Section-by-Section Analysis of the Western Colorado Lease Exchange and Conservation Act of 2016

Summary

Representative Tipton’s proposed “Western Colorado Lease Exchange and Conservation Act of 2016,” (Proposed Act) is irresponsible in all aspects. It provides for the exchange of leases in the Thompson Divide area for leases in the sensitive watershed of the upper North Fork Area totaling an estimated 30,000 acres without any environmental oversight, public input, and is subject to a dubious valuation process.

Why this Act is irresponsible:

1. The Big Picture:
   a. It exempts the leases from an environmental assessment or environmental impact assessment required by all leases issued by BLM pursuant to the National Environmental Policy Act;
   b. It strips the BLM and the USFS of their administrative agency roles in implementing laws and regulations on the management of federal mineral rights and public lands;
   c. It forces the Secretary of the Interior to manage all leases, throughout the entire Nation, under the terms of whatever outdated management plans were in existence at the time each lease was granted. Under the Proposed Act, it would be illegal for the BLM or Forest Service to update management practices to accommodate new scientific information or new realities on the ground.

2. For the North Fork Valley:
   a. It shifts all the social, economic, environmental and health risks of the associated oil and gas development in the Thompson Divide to the North Fork Valley without any public oversight of the leasing process.
   b. It denies NFV citizens of their constitutional, and administrative rights to protest new leasing;
   c. It exempts SG from environmental accountability, and grants SG an unprecedented means of bypassing federal mechanisms designed to protect the community. If this Act passes it creates a precedent for how SG can acquire new leases and achieve its goal of industrializing the upper North Fork Valley to the detriment of Delta County. Industrialization of the Upper Fork Valley would destroy the food shed, which is critical to the food security of the Western Slope and the State.
Rep. Tipton’s proposed “Western Colorado Lease Exchange and Conservation Act of 2016,” sole purpose appears to be to grant Russell Gordo’s Texas-based oil company, SG Interests, what he was prevented by antitrust laws from achieving i.e. a gift of unencumbered, potentially lucrative, Federal oil and gas leases at the expense of the taxpayer and at the expense of those of us who must live with the consequences of his exploitation.

CHC is in absolute opposition to Representative Tipton’s proposed bill. We encourage Rep. Tipton to come to the North Fork Valley and listen to his constituents. We encourage the County Commissioners and Legislators of all affected counties not to provide any support to this highly irresponsible piece of legislation.

Section-by-Section Analysis

The opening statement of the Proposed Act, without naming the Thompson Divide area outright, correctly acknowledges the importance of its recreational resources. It completely ignores non-oil and gas resources in the Exchange Area. The purpose of the Act is to “facilitate the efficient extraction of mineral resources in western Colorado by authorizing and directing an exchange of Federal oil and gas leases located in an area important for its recreational resources for equivalent Federal oil and gas leases located near existing oil and gas development, and for other purposes [emphasis added].”

Section 2.a.1.A
This section categorically asserts that the lease exchanges are in the public interest because they “promote significant job and other economic opportunity.” Economic modeling at Delta County indicates that job creation will be minimal. Also, this ignores any assessment of what jobs may be lost and what economic opportunities may be destroyed by the exchange.

Section 2.a.1.B
While opening with a restatement of the unfounded assertions in the previous section, we are then offered the assertion that the Proposed Act provides protections for the Thompson Divide area. It does not. The lease exchange can be completed on Monday and the Thompson Divide leases could be re-nominated on Tuesday. There is nothing in the Proposed Act that removes, even temporarily, any of the lands in the Thompson Divide area from oil and leasing.

Section 2.a.1.C
Again we have an unsubstantiated assertion of job creation and economic growth with no quantitative estimates of what might actually result. Further, the exchange area is implicitly characterized as an area that “values resource production as a tool to stimulate jobs and economic growth,” conveniently ignoring any characterization of the area as valuing agriculture, recreation, sound watersheds, pure air, etc., as an engine of economic growth.

Section 2.a.1.D
Here we are treated to a “motherhood and apple pie” phrase expounding the benefits to Colorado infrastructure, education, community programs, etc. that will result for the passage of the
Proposed Act. Completely ignored are the realities of TABOR, the difficulties in obtaining severance funding through the Colorado Department of Local Affairs, and the negative impacts to those State residents living in or near the sacrifice zone.

Section 2.a.1.E
Section E implies that passage of the Proposed Act will “ensure Federal management of Federal land and minerals”. Also, this section vapidly implies that areas of Colorado where “recreation is important to Colorado’s residents’ and visitors’ way of life” are important to the public interest. The phrase is meaningless. We challenge anyone to name an area in Colorado where recreation is not important to the residents’ and visitors’ way of life.

Section 2.a.2.A
It states that the Act will not conflict with established management objectives on Federal lands subject to such leases, yet it strips BLM of its administrative role relative to land exchanges in Section 4.a.2.A. By some convoluted logic, we are assured that the oil and gas objectives of SG Interests and Ursa Piceance LLC are in the public interest, and that the passage of the Proposed Act will help the United States meet those objectives. Why would the United States seek to harness itself to achieving the objectives of two private entities, i.e. SG Interests and Ursa Piceance LLC?

Section 2.a.2.B
It is unclear how the Proposed Act will affect the operation of the Wolf Creek Underground Storage Field.

Section 2.a.2.C-D
These sections assert that the valuation of the leases to be surrendered and the leases to be acquired via the exchange are of equal value and define what is to occur should the leases that are acquired exceed the value the leases that are to be relinquished. It does not explain the valuation process. The treatment of the under-valued or over-valued leases is addressed in Section 4.b.

Section 3 Definitions
Here the various entities involved and the parcels to be exchanged are defined. The federal lands of interest references the following maps, to which the public is not privy to until AFTER enactment of the Act, and when “as soon as practicable”:

Note that the newly issued leases will be in 4 blocks for the SG portion and in a single block for the Ursa portion. Therefore Ursa can maintain their lease with a single well, and SG can maintain theirs with a few as 4.

**Section 4.a.1.A**
The Proposed Act gives SG Interests a 6-month option, from the date of enactment of this Act, of exchanging the leases it currently holds in the Thompson Divide area and leases that have expired and are in danger of being cancelled by the BLM, for new leases in the Hubbard Park area. These new leases have a term of 10 years.

**Section 4.a.2.A**
This section requires BLM to apply the administrative procedures outlined in this ACT, and makes it illegal for the BLM to apply the land exchange procedures set forth in the BLM’s guiding legislation, the Federal Land Policy and Management Act of 1976.

**Section 4.a.2.B**
While the Act excludes the lease exchange from the NEPA process, and strips BLM of its defacto regulatory role relative to the lease exchange, the Act does require mineral extraction, exploration, and related activities conducted on the leases to be subject to applicable Federal, State, and local laws. See Section 4.a.6. Proposed development would still be subject to NEPA, but NEPA becomes more limited at the application for development permit level.

**Section 4.a.2.C**
Regardless of what previous law may state, the Proposed Act states, by fiat, that the actions taking place under the Proposed Act are, by definition, in compliance with the Federal Land Policy and Management Act and any land and resource management plans. This removes any avenue for legal action based on violations of these other laws relative to the lease exchange.

**Section 4.a.4.A-B**
This preserves SG Interests’ rights to the Wolf Creek area and allows SG to assign its interest to a municipality or “other entity” willing and able to hold them. “Other entities” also, presumably, includes another shell company that SG may choose to set up.

**Section 4.a.5**
This allows SG Interests to ignore any lease stipulations that makes the development of the new leases “unfeasible.”

**Section 4.a.6**
While the Act excludes the lease exchange from the NEPA process, and strips BLM of its defacto regulatory role relative to the lease exchange, the ACT does require mineral extraction, exploration, and related activities to be subject to applicable Federal, State, and local laws.
Section 4.a.7
The intent is to have the lease exchanges consummated within one year of the enactment of the Act. Section 4.a.1.A provides for a 6-month to execute the lease exchange. This provision appears to create a window to extend that.

Section 4.b.1-3
The value of the relinquished leases and the acquired leases are deemed to be equivalent. Should that not be the case, SG and Ursa are required to pay the difference or adjust the lease boundaries to eliminate the difference. Throwing a bone to the environment community, any proceeds will go into the Land and Water Conservation Fund. It is highly unlikely that there will be any proceeds.

Section 4.b.4.A-B
Regarding the leases to be relinquished, when the Department of the Interior’s Office of Valuation Services undertakes to value each of the parcels involved, the Proposed Act requires that they include the fair market value estimated for oil and gas reserves associated with each parcel (presumably determined by data provided by SG and Ursa), the actual cost of the lease, interest accrued during the duration of the lease, and any legal, environmental survey, physical survey, etc. expenses incurred by SG or Ursa.

When valuing the exchange areas, the Office of Valuation Services must include the fair market value the oil and gas reserves under each parcel, which are presumably unknown. No allowance is made for the recreational value lost, the ecological services that may be sacrificed, the risks incurred by those of us with no economic stake in the operation, the environmental costs, the damage to watersheds, etc. The valuation must be completed in 45 days and disputes are to be settled by binding arbitration.

Section 5.a-b
In a sweeping gesture, Section 5 applies to all Federal leases not covered specifically by the exchange in the Proposed Act, i.e. all parcels throughout the Nation. It makes it illegal for the Secretary of the Department of the Interior to apply any “new or more restrictive” conditions to any lease resulting from management plans created after the original letting of the lease. Further, it forbids the Secretary from applying any management practices or permitting conditions that are inconsistent with the original terms of the lease. This effectively makes it illegal for the BLM to apply the best science and management practices to the task of managing the Nation’s mineral resources.

Section 6.c
The maps associated with the Proposed Act will not be publicly available until after the Proposed Act has been passed.

Thanks to CHC Board Member and NFV vintner Brent Helleckson for his thorough analysis of the bill.