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August 28, 2008

BY MESSENGER AND BY EMAIL

Mr. Stephen Guertin, Regional Director
U.S. Fish and Wildlife Service
Mountain-Prairie Region
134 Union Boulevard
Lakewood, CO 80228

Re: Lexam Explorations (U.S.A.) Inc.

Dear Mr. Guertin:

Our firm is legal counsel for Lexam Explorations (U.S.A.) Inc. For more than two years now, Lexam has worked diligently and conscientiously with the Fish and Wildlife Service to develop conditions that protect the surface resources of the Baca National Wildlife Refuge while Lexam drills two natural gas exploration wells. The total surface impact of Lexam's exploration program is approximately 14 acres on the 92,500 acre refuge and the period of impact is approximately six months. Months before the current NEPA process commenced in May 2007, Lexam and the Service's local refuge managers were well on the way to completion of a "Negotiated Operating Plan" to protect the surface of the refuge property. In April 2008, the Acting Director of the Colorado Oil and Gas Commission stated on the record in a Commission hearing that Lexam was voluntarily meeting the standards of the new oil and gas regulations proposed to increase protection of the surface estate.

We now understand that the Service is considering whether even further environmental analysis is required prior to the exploration program. Therefore, the purpose of this letter is to request a meeting with you during the week of September 2nd and before the Service makes a final determination on whether any such additional analysis is required. Because we would like to discuss our legal reasoning as to why no such additional NEPA analysis is warranted, we would also request that you invite the Regional Solicitor, Mr. Comer, to attend this meeting as well as Mr. Graf, who has worked on this project for the past year.

If the Service believes that further analysis may be warranted because of "controversy" concerning the exploration program, this concern is easily laid to rest as a matter of law.

Clearly, a small, but ardent, group of local residents oppose the project. Pursuant to the CEQ's NEPA regulations, whether an action "significantly" affects the quality of the human environment depends, in part, on "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 C.F.R. § 1508.27(b)(4). Federal case law, however, is unequivocal that:

There is ... a difference between "controversy" and "opposition." The term "highly controversial" refers to instances in which a substantial dispute exists as to the size, nature, or effect of the major federal action rather than to the existence of opposition to a use."

Friends of Ompompanoosuc v. FERC, 968 F.2d 1549, 1557 (2d Cir. 1992). As a policy matter, it makes no sense for the Service to default to an EIS merely because of opposition to a particular project. In Lexam's case, the Service's EA amply demonstrates only a minimal impact to surface resources on the Refuge, and the Service and Lexam have agreed to detailed measures to prevent significant impacts from occurring during the exploration program.

To the extent the Service has concerns that a "controversy" within the meaning of the CEQ regulations exists as to air quality, the EA again establishes that this is not the case. Emissions from the drilling rig are generated from a mobile source that is not subject to stationary source or any other air permitting requirements under either federal or state clean air regulatory authorities. The EA also includes a visibility analysis conducted by Air Sciences Inc. Air Sciences prepared an analysis of potential impacts by estimating project-related emissions to the air from the temporary operations and applying a "Q/D" analysis (emissions/distance), a screening tool commonly relied upon by Federal Land Managers to assess whether additional visibility impact analysis is warranted. The Q/D analysis assumed double the expected level of emissions, but still concluded that the visibility impact was insignificant and that further analysis using EPA's VISCREEN model was not warranted.

Preparation of an EIS will not ameliorate the local opposition, but will simply delay the inevitable NEPA litigation. In circumstances in which the EA and its accompanying administrative record fully support issuance of the EA and a FONSI, the Service should not presuppose a "controversy" where none exists as a matter of law. Lexam has agreed that, in the event it proceeds to production of a natural gas resource, an additional, separate NEPA process will be required. Section 4.1 of the EA is explicit on this issue.

At the Service's request, Lexam agreed to a "drilling window" of August 1st to April 30th to protect wildlife and conduct the drilling operations at a time which would minimize impacts to soil. Particularly given the prospect of litigation and the logistics of mobilization, our "window" is closing rapidly. The monetary damage incident to the NEPA process also continues to grow as the cost to drill these two wells has increased literally by millions of dollars during preparation of the EA.

Lexam understands and respects that the Baca National Wildlife Refuge is an exceptional resource that deserves exceptional protection. Lexam committed to this protection before the NEPA process even began, and it remains committed to it today. By the same token, as the holder of "excepted rights" (a mineral interest held prior to the Service's acquisition of the

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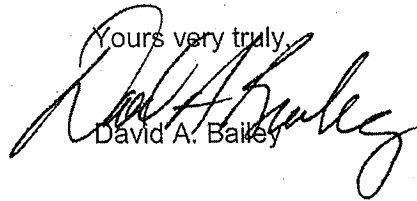
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surface), Lexam has the legal right to explore its interest. See USFWS Manual, 612 FW 2 (Oil and Gas) & 50 C.F.R. § 29.32. Lexam has been, and continues to be, subject to dramatically increased costs, unconscionable delay and deprivation of its right to explore its mineral interest underlying the Refuge. If this process becomes even more protracted, Lexam will explore the legal remedies available to it.

Please contact me to let me know when a meeting can be arranged.

Yours very truly,



David A. Bailey

DAB/my

cc: Ian Ball
Stefan Spears
Thomas Sansonetti, Esq.
Robert Comer, Esq.
Thomas Graf, Esq.
Mike Blenden
Ron Garcia



Rick Coleman/R6/FWS/DOI
10/17/2008 01:01 PM

To Mike Blenden/R6/FWS/DOI@FWS, Ron J
Garcia/R6/FWS/DOI@FWS, Bud
Oliveira/R6/FWS/DOI@FWS

cc

bcc

Subject Fw: NPS comment - final draft for BACA

Rick Coleman
ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

----- Forwarded by Rick Coleman/R6/FWS/DOI on 10/17/2008 01:01 PM -----

Sandra V Silva/R9/FWS/DOI

10/17/2008 12:52 PM

To Rick Coleman/R6/FWS/DOI@FWS

cc

Subject Fw: NPS comment - final draft for BACA



FYI . The message below is one you may want to include in your Baca EA files. It's from John Bunyak, NPS Permitting, Planning and Policy Branch Chief with the Air Resources Division..

Sandra V. Silva
Chief, FWS Air Quality Branch
sandra_v_silva@fws.gov
(303) 914-3801

----- Forwarded by Sandra V Silva/R9/FWS/DOI on 10/17/2008 12:49 PM -----

John
Bunyak/DENVER/NPS@NPS
10/17/2008 12:35 PM

To Tim Allen/R9/FWS/DOI@FWS@NPSX

cc John Notar/DENVER/NPS@NPS, Meredith
Bond/R9/FWS/DOI@FWS@NPSX, Sandra V
Silva/R9/FWS/DOI@FWS@NPSX

Subject Re: final draft for BACA

Tim: thanks for the opportunity to review this. Obviously, a lot of work went into this. Good job. John Notar said he didn't have any problems with this, and I'll defer to him on that. John