

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOLENEX LLC,

Plaintiff,

v.

S.M.R. JEWELL, et al.,

Defendants.

Civil Case No: 13-00993 (RJL)

**MOTION BY THE MONTANA PETROLEUM ASSOCIATION FOR LEAVE TO
APPEAR AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

The Montana Petroleum Association (the “MPA”), pursuant to Local Rule 7 of the United State District Court for the District of Columbia, respectfully requests leave to file the attached proposed brief as Amicus Curiae in support of Plaintiff. The grounds for this Motion are as follows:

1. The MPA is a statewide, non-profit, trade association with its headquarters in Helena, Montana, and represents over 200 members engaged in all aspects of the petroleum and natural gas industry, including exploration, production, transportation, refining, and marketing.

2. The outcome of this case would have a significant impact on the petroleum and natural gas industry in Montana. Therefore, as a representative of this industry, the MPA has an interest in the result of this case.

3. This Court has “inherent authority” derived from Rule 29 of the Federal Rules of Appellate Procedure to permit the filing of an amicus brief. Jin v. Ministry of State Sec., 557 F. Supp. 2d 131, 136 (D.D.C. 2008). Additionally, this Court has broad discretion in determining

“the fact, extent, and manner of the participation” of an amicus curiae. Id. (internal citations and quotations omitted). “An amicus brief should normally be allowed when . . . the amicus has unique information or perspective that can help the court beyond the help that lawyers for the parties are able to provide.” Id. at 137 (quoting Ryan v. Commodity Futures Trading Commission, 125 F.3d 1062, 1064 (7th Cir. 1997)).

4. The MPA’s proposed amicus curiae brief argues that the impact of allowing the United States Forest Service to continually delay Solenex’s acting on its approved Application for Permit to Drill sets a precedent that is detrimental to Montana’s economy. The MPA offers a unique perspective on the vital role that the petroleum and natural gas industry plays in Montana. The MPA’s unique background and representation of the petroleum industry make it well suited to provide this Court with information beyond the topics that either party has addressed.

5. Counsel for MPA has contacted counsel for Plaintiff and Defendants regarding this Motion. Plaintiff consents to the MPA’s filing of an amicus curiae brief; Defendants do not object.

6. The MPA’s proposed amicus curiae brief is filed concurrently with this motion to give opposing counsel the opportunity to address the arguments made therein.

WHEREFORE, the Montana Petroleum Association respectfully moves this Court to grant it leave to appear as amicus curiae and to accept the filing of the attached Brief of Amicus Curiae the Montana Petroleum Association in Support of the Plaintiff’s Motion for Summary Judgment.

DATED this 28th day of July, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 2014, the foregoing was served via the Court's CM/ECF system which will forward copies to Counsel of Record.

/s/ James W. Porter, III
Of Counsel

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**BRIEF OF AMICUS CURIAE THE MONTANA PETROLEUM ASSOCIATION
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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INTEREST OF AMICUS CURIAE¹

The Montana Petroleum Association (“MPA” or “Amicus”) is a statewide, non-profit trade association with its office located in Helena, Montana. The MPA was formally incorporated as a Montana non-profit corporation in 1999, but its roots trace back to 1937. The MPA currently represents over 200 members engaged in all aspects of the oil and natural gas industry, including exploration, production, transportation, refining, and marketing. The MPA strives to maintain a positive business climate for Montana's oil and gas industry and to foster public awareness of the industry's many economic and ecological contributions to the state and nation. Solenex, Inc. (“Solenex”), has been an MPA member in good standing for many years.

The Bureau of Land Management (“BLM”) manages 37,748,688 acres (58,982 square miles) of federal subsurface minerals in Montana (which is about 40% of the state's total area). Bureau of Land Mgmt, Dep't of the Interior, 2013 Montana/Dakotas Annual Report, July 23, 2014.² Oil and gas development on federal lands therefore significantly affects Montana's oil and gas industry, as well as its economy. This present action will largely determine whether federal agencies may obviate the rights of private parties under federal oil and gas leases through unreasonably delay. It also implicates a disturbing trend of diminishing access to public lands. The outcome of this case will directly impact oil and gas development in Montana. MPA members therefore have an interest in the outcome of this action.

¹ Plaintiffs have consented to the filing of this amicus brief, and Defendants do not object. No party or party's counsel contributed money that was intended to fund the preparation or submission of this brief. No party or party's counsel has written this brief in whole or in part, and no person or entity, other than Amicus or its counsel, made a monetary contribution to the preparation or submission of this brief.

² Available at http://www.blm.gov/mt/st/en/info/newsroom/2013_annual_report.html.

SUMMARY OF THE ARGUMENT

Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment (Dkt. #24) ("Plaintiff's Memorandum") demonstrates with compelling force and clarity that the Defendants' delay is unreasonable. The purpose of this brief is to show the Court that the outcome of this action will have repercussions beyond the parties. If Defendants are permitted to continue indefinitely their unreasonable delay by not allowing Solenex to act on its approved Application for Permit to Drill ("APD"), they will have essentially rendered Federal Oil and Gas Lease M-53323 ("Lease M-53323") meaningless. This would cast a shadow of doubt over all federal oil and gas leases. Further, Defendants' actions have effectively denied access to multiple-use federal lands³ in derogation of Congressional policy, thus continuing a disturbing trend that has sharply limited oil and gas activity and production from federal lands. The MPA membership has a direct interest in restoring the integrity of federal oil and gas leases and in keeping federal lands available to the public. Allowing Defendants' unreasonable delay to continue would have a harmful effect on oil and gas development in Montana, and therefore a harmful effect on the state of Montana and its communities. By enforcing the terms of this lease, the Court will help restore certainty in federal contracts, and it will send the message that federal agencies cannot unilaterally and unreasonably lock up multiple-use federal lands in derogation of their duties under federal law.

³ "Multiple-use federal lands" herein refers to lands administered by the BLM and U.S. Forest Service that have not been withdrawn or designated for a special use such as a National Park or Wilderness Area, and are therefore subject to the agencies' multiple use mandates. See 43 U.S.C. § 1702 (c) & (e); 16 U.S.C. §§ 528, 529, 531 & 1607. The Forest Services' multiple-use mandate originates in the Multiple Use Sustained Yield Act of 1960, Pub. L. 86-517, 74 Stat. 215. The principle was adopted and continued in the 1974 the Forest and Rangeland Renewable Resources Planning Act, Pub. L. 93-378, 88 Stat. 476 (1974), and the National Forest's Management Act of 1976, P.L. 94-588, 90 Stat. 2949. The Bureau of Land Management's multiple-use mandate is contained in the Federal Land Policy and Management Act of 1976, Pub. L. 94-579, 90 Stat. 2743. Mineral resources are specifically included in the BLM's multiple-use mandate. 43 U.S.C. § 1702(c) (2012).

ARGUMENT

I. Defendants’ Unreasonable Delay Renders Lease M-53323 Meaningless, and thereby Threatens the Certainty of Contracts with the Federal Government.

When the federal government enters into an oil and gas lease under the Mineral Leasing Act (“MLA”) of 1920, 41 Stat. 437 (codified as amended at 30 U.S.C. §§ 181–287 (2012)), it has entered into a contract. See Mobil Oil Exploration & Producing Se., Inc. v. United States, 530 U.S. 604, 609 (2000); Standard Oil Co. of Cal. v. Hickel, 317 F. Supp 1192, 1197 (D. Alaska 1970), aff’d sub nom. Standard Oil Co. of Cal. v. Morton, 450 F.2d 493 (9th Cir. 1971). Government contracts are interpreted in the same manner as contracts between private parties; the government is not entitled to special rights simply by virtue of its status. Standard Oil Co., 317 F. Supp at 1197; Rosebud Coal Sales Co., Inc. v. Andrus, 667 F.2d 949, 951 (10th Cir. 1982). Federal permitting processes have become increasingly time-consuming and complicated. See, e.g., Office of the Inspector Gen., U.S. Dep’t of the Interior, CR-EV-MOA-0003-2013, Onshore Oil and Gas Permitting 1 (June 2014) (hereinafter Inspector Gen. Report) (“[R]eview times are very long”).⁴ But there is a limit. “[L]engthy delays matter,” and the government cannot deviate from its established regulatory procedures and standards so significantly as to render the lease illusory. See Mobil Oil, 530 U.S. at 620–21.

Lease M-53323 expressly granted Sidney Longwell (now Solenex) the “exclusive right and privilege to drill for, mine, extract, remove and dispose of all the oil and gas deposits . . . in the lands leased. . . .” Rec. at HC00885.⁵ The lease was clearly made subject to all corresponding federal rules and regulations, which include permitting requirements. See Rec. at HC00888. Stipulations attached to the lease limit and even preclude surface occupancy over portions of the

⁴ Available at <http://www.doi.gov/oig/reports/upload/CR-EV-MOA-0003-2013Public.pdf>.

⁵ Facts provided on the record by Defendants are bates-stamped “HC00000” for BLM documents and “FS000000” for Forest Service documents.

leased lands. See Rec. at HC00886–93. But nothing in the lease contract could possibly have put Sidney Longwell on notice that Defendants would deviate so far from normal permitting processes as to completely deny him the benefit of the bargain for 30 years.

Oil and gas exploration and production is a highly capital-intensive endeavor. It is also a high-risk venture, requiring “important decisions regarding the allocation of scarce resources among investments that are characterized by substantial geological and financial risk.” Saul B. Suslick, et al., Uncertainty and Risk Analysis in Petroleum Exploration and Production, 6 *TERRÆ* 30, 30 (2009).⁶ While successful oil and gas companies have learned how to manage geological and financial risk, the risk that the United States government may not honor its contract is an entirely new and different form of risk.

Defendants’ delay has rendered Solenex incapable of drilling a single well on Lease M-53323 for nearly 30 years after its drilling permit was first approved. See PSOF ¶ 31.⁷ This delay discourages industry confidence in federal leases because it indicates that the BLM and Forest Service may not respect their contractual leasing obligations. If this is allowed to happen to Solenex, it can happen to any federal lessee. Uncertainties from unreasonable delays should not be tolerated because they impact more than just the individual lease holder; they affect the entire industry. Cf. Cutler v. Hayes, 818 F.2d 879, 896-98 (D.C. Cir. 1987) (“Quite simply, excessive delay saps the public confidence in an agency’s ability to discharge its responsibilities and creates uncertainty for the parties, who must incorporate the potential effect of possible agency decisionmaking into future plans.”) (internal quotations and citations omitted). In turn,

⁶ Available at <http://www.ige.unicamp.br/terrae/V6/PDF-N6/T-a3i.pdf>.

⁷ Plaintiff’s Statement of Facts (“PSOF”) was submitted to the Court with Plaintiff’s Motion for Summary Judgment and Plaintiff’s Memorandum and Points of Authority in Support of Summary Judgment.

unreasonable agency delays impact the American public. Recently, the Office of the Inspector General of the Department of the Interior criticized BLM's delays on oil and gas leases, stating:

Long review times create uncertainties . . . for both industry and BLM. This adversely affects developing the Nation's domestic energy resources. Specifically, the Federal Government and Indian mineral owners risk losing royalties from delayed oil and gas production. Industry officials informed us that delays cause some wells not to be drilled, resulting in additional lost production and royalties.

Inspector Gen. Report, supra, at 1.

Federal land and resource management agencies must foster contractual certainty to ensure they are vested with some amount of confidence. The federal leasing program is already risky and expensive. Exploration and production companies expend significant capital acquiring federal leases, evaluating hydrocarbon potential, permitting, and drilling – all before they can even begin to produce oil and gas. Without production, there is no return on investment.

Members of the industry have recently voiced concerns with regard to federal leasing, stating:

If industry believes that the federal government will no longer live up to its obligations, will arbitrarily change the rules of the game mid-process, will allow public and political pressure to unduly influence the administrative process, and will not honor its contracts, it will lose confidence in the federal leasing program.

Scoping Comments from Joint Trade Association, to Steve Bennett, BLM Field Manager, 8 (May 15, 2014).⁸

In this case, Defendants' have done exactly what Mobil Oil warns against – rendering a federal lease meaningless through unreasonable delay. This type of behavior has shaken industry confidence in the federal government's commitment to its contractual obligations. By enforcing the terms of this particular lease, the Court will help restore certainty in federal contracts.

⁸ Available at <http://westernenergyalliance.org/sites/default/files/Joint%20Trade%20Association%20White%20River%20NF%20Lease%20EIS%20Scoping%20Comments-%2005-15-2014.pdf>.

II. Defendants’ Unreasonable Delay Reinforces the Message that Oil and Gas Development on Federal Lands is Expensive, Time-Consuming – and Unwelcome.

From 2009 to 2013, oil production on private lands in the United States has increased 61% and natural gas production has increased 33%. Marc Humphries, Cong. Research Serv., R42432, U.S. Crude Oil and Natural Gas Production in Federal and Non-Federal Areas 2, 4 (2014). Given the recent conflict and instability in the Middle East, this new production has likely averted another oil crisis. Ed Crooks & Anjli Raval, Energy: The Indispensible Country, Fin. Times, July 15, 2014.⁹ But the federal government has not shared in this effort. During the same time period, oil production from federal lands has declined 11% and natural gas production has declined 28%. Humphries, supra, at 1.

Much of this decline has occurred in federally-administrated offshore areas, but Montana has seen its share. Production of crude oil from federal lands in Montana declined 29% from 3.5 million barrels in 2003 to 2.5 million barrels in 2013. Office of Natural Res. Revenue, Dep’t of the Interior, Statistical Information, July 23, 2014.¹⁰ Likewise, production of natural gas (unprocessed wet gas plus coalbed methane) from federal lands in Montana declined 37% from 20.4 billion cubic feet to 12.8 billion cubic feet during that period. Id. The future looks no better. The number of wells spudded on federal lands in Montana over the past ten years has dropped 83%, with only 21 wells spudded in 2013. See Bureau of Land Mgmt, U.S. Dep’t of the Interior, Oil and Gas Statistics by Year for Fiscal Years 1988 – 2013, Table 9 (last updated Nov. 18, 2013) (hereinafter “BLM Statistics”).¹¹

Geology is not the issue. Under federal land lies around 11 billion barrels of proven oil reserves, 5.3 billion of that is onshore. Humphries, supra, at 2–3. Much of it is located in the

⁹Available at <http://www.ft.com/intl/cms/s/2/601a8476-0b5d-11e4-ae6b00144feabdc0.html#axzz383bZT0S3>.

¹⁰Available at <http://statistics.onrr.gov/>.

¹¹Available at http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/statistics.html.

Rocky Mountain region encompassing New Mexico, Utah, Colorado, Wyoming, and Montana. Among those states, and including all forms of conventional energy, is the production equivalent of 5.6 million barrels per day (MMbd), enough to place the region 9th in the world—if it were its own country. Timothy J. Considine, The Economic Value of Energy Resources on Federal Lands in the Rocky Mountain Region, Univ. of Wyo. Dep’t of Econ. & Fin., iii (Sept. 17, 2013).¹² The area in which Solenex proposes to drill is especially prospective. It sits within the Western Overthrust Belt, which lies along the Eastern front of the Rocky Mountain Range. PSOF ¶ 26. Substantial production from this trend has been established to the North in Alberta, Canada, and to the South in Wyoming and Utah. Id.

Access to federal reserves, however, is another matter. A study mandated by Congress found that only 17% of federal lands with the potential for oil and gas were accessible for development under standard lease terms. U.S. Departments of the Interior, Agriculture, & Energy, Inventory of Onshore Federal Oil and Gas Resources and Restrictions to Their Development: Phase III Inventory – Onshore United States vii–viii (2008).¹³ These “accessible” lands contain only 8% of the federal onshore oil reserves and 10% of the federal natural gas reserves. Id. at viii. Another 23% of potentially-productive federal lands are accessible with restrictions, although some of these restrictions may effectively close the lands by precluding drilling. Id.

To develop “accessible” federal lands, one first needs an oil and gas lease. See 30 U.S.C. § 181. The number of new federal leases issued annually in any given year has declined 84% from 9,234 in 1988 to 1,468 in 2013. BLM Statistics, supra, at Table 4. The total number of acres covered by new leases has declined 90% from 12,215,573 to 1,172,808 (19,087 to 1,832.5 square

¹² Available at <http://www.westernenergyalliance.org/sites/default/files/U%20of%20Wyo%20Economic%20Value%20of%20Energy%20Resources%20on%20Federal%20Lands-%209.17.13.pdf>.

¹³ Available at http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/EPCA_III.html.

miles) in the same time period. Id. at Table 3. A lease is essentially worthless without a drilling permit. The number of federal permits increased 75% from 1,772 in 1988 to 7,124 in 2007, but since has declined 47% to 3,770 in 2013. Id. at Table 8.

It is of little wonder people in industry perceive that development on federal lands is unwelcome. See David Galt, Fed Up with Federal Lands Management, Hungry Horse News, May 19, 2014 (“[E]nergy production has been stifled through lengthy permitting and more lands designated off-limits to oil and gas drilling.”);¹⁴ Bob Tippee, Federal Land Not Part of US Oil Output Surge, Oil & Gas J., July 21, 2014, 28 (“Production can’t increase where access and work are discouraged.”).¹⁵ With regard to a similar situation involving federal leases in Colorado, the Executive Director of the West Slope Colorado Oil & Gas Association recently stated:

Trade associations from all across the nation recognize that this isn’t just about a handful of leases in western Colorado. This is a barometer on whether a leaseholder can reasonably expect the regulatory certainty necessary to invest on federal lands in the future. By retroactively changing the rules years after these leases were sold, BLM is directly threatening investment on the West Slope of Colorado, but also shaking what little faith is left in the federal government and its commitment to honor valid property rights.

Press Release, Western Energy Alliance, Oil and Gas Industry United: 65 Leases in the White River National Forest Have Far-Reaching Implications (May 16, 2014).¹⁶

Congress has consistently passed legislation that states it is in the national interest to promote oil and gas development on multiple-use federal lands such as the Forest Service lands that overlie Lease M-53323. Starting with the MLA and continuing through the Energy Policy Act (“EPAAct”) of 2005, 42 U.S.C. §§ 15801 et seq., Congress has repeatedly emphasized the

¹⁴ Available at http://www.flatheadnewsgroup.com/hungryhorsenews/fed-up-with-federal-lands-management/article_632cd466-df70-11e3-8cc4-001a4bcf887a.html.

¹⁵ Available at <http://digital.ogj.com/ogjournal/20140721>.

¹⁶ Available at <http://www.westernenergyalliance.org/press-rooms/2014>.

importance of domestic energy production to the security and well-being of the nation and charged the relevant administrative agencies with the responsibility to fulfill this important endeavor. See Harvey v. Udall, 384 F.2d 883, 885 (10th Cir. 1967) (The purpose of the Mineral Leasing Act was “to promote the orderly development of the oil and gas deposits in the publicly owned lands of the United States through private enterprise.”); Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21A (2012) (“The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in ... stable domestic mining ... [including oil and gas],” and that “[i]t shall be the responsibility of the Secretary of the Interior to carry out this policy....”); Energy Policy Act of 1992, 42 U.S.C. § 13401 (2012) (The goal of the Act is “to strengthen national energy security by reducing dependence on imported oil”); Energy Policy Act, Pub. L. No 109-58, 119 Stat. 594 (2005) (“An Act to ensure jobs for our future with secure, affordable, and reliable energy”). Of particular relevance in this regard is Congress’ specific instruction in the EPLA to the Secretary of the Interior and the Secretary of Agriculture to ensure timely action on applications for permits to drill by expeditious compliance with environmental and cultural resources laws. 42 U.S.C. § 15921 (2012); see also 42 U.S.C. § 15922 (2012) (requiring that memoranda of understanding provide for timely processing of oil and gas leases).

In this case, Defendants have disregarded these statutory mandates. Instead, they wrongfully suspended Lease M-53323 and Solenex’s APD for over twenty years.¹⁷ The first

¹⁷ Section 209 of the MLA states that the Secretary may suspend a lease when “necessary to do so in order to promote development,” as long as the suspension “encourag[es] the greatest ultimate recovery of [oil and gas], and [is] in the interest of conservation of natural resources.” 30 U.S.C. § 209(2012). The D.C. Circuit has interpreted “in the interest of conservation” to include suspensions that avoid environmental harm. Cooper Valley Mach. Works, Inc. v. Andrus, 653 F.2d 595, 602 (D.C. Cir. 1981). Any contention that the suspension was required to meet Defendants’ obligations under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4331 et seq (2012), and the National Historical Preservation Act (NHPA), 16 U.S.C. §§ 470 – 470x-6 (2012), is without merit as Defendants had already met their statutory obligations in this case. The BLM had already approved Solenex’s APD four times. FS000032-34; FS1109-1119; FS002185-90; FS002294-2326. On each occasion, both the Forest Service

three years of the suspension were “in aid of legislation” that never went anywhere. PSOF ¶¶ 61–63. The next seventeen years of suspension were based on studies, more studies, and enlarging the boundaries of a Traditional Cultural District (“TCD”). See PSOF ¶¶ 64–71, 73–74, 76–78, 81–83, 85–89, 91, 93–94, 98–105, 107–10.

In view of these endless years of study, it is unfortunate that so little attention has been paid to determining whether or not oil and gas is actually present. The area in which Solenex intends to drill has long been considered of high hydrocarbon potential. PSOF ¶ 26. But no one really knows what lies under the ground. Therefore, nobody can make a reasoned analysis of the actual costs and benefits of drilling. It would be simple enough to find out. The Record of Decision underlying Solenex’s permit allows it to drill and test one well. PSOF ¶ 58. Solenex cannot even produce that well without further environmental analysis. Id. Refusing to allow Solenex to drill that well simply is not reasoned, informed land management. Allowing the Defendants’ unreasonable delay to continue sends the clear message that even leased federal lands can arbitrarily be declared off-limits.

III. Defendants’ Unreasonable Delay Harms the State and Local Communities.

The delay in this case impacts Amicus’ members and the citizens of Montana in three ways. First, the delay precludes a source of prospective well-paying jobs. The proposed well-site is located in Glacier County, which is one of Montana’s most economically-challenged counties. Glacier County ranks 54th out of Montana’s 56 counties with an unemployment rate of 8.9%, which is well above the state’s average rate of 4.1% unemployment. Mont. Dept. of Labor & Indus., County Unemployment Rate Rankings (May 2014).¹⁸

and the BLM have found that Solenex’s proposed drilling would have no significant impact on the environment and would not negatively impact any cultural or religious sites of the Blackfeet nation. Id.

¹⁸ Available at <http://www.ourfactsyourfuture.org/cgi/databrowsing/?PAGEID=4&SUBID=268>.

Additionally, jobs in Glacier County and neighboring Flathead County, which together encompass Solenex's entire lease, pay much less than the oil and gas industry's standard wage in the state. In Montana, the oil and gas industry pays an average annual wage of approximately \$56,581. Scott Richard, The Economic and Fiscal Impacts of Montana's Oil and Gas Industry, Mont. State Univ., Ctr. for Applied Econ. Research, 3 (June 2012).¹⁹ In 2010, the average annual wage of Glacier and neighboring counties is under \$35,000. See, e.g., Research & Analysis Bureau, Mont. Dep't. of Labor & Indus., Montana County Fliers: Economic and Demographic Information for Glacier County 4 (2012).²⁰

Solenex's operations could potentially relieve the economic burden in these counties by generating at least ten permanent local jobs and up to forty temporary local jobs. PSOF ¶ 59. As Glacier and the surrounding counties have already stated:

[T]he [Solenex] project [would] help alleviate depressed economic conditions and provide economic stability in northern Montana. . . . Local communities and counties [would] benefit from direct expenditures by [Solenex] and through increased taxes on equipment associated with exploration activities.

Id. The Solenex project may provide economic benefits through greater spending as well. See Richard, supra, at 3–4 (describing the indirect and induced impacts of the oil and gas industry on Montana's economy). By averting Solenex's drilling, the agency delay prevents the possibility of well-paying jobs in counties that could use them.

Second, along with preventing the creation of well-paying jobs, the delay prevents possible increases in county revenues from royalty sharing programs. In general, local

¹⁹ Available at <http://www.westernenergyalliance.org/wp-content/uploads/2013/08/The-Economic-and-Fiscal-Impacts-of-Montanas-Oil-and-Gas-Industry-2011-Published-6-2012.pdf>.

²⁰ Available at <http://www.ourfactyourfuture.org/?PAGEID=67&SUBID=273>. Both Glacier County and neighboring Flathead County are comprised of large amounts of federal acreage. See Mont. State Library, infra. In contrast, Richland County, which is comprised of only 3.8 % federal lands, id., boasts much stronger economic figures: the county's unemployment rate is only 2.2%, County Unemployment Rate Rankings, supra, and the average annual wage is \$38,767. Research & Analysis Bureau, Mont. Dep't of Labor & Indus., Montana County Fliers: Economic and Demographic Information for Richland County 4 (2012), <http://www.ourfactyourfuture.org/?PAGEID=67&SUBID=273>.

governments cannot tax federal lands absent congressional approval. See Prince William Cnty. v. Thomason Park, Inc., 91 S.E.2d 441, 444 (1956) (“It is a fundamental principle that a state and its subdivisions are without power, in the absence of express consent of Congress, to tax property owned by the United States.”); Public Land Law Review Comm’n, One Third of the Nation’s Land: A Report to the President and to the Congress 235 (June 1970) (hereinafter Land Comm’n Report); M. Lynn Corn, Cong. Research Serv., RL 31392, PILT (Payment in Lieu of Taxes): Somewhat Simplified 1 (2014). The inability to tax federal lands significantly impacts counties because their revenues depend, in large part, on property taxes. Land Comm’n Report, supra, at 235–36; Corn, supra, at 1. To offset the economic burdens generated by this inability to tax federal lands, Congress has created several compensation programs, including oil and gas royalty sharing. See, e.g., 30 U.S.C. § 191 (2012); see also Land Comm’n Report, supra, at 236 (“The legislative history . . . clearly reflects that the payments to the states and local governments were intended as compensation for the fact that the lands in question would no longer be available for private ownership and property taxation.”); Don Seastone, Sharing or Payments in Lieu of Taxes on Federal Lands?, 47 Land Econ. 373, 375 (1971) (“The public purpose served by and requiring payments to state and local governments is the equitable treatment of those entities whose own abilities to raise revenues are limited by the tax immunity of federal lands.”). A federal statute requires that 50% of the royalties generated from federal oil and gas leases go to the states where the leases are located. 30 U.S.C. § 191(a). In Montana, 25% of the state’s share of these royalties must go to the counties where the leases are found. Mont. Code Ann. § 17-3-240 (2013).

The inability to tax federal lands creates a burden for Glacier and surrounding counties because these counties contain sizeable federal acreage. See Land Comm’n Report, supra, at 235–36 (stating that the inability to tax federal land significantly impacts counties with

significant federal acres); Corn, supra, at 1 (same). For example, Flathead County is 71.7% federal land, with the National Forest Service claiming over 52% of the county. Mont. State Library, Montana County Land Ownership.²¹ Likewise, Glacier County is comprised of 20.2% federal land and 39.1% of Indian Reservation and Trust land. Id. Congress recognizes that, like any other land owner, the U.S. has an obligation to support local communities. Defendants' delay denies the counties the potential of this support.

Third, the delay prevents potential economic gains to Montana's overall economy because it dissuades the oil and gas industry from seeking out federal mineral leases. Montana has great potential in terms of federal mineral leases because nearly 40% of Montana's subsurface minerals are federally owned, at over 37 million mineral acres (nearly 59,000 square miles). Bureau of Land Mgmt, Dep't of the Interior, Mineral and Surface Acreage Managed by the BLM.²² Projections show that if 117 wells were drilled on Montana's federal lands, it would create over 3,800 direct jobs, add over \$1 billion dollars in economic output, and generate \$96.7 million dollars in taxes and royalties for state, local, and the federal governments. Considine, supra, at 39.

For these economic gains to be realized, there needs to be trust in the mineral leasing program. Like other oil and gas ventures, mineral leasing requires an evaluation of market viability and economic risks, including geologic potential as well as contractual certainty. See Bureau of Land Mgmt, Dep't of the Interior, Federal Oil and Gas Leasing and Development in Montana ("Leasing remains a market-driven activity . . .").²³ Supporting the government's delay in this case will promote distrust in a federal mineral leasing program that has significant potential for growth in Montana.

²¹ Available at http://geoinfo.msl.mt.gov/Home/geography/geography_facts/montana_county_land_ownership.aspx.

²² Available at http://www.blm.gov/wo/st/en/info/About_BLM/subsurface.html.

²³ Available at http://www.blm.gov/mt/st/en/prog/energy/oil_and_gas/leasing/mtleasing.html.

CONCLUSION

Amicus The Montana Petroleum Association respectfully requests that the Court enter summary judgment in favor of Solenex, and grant Solenex the relief it has requested.

Dated this 28th day of July 2014.

Respectfully submitted,

/s/ James W. Porter, III

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 2014, the foregoing was served via the Court's CM/ECF system which will forward copies to all Counsel of Record.

/s/ James W. Porter, III
Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOLENEX LLC,

Plaintiff,

vs.

JEWELL, ET AL,

Defendants.

Civil Case No. 13-00993 (RJL)

Judge Richard J. Leon

ORDER GRANTING MOTION OF
MONTANA PETROLEUM
ASSOCIATION FOR LEAVE TO
FILE AN AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFF

THIS MATTER having come before this Court on Amicus Curiae Montana Petroleum Association's Motion for Leave to File an Amicus Curiae Brief in Support of Plaintiff, and this Court having reviewed the motion and being otherwise fully advised:

IT IS ORDERED that the Motion is granted;

IT IS FURTHER ORDERED that the Clerk of Court shall file the submitted Amicus Curiae Brief of Montana Petroleum Association in Support of Plaintiff.

Dated this ____th day of _____, 2014.

United States District Judge Richard J. Leon

