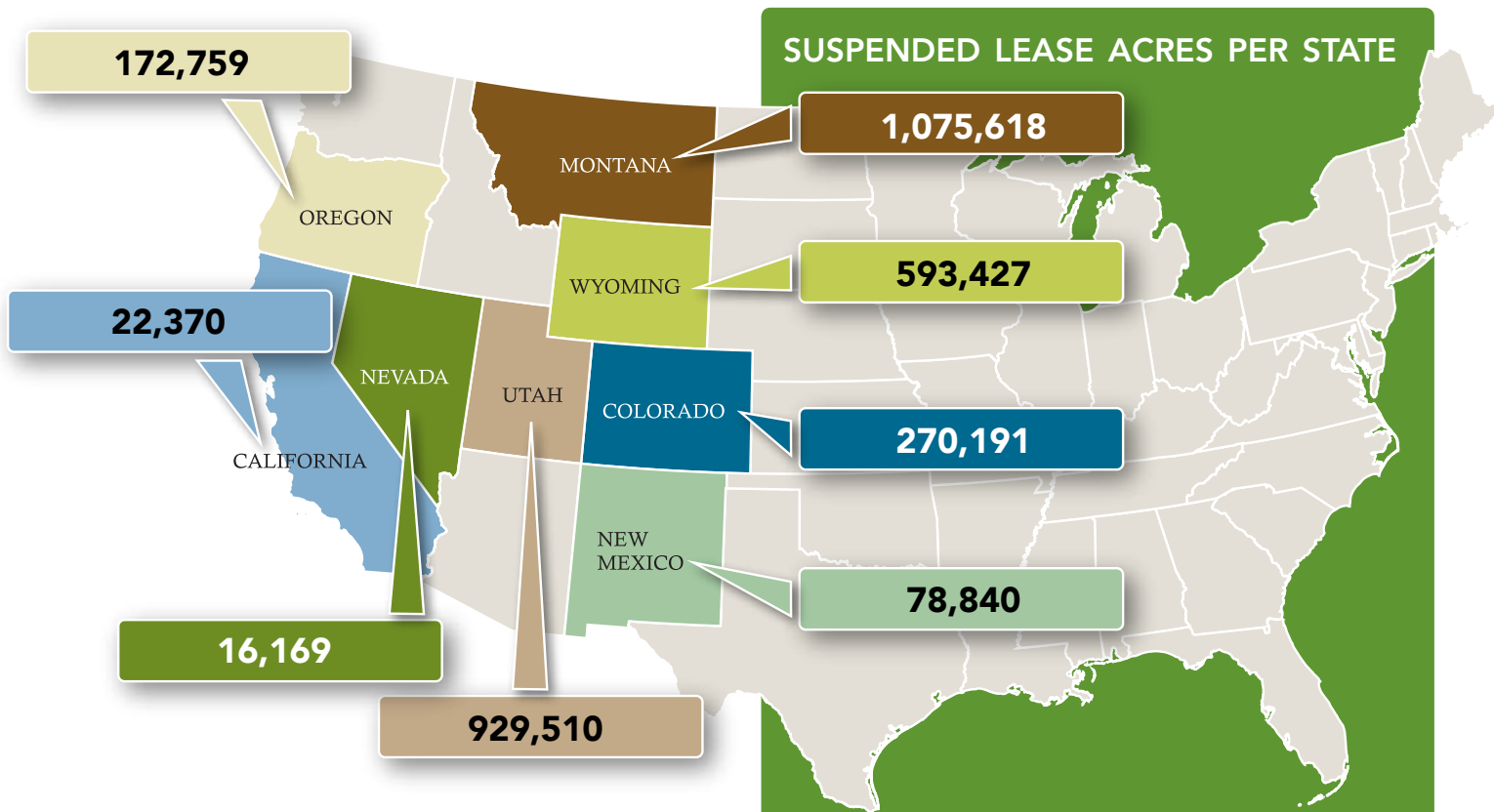




LAND HOARDERS:

How Stockpiling Leases is Costing Taxpayers



Oil and gas companies are supposed to develop the public land leases they are privileged to hold in a timely manner, or give them up. These lands have been set aside under energy leases for the benefit of the American taxpayer. However, oil and gas operators have made a habit of exploiting loopholes known as “suspensions.” These companies effectively take the control of the lease out of the hands of public officials, and off the books—by stockpiling leases. This land hoarding must be addressed to protect America’s taxpayer and our public lands.

Current law allows leases to be “suspended”—effectively put on hold—ensuring the leases do not expire even while companies are not paying

While SUSPENSIONS can be a useful (even necessary) tool, current suspensions include millions of acres that have been on hold for decades and have already cost taxpayers more than \$80 million in lost rents alone.

rent and are not required to make progress on developing energy resources that would require royalty payments. While the leases are suspended, the oil and gas companies retain control of the lands; which prevents them from being managed for multiple uses for the benefit of the public—be it for recreation, conservation or possibly development by other companies.

The Wilderness Society has reviewed decades of suspension justifications and found that while leases may be appropriately put on hold to allow for thorough environmental review of proposed development, the Bureau of Land Management's (BLM) current approach to granting and managing lease suspensions is flawed, raising a number of concerns:

- Lease suspensions are cheating U.S. taxpayers of rental and royalty payments.
- Lease suspensions can allow industry to evade Congressional intent to diligently develop and provide timely and reasonable access to federal oil and gas resources.
- Lease suspensions can preclude the BLM's ability to achieve its multiple-use mandate.

We recommend immediate action to address these problems and ensure lease suspensions are appropriately applied in the future:

1. The BLM must identify and end suspensions that are no longer justified and should have expired years ago.
2. The Government Accountability Office (GAO) should initiate an investigation and produce a report to further define the scope of the problem and remedial actions.
3. The BLM should issue new policy and training to guide future lease suspensions and ensure suspensions are only granted when truly needed and managed to ensure they end in a timely manner.
4. The BLM should also issue a new policy requiring greater opportunities for public participation, transparency (including annual reporting) and oversight of both new suspension requests and existing suspensions.

Millions of acres are subject to unjustified lease suspensions that receive little or no oversight once granted.



Photo: Paul Lowry - flickr

WHAT ARE LEASE SUSPENSIONS?

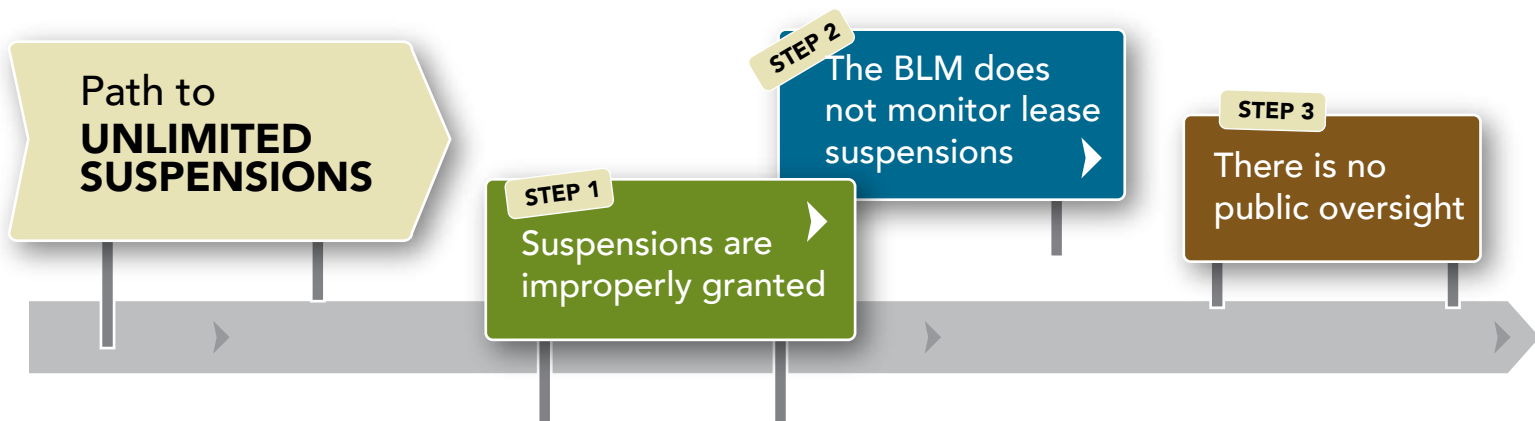
Suspensions of oil and gas leases can be used to extend the life of federal mineral leases beyond their primary terms (which is ten years), even when the lessee has not made efforts to develop these resources or produced any oil or gas. A federal mineral lease suspension, under the Mineral Leasing Act, "tolls" (effectively puts on hold) the operating and production requirements of a lease, including the obligations to make rental and royalty payments, and extends the primary term of the lease by the length of the suspension. The BLM may either "direct" that a lease be suspended or, upon review of an application submitted by a lessee, "assent to" a request for a suspension.

A suspension may be granted only where suspending operations and production would be "in the interest of conservation of natural resources."

The phrase "conservation of natural resources" has been broadly construed, and provides for suspension of onshore oil and gas leases either:

- (1) because use of the lease has been precluded by an act, omission, or delay by a federal agency, such as denying the lessee "timely access" to the property; or
- (2) in the interest of conservation, which can mean preventing either damage to the environment or loss of mineral resources.

Millions of acres of public lands sit in limbo under suspended leases, and can remain that way for decades. The BLM routinely grants suspensions, in many cases for questionable reasons. Overall, the BLM fails to actively manage and monitor them to ensure suspensions are lifted as circumstances change or conflicts are resolved.¹



Congress never intended lease suspensions to remain in place for decades – this undermines Congressional intent for diligent development of leased lands.

Congress intended for leased lands and minerals to be developed and to generate energy and income for the benefit of the public. Where development is not diligently pursued, leases were to expire so that lands can be subject to other uses, including development by other potential operators.

The Mineral Leasing Act of 1920 (as amended) outlines statutory obligations for oil and gas operators on our public lands. These obligations include due diligence requirements and royalty payments to facilitate energy development and provide a return to U.S. taxpayers. The Mineral Leasing Act provides for suspension of leases in specific circumstances and is clear that suspensions are to be lifted when those circumstances are no longer present. In the absence of the specific circumstances detailed in the Mineral Leasing Act, where lessees are holding leases longer than the statutory term without exercising due diligence and without rental or royalty payments, Congressional intent is subverted.

Suspended leases cover millions of acres and can remain off the books for decades.

Suspended oil and gas leases occupy a significant amount of federal minerals. BLM data acquired by The Wilderness Society in April 2015 show 3.25 million acres of federal leases held in suspension.²

This is nearly 10% of the total federal minerals currently under lease by the oil and gas industry.

Utah alone has nearly one million acres of federal leases currently held in suspension. Many suspended leases have been under suspension for decades. Of the 3.25 million acres of federal leases currently in suspension, 30% have been in suspension since before 1990.

New Mexico has dozens of suspended leases dating back to the 1960s-70s – with \$1,315,640 lost on leases that have been suspended since before 1980. However, suspensions are continuing to pile up, with 30% of the lease suspensions in New Mexico applied for and granted in the last five years – and across the West 47% of the suspensions occurred in the last five years. The data indicate leases frequently remain in suspension well after the circumstances that originally justified the suspension are no longer in place and that this problem is only continuing to grow.

Habitual hoarders: the oil and gas industry stockpiles leases and approved drilling permits

Our findings on the abuses of lease suspensions are consistent with industry patterns. The oil and gas industry stockpiles leases without developing them and obtains Approval for Permits to Drill (APDs) not being used. Through the end of fiscal year 2014, there were more than 20 million acres under lease that were not being developed and almost 6,000 approved permits to drill that were not used. Leaving leases in limbo should come to an end.³

DATE WHEN CURRENT LEASES ENTERED INTO SUSPENSION

1940-1995 32%

1996-2009 25%

2010-2015 43%

The BLM lease suspension decisions are made without disclosure or public review

Suspension requests and decisions are handled without formal review under the National Environmental Policy Act (NEPA). As a result, the company applying for the suspension is the only party involved in the process. Moreover, the BLM does not generally publish its decisions or the terms of suspensions providing the public little opportunity to engage in what amounts to an extension of the lease term. Involving the public in suspension requests can ensure that the public interest is properly weighed against the interests of the oil and gas operator requesting the suspension. Further, providing the public with current information about the status of suspended leases can also aid in the proper administration of those leases and ensure that the BLM and the industry are complying with the terms of suspension agreements.

The BLM routinely grants suspensions that may not be justified under its own policies.

The BLM has a guidance manual⁴ that sets out specific criteria governing when it should grant suspensions. In general, suspensions based on delayed approvals for development should be limited to situations where the delay is abnormal or not happening to other operators. In short, suspensions should not be granted simply because an operator has failed to seek a permit in a timely manner or because of other foreseeable delays. Unfortunately, our review found that the BLM does not adhere to its own standard, instead granting last minute requests by companies to suspend leases simply because they have failed to make sufficient efforts until their leases are close to expiration. For example:

- In Colorado, the BLM granted four lease suspensions for an APD filed at 5:03 p.m. on the first day of the month the leases were set to expire.⁵
- In Colorado, three leases⁶ were granted suspensions to allow for NEPA review associated with an application for permit to drill (APD). Although the associated APD was received by the BLM approximately thirty-five days before lease expiration, and a suspension request letter was filed only four days after the APD, the BLM granted a suspension “due to an unforeseeable administrative delay,” which is clearly contrary to applicable legal standards.⁷

- Similarly, in Utah, a lease⁸ was suspended based on a Notice of Staking (NOS)—a form completed prior to drilling—received approximately thirty-five days prior to lease expiration even though the BLM’s guidance requires evidence that such activity “has been stopped by actions beyond the operator’s control.”⁹

The BLM does not adequately monitor or evaluate suspended leases to determine whether suspensions are still justified.

The BLM is required to monitor suspensions to determine if the circumstances used to justify the suspension still exist and to lift suspensions when they do not.¹⁰ However, our review found that the BLM does not actively monitor suspended leases or even have a system for setting a schedule to do so. As a result, once suspended, leases are likely to remain suspended unless and until the oil and gas operator decides it would like to develop the lease. Our review of selected BLM records in several western states disclosed numerous examples of active lease suspensions where the circumstances that originally justified the suspensions were no longer in place, so the suspensions should have ended – but they have not. For example:

- In Wyoming, four leases¹¹ were suspended effective June 1, 1994. Although the stated justification for the suspension expired three years later, in 1997, it was not until 2004 that the BLM terminated the suspensions for three of the leases, and the suspension for one of the leases appears to still be in place.
- In Utah, six leases¹² were suspended in September 1998. Although the justification for the suspension ended in 2005, the BLM failed to lift the suspensions in a timely manner and the leases have since been granted new suspensions related to litigation. Had the BLM lifted the suspensions, the leases would have expired before any further suspensions could have been requested.
- In Colorado, a lease¹³ was suspended effective July 1, 2011, with approximately two months remaining of its primary term.¹⁴ The suspension order provided that the suspension would last no later than August 30, 2012, yet the suspension still remains in place. Of course, had the suspension been timely lifted, the lease would have since expired. Similarly, the suspension for another Colorado lease granted until September 1, 2014, was not lifted, although if it had been, the lease would have since expired.¹⁵
- In Michigan, three leases were suspended effective September 1, 2003. Under the terms of the order granting the suspensions, the suspensions should have been terminated no later than November 30, 2006. Yet, the BLM did not affirmatively lift the suspensions until more than two years later, after the lessee requested confirmation that the suspension was still in effect.¹⁶

CASE STUDY: South Shale Ridge



Photo: Scott Braden



Photo: Jeff Widen

Western Colorado's South Shale Ridge is a Citizen Proposed Wilderness Area, previously included in Rep. Diana DeGette's Colorado Wilderness Act and recognized by the BLM for its wilderness characteristics. In addition to the exceptional wilderness qualities of South Shale Ridge, the area contains many other conservation values including endangered species habitat, recreation opportunities and scenic resources.

In 2004, the BLM prepared an Environmental Assessment (EA) to lease the remaining unleased lands in South Shale Ridge. The same day that the final EA was issued, the BLM also issued a Notice of Competitive Lease Sale that included sixteen parcels within the boundaries of the South Shale Ridge. The lease sale was conducted as scheduled on November 10, 2005, and all of the parcels in the South Shale Ridge area were leased. A number of conservation groups challenged both

the EA and the leases issued pursuant to the EA, ultimately bringing a lawsuit.

In 2007, a federal district court in Colorado held that the BLM had violated both NEPA and the Endangered Species Act (ESA) in issuing leases on South Shale Ridge. The court's decision prohibited the BLM from issuing new leases until the agency conducts NEPA analysis considering leasing with a "no surface occupancy" stipulation and engages in new consultation with the Fish and Wildlife Service under the ESA regarding the Colorado hookless cactus.

Following the court's ruling, the BLM has treated the invalidated leases as "suspended." However, the BLM has yet to act upon the litigation outcome by either conducting additional analysis or canceling the leases.

In August 2015, the BLM released its final Grand Junction Resource Management Plan, and declined to protect the wilderness characteristics of South Shale Ridge. The BLM's justification for not protecting South Shale Ridge and other lands with wilderness characteristics was that they "fall within the portion of the Grand Junction Field Office with known potential for natural gas development, and are largely leased for oil and gas development; or provide motorized and mechanized use opportunities. Under the Preferred Alternative and its corresponding travel management plan the manageability of these areas for wilderness characteristics would be compromised by valid existing rights, and/or motorized and mechanized use and these areas would be managed for other resources and resource uses."¹⁷

The BLM is treating the suspended leases in South Shale Ridge as valid existing rights that preclude managing the area for its wilderness characteristics, despite the fact that a federal court invalidated the leases eight years prior and the BLM has not moved forward with environmental analysis on the suspended leases in that time. The leases are precluding multiple use management of South Shale Ridge, while not generating energy or revenue for the U.S. taxpayers who own those minerals.

The high cost of hoarding: PROBLEMS ARISING FROM LEASE SUSPENSIONS

Suspension of federal leases can serve legitimate purposes, such as giving the BLM time to conduct thorough environmental review of proposed projects and development without causing delays to leaseholders. However, the BLM's current approach to lease suspensions interferes with the BLM's multiple use mandate by keeping lands from other uses; cheats U.S. taxpayers of income from leasing and development; undermines Congressional intent for diligent development of public resources; and prevents the public from performing its important oversight role.

Lease suspensions can preclude the BLM from achieving its multiple-use mandate.

Suspended leases can foreclose alternative land management options, such as allocating lands for conservation, recreation or other multiple uses. For example, the presence of oil and gas leases, regardless of whether the leases are or have ever been in production, is often cited to justify the BLM's decisions not to manage lands to protect their wilderness characteristics or other values in resource management plans. In the case of South Shale Ridge in Colorado, this decision is based explicitly on suspended leases, showing the impacts to multiple use management.

Lease suspensions are cheating U.S. taxpayers of rental and royalty payments.

Lease suspensions allow the oil and gas industry to hold on to public lands and minerals without making rental or royalty payments, sometimes for decades.¹⁸ Currently, 2.65 million acres of federal minerals are held in suspended leases and not generating rental or royalty payments for the federal government. While it may be appropriate for the BLM to exempt operators from paying rent or royalties in certain justified situations, leases that have been suspended for an unnecessary amount of time are costing U.S. taxpayers. Virtually all leases that have been suspended since before 1990 are not generating rental or royalty payments, meaning that taxpayers have not seen income from nearly one million acres of federal minerals for at least the past twenty-five years.



\$82,225,149
lost over the life of
oil and gas leases
currently suspended

Photo: Varodrig-Wikimedia Commons

Looking at only rental payments that should have been paid on these leases, approximately \$82 million has been lost to the American taxpayer. In addition, the American public did not receive either the benefit of the energy that should have been generated from development or the royalty payments owed on revenue that would also have been generated.

The system must and can be fixed: OUR RECOMMENDATIONS

Looking at some of the 3.25 million acres of leased lands under suspension, The Wilderness Society found many of these suspensions were not justified and yet lasted decades—depriving the American public of both compensation for leasing and use of these lands for other activities.

Our research has identified the sources of these problems as:

- Suspensions are granted when they are not justified;
- Once suspensions are in place, they are not actively monitored or reviewed, so suspensions are not lifted – keeping leases in place and preventing other uses;
- The BLM does not disclose the initial suspensions or status, so there is no public oversight or tracking to serve as a check on agency and industry actions.

America has a vested interest in how our public lands are managed. Suspensions are routinely granted without any public notification or opportunity for comment, and are continued without a forum for the public to engage with the agency when suspensions are no longer justified and should be lifted. Public oversight can and should perform a check to ensure suspensions are only granted with proper justification and are managed to ensure suspensions are ended in a timely manner.

Right now, it's too easy for industry to get leases into suspension and to keep them there, to the detriment of other multiple uses and American taxpayers. Nonetheless, our research indicates that mismanagement of lease suspensions could be greatly reduced with targeted policy reforms and more public transparency, including:

- **Review and lift suspensions on all leases where there are no valid reasons to continue suspension; cancel all those that have expired.** The BLM should take immediate action to address problematic lease suspensions by cleaning up records, lifting unnecessary and expired suspensions and issuing expiration notices on leases that should have expired by the terms of applicable suspension agreements.

To accomplish this task, the BLM should immediately initiate a task force or direct state offices to review all suspended leases. Review should be prioritized based on the age of suspensions and leases located in areas undergoing resource management plan revisions or amendments.

- **Congress should request a GAO investigation to identify and recommend remedy for the underlying problem.** This research should address, among other things, how frequently suspensions are inappropriately issued, how frequently suspensions are continued or extended for improper amounts of time due to lack of monitoring and oversight and whether public oversight could assist in avoiding these problems in the future.
- **The BLM should issue new policy to guide application of lease suspensions to ensure these types of problems do not continue.** The BLM need not wait on the results of this study to address some known problems with the practice of suspended leases. The BLM should issue revised direction for considering suspension requests that includes clear criteria for when the agency does and does not have discretion to grant a suspension request. This guidance should also clarify when the agency should exercise its discretion to approve or deny a suspension request and establish a monitoring and tracking system for suspensions. A verification system to ensure regular oversight including directing state offices to evaluate suspended leases on a quarterly basis and report to DC in a publicly available format should also be incorporated into the suspended lease management strategy.
- **The BLM should increase transparency and opportunities for public involvement in lease suspensions and monitoring.** The BLM should be required to post documentation of lease suspension requests and decisions, including on its NEPA log, but also in a dashboard available via state office websites. Information on suspended leases, including status and reason for suspension, should also be made public to provide for public oversight and accountability on the length of suspensions in annual oil and gas program reports.

A summary of lease suspensions should be included in the BLM's annual reporting of oil and gas statistics, as well. Finally, the BLM should evaluate whether categorical exclusions are appropriate for individual suspensions, applying the "extraordinary circumstances" criteria, and if any of those criteria are met, then an environmental assessment or environmental impact statement must be prepared.

1 A more detailed discussion of our findings is presented in the **attachment**: "How the hoarding of our public lands and minerals was allowed to happen." (<https://wilderness.org/sites/default/files/Suspension%20White%20Paper%20Appendix%20-%202012-8.pdf>)

2 Through Fiscal Year 2014, approximately 35 million acres are under lease. http://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION_/energy/oil_gas_statistics/data_sets.Par.69959.File.dat/summary.pdf

3 Through Fiscal Year 2014, less than one-third of leases are currently in production (http://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION_/energy/oil_gas_statistics/data_sets.Par.69959.File.dat/summary.pdf) and close to 6,000 approved to permit to drill have not been used ([http://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION_/energy/oil_gas_statistics/data_sets.Par.86452.File.dat/AAPD%20Report%20\(approved_apd_not_drilled_9_30_2014\).pdf](http://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION_/energy/oil_gas_statistics/data_sets.Par.86452.File.dat/AAPD%20Report%20(approved_apd_not_drilled_9_30_2014).pdf)).

4 Manual 6310-10, Suspensions of Operation and/or Production.

5 Lease Nos. COC-65852, 65853, 65854, 65848.

6 Lease Nos. COC-77607, 67608, and 67609.

7 **See *Vaquero Energy, Inc.***, 185 IBLA 233, 237 (2015) ("Lessees and/or operators are responsible for timely filing required plans and necessary applications and cannot reasonably assume the Secretary will grant a suspension of operations...merely to relieve them of the consequences of their poorly timed decisions and actions."); **Harvey E. Yates Co., et. al.**, 156 IBLA 100 (2001) ("...a BLM delay in approving an APD does not equate to an order suspending drilling or production."). We recognize that agency guidance materials provide that suspensions should not be granted for APDs filed within 30 days of lease expiration. **See** BLM Manual H-3160-10, § 2.C. However, given the volume of suspensions granted for APDs filed within months of lease expiration, and the foreseeability of agency delays related to permit processing, suspension requests should generally also be rejected for APDs filed within 6 months of lease expiration. **See** BLM, "Average Application for Permit to Drill (APD) Approval Timeframes: FY2005-FY2014" **available at** http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/statistics/apd_chart.html (showing that, in FY 2014, BLM needed an average of 94 days to process complete APDs, and operators took an average of 133 days to cure deficiencies in their initial APD submissions).

8 Lease No. UTU-75121.

9 Manual 3160-10, § 3.31.A.3.

10 Manual 3160-10.

11 Lease Nos. WYW-097254, WYW-108053, WYW-113997 and WYW-106143

12 Lease Nos. UTU-64921, 70849, 70887, 70888, 70889 and 71401.

13 Lease No. COC-065227.

14 The lease had been committed to the Secret Canyon Unit before its suspension, but the Unit never drilled its initial obligation well. The Unit was itself subsequently suspended under § 25 of its unit agreement, but this suspension would not act to suspend COC-065227. **See** Draft BLM Handbook H-3180-1-Unitization, § II(J)(1) ("Suspensions under Section 25 apply onto the unit requirements and will not serve to extend leases that would otherwise expire."), p. 23 ("Extensions granted for meeting unit drilling requirements do not toll the running of lease terms. Thus, depending on the circumstances, a suspension of operations and/or production pursuant to 43 CFR 3103.4-2 and 43 CFR 3165.1 may also be needed to preserve any committed lease that would otherwise expire.")

15 This suspension was granted under § 17(i) rather than § 39, but the same principles apply to lifting the suspension in this instance.

16 **See *Savoy Energy***, 178 IBLA 313, 315, 317, 319-20 (2010).

17 Grand Junction Proposed RMP at F-6.

18 Suspensions issued under Section 39 of the Mineral Leasing Act suspend rental, royalty or minimum royalty payments. Suspensions issued under Section 17(i) of the Mineral Leasing Act do not.