SANTA BARBARA COUNTY
BOARD AGENDA LETTER

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:	
Prepared on:	12/29/04
Department Name:	Planning & Development
Department No.:	053
Agenda Date:	1/11/05
Placement:	Administrative
Estimate Time:	
Continued Item:	NO
If Yes, date from:	

TO:	Board of Supervisors
FROM:	Valentin Alexeeff, Director Planning and Development Department
STAFF CONTACT:	Doug Anthony, Energy Specialist Energy Division, 568-2046
SUBJECT:	Comments on Draft Environmental Assessments for Proposed Suspensions of 36 Undeveloped Leases in Federal Waters Offshore Santa Barbara County

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Recommendation(s): That the Board of Supervisors review and concur with the attached letter sent to the Minerals Management Service on December 16, 2004, commenting on draft Environmental Assessments for Proposed Suspensions of 36 Undeveloped Leases in Federal Waters Offshore Santa Barbara County.

Alignment with Board Strategic Plan: This recommendation primarily aligns with Goal V: A High Quality of Life for All Residents.

Executive Summary and Discussion:

OCS Oil & Gas Leasing & Lease Extensions

The U.S. Department of the Interior leased 369 tracts offshore California between 1966 and 1984 for the purpose of developing hydrocarbon resources. Of those 369 leases, 43 leases have since been produced or are situated within producing units. Another 290 leases expired, were relinquished, or otherwise terminated. Lastly, 36 leases have remained undeveloped over a period of 19-to-36 years, as illustrated in the attached Table and depicted in white on the attached map. These 36 undeveloped leases are the subject of this report.

There are two issues at hand:

- The Minerals Management Service (MMS) of the U.S. Department of the Interior (DOI) is considering requests from lessees of these tracts to extend the terms of the leases that would otherwise expire for lack of due diligence.
- The MMS initially failed to follow proper procedures pursuant to federal law, and then, under court order as a result of *California v. Norton*, conducted environmental review that we believe to be inadequate in scope for the extension of leases.

Oil companies explored the 36 tracts shortly after they were leased and, according to the MMS, discovered payable quantities of hydrocarbon resources. Since then, the MMS has extended the original five-year terms of the 36 undeveloped leases through a series of suspensions. The original five-year term was set primarily to ensure that the lessees developed hydrocarbon resources from the leases with due diligence, pursuant to the Outer Continental Shelf Lands Act (OCSLA).[1] The MMS may impose a suspension on the lessee, or grant a lessee's request for a suspension under the following conditions (30 CFR 250.172-175):

- To avoid a threat of serious irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits or to the marine, coastal, or human environments.
- To facilitate proper development of a lease or field, including reasonable time to construct production facilities, construct or negotiate for use of transportation facilities (including onshore processing and storage capacity), negotiate contracts for sale of oil or gas.[2]
- To approve a request for an extension by the lessee to mitigate delays in commencing drilling or other operations for reasons beyond the lessee's control, such as unexpected weather, unavoidable accidents, or drilling rig delays.
- To serve the national interest such as in times of war.
- To address the lessee's non-compliance with a provision of any applicable law, regulations, order, or provision of the lease or permit. However, an extension of the lease period will not result if the MMS directs a suspension of a lease due to gross negligence or willful violation of a provision of the lease, governing statutes, or regulations by the lessee or operator.
- To allow a reasonable period of time to comply with requirements of the National Environmental Policy Act.
- To allow a reasonable period of time to facilitate the installation of equipment necessary for safety and environmental reasons.
- To address inordinate delays encountered by the lessee in obtaining requires permits and consents, including administrative or judicial challenges or appeals.
- To comply with judicial decrees prohibiting production or any other operation or activity, or the permitting of those activities, effective the date set by the court for that prohibition.
- To avoid premature abandonment of a producing well.

California v. Norton

In November of 1999, the Secretary of the Interior approved suspensions for the 36 undeveloped leases; these leases would have otherwise expired if not extended. However, the California Coastal Commission objected that such approvals required its review, pursuant to the Federal Consistency Review provisions of

[1] The lease shall provide for suspension or cancellation of the leases during the initial lease term or thereafter (43 USCS § 1337(b)(4)). Lease terms are extended beyond the initial term when the lessee is producing oil or gas in commercial quantities (including downtime to drill new wells or rework existing wells) consistent with applicable regulations (30 CFR 256.37, 256.70, 256.71, and 250.1301). Non-producing leases located within a unit assume the term of the unit. As long as one or more leases in the unit are producing commercial quantities of oil or gas, the term of the unit is extended. Terms of producing leases or units continue until such time that oil and gas operations have ceased for more than 180 days, unless the MMS approves a longer grace period (30 CFR 250-180(d, e)).

[2] In these cases, suspensions may only be issued if a well on the lease has been drilled and determined to be producible in paying quantities (30 CFR 250.171(c) and 250.115).

the U.S. Coastal Zone Management Act (CZMA).[3] The Minerals Management Service disagreed, and the State of California litigated to compel DOI to comply with procedures legally prescribed under both the CZMA and the National Environmental Policy Act (NEPA). The counties of Santa Barbara and San Luis Obispo and other entities joined the litigation, *California v. Norton*, as intervenors, defending the State's rights and authorities under the CZMA and contesting DOI for not properly following requirements under NEPA.

In June of 2001, the U.S. District Court for the Northern District of California ruled in favor of the State of California. DOI appealed the District Court's ruling to the U.S. Court of Appeals for the Ninth Circuit. However, that court unanimously affirmed the District Court's ruling. DOI then decided not to contest the rulings of these courts any further.

In making their rulings, both courts stressed the far-reaching effects of the lease extensions, particularly where the leasing of such tracts were not previously subject to Federal Consistency Review, noting among other things that *"These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production. Because the decision to extend these leases through the suspension process is discretionary, it does grant new rights to the lessees to produce oil and derive revenues therefrom for many years when absent the suspensions all rights would have terminated."*[4]

Regarding compliance with NEPA, the District Court ruled that *"... the MMS should have provided some explanation for its reliance on the categorical exclusion and its view that the extraordinary circumstances exceptions do not apply before granting the requested suspensions."*[5]

Post California v. Norton Environmental Review

The MMS proceeded with conducting environmental reviews pursuant to NEPA as a first step in complying with the court rulings. On November 17, 2004, the MMS issued six draft Environmental Assessments (EAs) for granting lease suspensions for the 36 undeveloped leases in question.[6] In so doing, the agency solicited

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[3] Federal Consistency Review is a mechanism for resolving conflicts between state coastal zone plans and federally approved activities, including leasing of oil/gas tracts, exploration and development. "…[T]he CZMA requires that certain federal agency activities, and certain private activities done under the authority of a federal license or permit, that affect the coastal zone, be consistent with the State's coastal management program.'

[4] *California v. Norton*, No. 01-16637 Ninth Circuit, p. 24, including footnote 6.

[5] *California v. Norton*, No. C 99-4964 CW, U.S. District Court, Northern California, p. 21. Defendants in the case unsuccessfully asserted that the suspensions do not authorize any activities that will affect the environment because no activities, including any required milestones, would occur until after the lessees file new or revised Exploration Plans or Development and Production Plans. Defendants also unsuccessfully disputed an assertion by the Plaintiffs that the extraordinary circumstances exceptions to categorical exceptions did not apply because there was no dispute among scientists about its environmental effects.

[6] *"According to* [the U.S. Council on Environmental Quality], *an EA is a concise public document prepared by a federal agency when a proposed action is not covered by a categorical exclusion or otherwise exempt from NEPA. Federal agencies use the EA to determine whether the proposed action has the potential to cause significant environmental effect. 40 C.F.R. 1508.9(a). The purposes of an EA are to: · Provide evidence and analysis sufficient to determine whether an* [Environmental Impact Statement (EIS)] *is required. · Aid a federal agency's compliance with NEPA when no EIS is necessary. · Facilitate preparation of an EIS when one is necessary 40 C.F.R. 1508.9(a)."* Bass, Ronald E., *et. al.*, *The NEPA Book* (Point Arena, CA: Solano Press Books, 2001), p. 44.

public comment on the adequacy and completeness of the EAs. The MMS defined a 30-day comment period, with comments due no later than December 16, 2004.

The MMS limited the scope of the EAs solely to activities that would take place during the period of suspensions, rather than assessing at a programmatic level of detail the environmental effects that may result from developing and producing these leases that would otherwise expire if the requested suspensions were not approved. This narrow scope runs counter to the rulings of both courts, as summarized above, and to the legal arguments filed by the County during the *California v. Norton* litigation. The granting of suspensions is essentially "connected activities" to the eventual development of these leases, and the suspensions have no utility independent of the subsequent production and development of these leases.[7]

Given the short period of time to examine the EAs, the Planning and Development Department coordinated with the County Counsel's office to prepare and submit comments on the limited scope of the EAs. In doing so, staff essentially recited important points from the rulings of both the District Court and Court of Appeals in *California v. Norton*, and recited important points of law in a brief that the County filed during that litigation.

The County Administrator subsequently requested that Planning and Development bring our comment letter before the Board of Supervisors to ensure that the Board concurs with the policy approach and content of the letter.

Mandates and Service Levels: The draft Environmental Assessments affect the procedural implementation of the Coastal Zone Management Act and, in particular, the review of Federal activities, permits and licenses for consistency with the California Coastal Management Program. These assessments focus on the Federal actions involving offshore oil and gas leasing and development. Consistency review is conducted primarily by the California Coastal Commission; however, Santa Barbara County often participates as an interested party because the Federal government historically has concentrated most of its oil and gas leasing and development offshore California in the Santa Barbara Channel and Santa Maria Basin, offshore Santa Barbara County.

Fiscal and Facilities Impacts: Expenses incurred in analyzing and preparing comments on the EAs are budgeted in Fund 0001, Program 5080, Project PKS2 as shown on page D-300 of the County's FY 04-05 budget book, under expenditure item *Long Range Planning.* These expenses are offset by revenue from the Coastal Impact Assistance Program of 2001 administered by the National Oceanic and Atmospheric Administration, as shown on page D-300 of the County's FY 04-05 budget book, under the revenue source listed as *Grants*.

The NEPA and CZMA Federal Consistency Review processes afford the County channels for protecting its coastal resources, including many of the County's coastal parks that provide recreational opportunities to its citizenry and tourists

[7] In the U.S. Council on Environmental Quality regulations, "connected activities" include those that "(i) automatically trigger other actions which may require environmental impacts statements" and those that "(ii) cannot or will not proceed unless other actions are taken previously or simultaneously" (40 CFR § 1508.25(a)(1). Development and production of the leases granted suspensions satisfy each of these criteria.

Special Instructions: None.

Concurrence: County Counsel.

Attachments: Table: 36 Undeveloped Leases
Map of leases offshore Santa Barbara County
P&D's comment letter to MMS, dated December 16, 2004

Table: Thirty-Six Undeveloped Leases Offshore Santa Barbara County

LEASE (se-nw)	SALE DATE	INITIAL TERM[8]	YEARS TO DATE
0210 (Cavern Pt)	2-6-68	5	36
0527 (Cavern Pt)	10-17-84	5	19 ½
0464 (Gato Cyn)	6-11-82	5	22
0460 (Gato Cyn)	6-11-82	5	22
0453 (Rocky Pt)	5-28-81	5	23
0452 (Rocky Pt)	5-28-81	5	23
0319 (Sword)	6-29-79	5	25
0320 (Sword)	6-29-79	5	25
0322 (Sword)	6-29-79	5	25
0323A (Sword)	6-29-79	5	25
0449 (Bonito)	5-28-81	5	23
0446 (Bonito)	5-28-81	5	23
0445 (Bonito)	5-28-81	5	23
0443 (Bonito)	5-28-81	5	23
0500 (Bonito)	8-5-82	5	22
0499 (Bonito)	8-5-82	5	22
0435 (Purisima Pt)	5-28-81	5	23
0432 (Purisima Pt)	5-28-81	5	23
0427 (Purisima Pt)	5-28-81	5	23
0426 (Purisima Pt)	5-28-81	5	23
0434 (Santa Maria)	5-28-81	5	23
0433 (Santa Maria)	5-28-81	5	23
0431 (Santa Maria)	5-28-81	5	23
0430 (Santa Maria)	5-28-81	5	23
0425 (Santa Maria)	5-28-81	5	23
0422 (Point Sal)	5-28-81	5	23
0421 (Point Sal)	5-28-81	5	23
0416 (Point Sal)	5-28-81	5	23
0415 (Point Sal)	5-28-81	5	23
0414 (Lion Rock)	5-28-81	5	23
0408 (Lion Rock)	5-28-81	5	23
0403 (Lion Rock)	5-28-81	5	23
0402 (Lion Rock)	5-28-81	5	23
0397 (Lion Rock)	5-28-81	5	23
0396 (Lion Rock)	5-28-81	5	23
0409 (not unitized)	5-28-81	5	23

[8] U.S. Department of the Interior, Minerals Management Service, Pacific OCS Region, *Status of Leases and Qualified Companies, Pacific OCS Region, as of November 2001,* Camarillo, CA: Minerals Management Service, pp. 5-16.

Map attached separately as jpeg

December 16, 2004

Minerals Management Service
Attn: Suspension—EA Comments
Office of Environmental Evaluation
770 Paseo Camarillo
Camarillo, CA 93010-6064

RE: Comments on Draft Environmental Assessments for Suspensions of Leases Offshore Santa Barbara and San Luis Obispo Counties

To Whom It May Concern:

As a plaintiff in *California v. Norton,* the County of Santa Barbara is disappointed that the Minerals Management Service (MMS) chose not to examine the potential environmental effects of extending 36 currently undeveloped leases. Instead, the current draft environmental assessments (DEAs) focus solely on insignificant activities by the operators of these leases that would occur during the periods of suspensions, including shallow hazard surveys and administrative tasks. Such a narrow focus would appear to ignore that:

(1) Granting of suspensions represents "a significant decision to extend the life of oil exploration and production off of California's coastal, with all of the far reaching effects and perils that would go along with offshore oil production," as stated by the District Court;
(2) The MMS has previously confirmed that commercial quantities of hydrocarbons have been discovered on all these units; and
(3) The MMS has sufficient information about how these leases would be produced and developed.

A comprehensive, programmatic environmental assessment should have been prepared for each of the requests for suspension. At a minimum, those assessments would lead to a comprehensive, programmatic Environmental Impact Statement for non-unitized lease P-0409, and the Lion Rock, Point Sal, Purisima Point, Santa Maria, and Gato Canyon Units, because production and development would require substantial new infrastructure, including new offshore platforms. Anything short of a more comprehensive review of environmental impacts fails to meet the intent and spirit of the Federal Consistency Review process and the Court rulings in *California v. Norton.*

Our detailed comments on each DEA are attached. Please direct any questions to Mr. Doug Anthony or Mr. Steve Chase at (805) 568-2040 of my department.

Sincerely,

Valentin Alexeeff
Director

Attachment 1

Comments on the Draft Environmental Assessment of the Cavern Point Unit (Leases OCS-P 0210 and 0527)

The County of Santa Barbara ("County") requests that the Minerals Management Service ("MMS") expand the scope of the Draft Environmental Assessment (DEA) and revise its analysis of potential impacts. This revised DEA should address the connected activities of production and development that should reasonably be expected to result from any approval of a suspension. County further requests that a new DEA with an expanded scope be re-circulated for public comment. County reserves judgment as to the conclusions of DEA for granting suspensions of Cavern Point Unit leases until a revised DEA with adequate scope and analysis has been issued.

Venoco, the unit operator, requests suspensions of these leases so that it may produce and develop oil and gas, employing extended-reach techniques from Platform Gail. This platform is situated on an adjacent unit. Wherein granting of these suspensions extends to Venoco all rights to produce and develop these leases under the Outer Continental Shelf Lands Act, denial would terminate such rights.

The DEA identifies two proposed actions: (1) an extension to the terms of leases that would otherwise expire,[9] and (2) preparation by Venoco, the unit operator, of an updated application for an Exploration Plan and interpretation of seismic data from previous surveys. The first action, formally termed as a Suspension of Production, is a federal activity, as defined under the Coastal Zone Management Act (CZMA, 16 U.S.C. § 1456 (c)(1)(A))[10] The second action represents partial steps towards production and development. This second action does not, in and of itself, represent a Federal activity pursuant to the CZMA or private activity that requires a Federal permit or license; however, it establishes the reasonable intent by the operator to extend the term of the two leases located in the Cavern Point Unit to produce and develop them.

The DEA considers only potential environmental effects of the second action, arriving at an obvious conclusion that preparation of applications and analysis of previously obtained seismic date do not result in a significant effect on the environment. However, the DEA completely ignores any consideration of environmental effects that may result from production, and development of the leases that a prudent person would conclude connected to the suspensions of leases. Therefore, we find the draft Environmental Assessment (DEA) to be seriously flawed as to its scope of analysis and conclusions.

Both the Distict Court and the Ninth Circuit Court of Appeals in *California v. Norton* stressed the far-reaching effects of lease extensions, particularly where the leasing of such tracts were not previously subject to Federal Consistency Review. "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production. Because the decision to extend these leases through the suspension process is discretionary, it does grant new rights to the lessees to produce oil and derive revenues therefrom for many years when absent the suspensions all rights would have terminated." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 24, including footnote 6.) Anything short of this level of analysis would undermine the spirit and purpose of the CZMA Federal Consistency Review and the previous legal challenge of plaintiffs in *California v. Norton.*. "Defendants' claims that the future review of the EPs or DPPs that will be submitted for the milestone activities obviates the need to review the lease suspensions for consistency is not well taken. The CZMA, as amended, requires consistency review of leases when they are sold and requires review again later when the EPs and DPPs are submitted. … Thus, under CZMA, as amended, the later review of the EPs and DPPs for consistency with the CCMP does not obviate the MMS's responsibility to provide the State with consistency determination at the earlier stage when the lease is sold. Neither

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[9] "What is referred to as a suspension of the lease is actually a suspension of the running of the term of the lease, that is, in effect an extension of the lease." (*California v. Norton,* No. 99-4964 (CW) N.D. Cal., p. 5.)

[10], "The Court finds that the MMS's grant of these suspensions is a federal activity, as defined by the CZMA in 16 U.S.C. § 1456(c) (1). (*California v. Norton,* No. 99-4964 (CW) N.D. Cal, p. 13.) "We are therefore convinced that section (c)(1) applies to these lease suspensions." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 27.)

does it obviate the need for a consistency determination of the suspension of these leases, which were not reviewed for consistency with the CCMP at the time of their sale." (*California v. Norton*, pp. 14-15.)

Moreover, the Council on Environmental Quality ("CEQ") has determined, and NEPA case law has reinforced, that environmental impacts must be evaluated prior to making a commitment of resources (40 C.F.R. Sec. 1502.5; *Metcalf v. Daley*, 214 F.3d 1135,1142 (9th Cir. 2000)). In this case, MMS chose to defer the environmental impact analysis to a point in time where the fundamental decision-making junctures had already come and gone. Once the suspensions are granted an environmental assessment or environmental impact statement can only serve as a post hoc rationalization of the decision to allow development and production to take place. This contravenes the CEQ regulation and the case law (*Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562, 567 (9th Cir. 2000)).

To do otherwise would be to artificially separate the suspensions from the development and production activity for which these suspensions are intended. Dividing the project into such multiple actions is impermissible (*Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985)).

In *Thomas v. Peterson*, plaintiffs challenged Forest Service approval of a timber road designed to facilitate timber sales. The road was approved with an environmental assessment ("EA") and a finding of no significant impact ("FONSI") that considered the impacts of the road, but did not consider the combined impacts of the road and the timber sales together (*Thomas v. Peterson,* p. 757). The district court granted summary judgment for the Forest Service but the Ninth Circuit reversed, requiring the combined impacts of the road and timber sales to be addressed in an EIS:

A central purpose of an EIS is to force the consideration of environmental impacts in the decision making process. That purpose requires that the NEPA process be integrated with agency planning "at the earliest possible time," 40 C.F.R. § 1501.2, and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken (*Thomas*, p.760).

In *Thomas,* the court held that the Forest Service was required to prepare an EIS that analyzed the combined impacts of the road and the timber sales that the road was designed to facilitate (*Thomas v. Peterson,* p. 761). The Forest Service argued that the timber sales were too uncertain and too far in the future for their impacts to be analyzed along with that of the road. It also argued that the cumulative environmental effects of the road and the timber sales would be adequately analyzed and considered in the EAs or EISs that it would prepare later for the individual timber sales. The Ninth Circuit would not allow it. The timber sales could not go forward without the road, and the road would not be built if there were no timber sales to necessitate it (*Thomas v. Peterson,* p. 759). The series of interrelated projects was "connected" for the purposes of environmental review.

The granting of the requested suspensions is essentially "connected actions" to the eventual development of these leases. In the Council on Environmental Quality ("CEQ") regulations "connected actions" include those that "(i) automatically trigger other actions which may require environmental impact statements" and those that "(ii) cannot or will not proceed unless other actions are taken previously or simultaneously"(40 C.F.R. § 1508.25(a)(1)). Development and production of the leases granted suspensions satisfy each of these criteria.

It is undisputed that if there were no lease suspensions there would be no further development of the tracts in question unless they were leased again. The leases would expire. The lease suspensions have no utility independent of the subsequent production and development (*Wetlands Action Network v. U.S. Army Corps of Engineers*, 2000 U.S. App. LEXIS 21071 (9th Cir. August 21, 2000)). They are "connected actions" within the meaning of the CEQ regulations and so NEPA review must occur prior to the first of the actions.

We disagree with the assertion that a suspension is granted for a limited purpose, or that the MMS lacks substantive detail to examine the potential environmental effects of development and production as may be the case prior to initial leasing. Again, the suspension is, in essence, an extension of the lease term, with all rights to development. If not extended, those rights are forfeited or compensated. Moreover, the MMS has sufficient detail about how these leases would be developed and produced – i.e., extended-reach drilling from Platform Gail, transport of production

to Platform Grace and, from there, onshore via existing pipelines – to analyze potential environmental impacts at a programmatic level of review.

In conclusion, we understand from the DEA that Venoco plans to produce and develop the Cavern Point Unit from existing Platform Gail. Accordingly, we request that the scope of the DEA be expanded to address, at a programmatic level of analysis, potential new significant impacts, or increase in existing significant impacts on the environment from producing the Cavern Point Unit from existing Platform Gail and any potential new pipeline infrastructure that may be required should Platform Grace be converted to an LNG terminal. This expanded scope should address activities which are reasonably expected to occur as a result of renewing these leases.

The County reserves its judgment as to whether a programmatic EIS required, or a Finding of No Significant Impacts is sufficient, to address the action of extending a lease, until a revised DEA with adequate scope and analysis is made available. Such judgment cannot reasonably be rendered now because the scope and analysis of the current is seriously inadequate.

Attachment 2

Comments on the Draft Environmental Assessment of the Gato Canyon Unit (Leases OCS-P 0460, & 0464)

The County of Santa Barbara ("County") requests that the Minerals Management Service ("MMS") expand the scope of the Draft Environmental Assessment (DEA) and revise its analysis of potential impacts. This revised DEA should address the connected activities of production and development that should reasonably be expected to result from any approval of a suspension. We further request that the MMS prepare a comprehensive, programmatic Environmental Impact Statement (EIS) to properly analyze the potential environmental effects of installing and operating a new offshore platform and associated pipelines offshore California. The County believes an EIS is appropriate because the requested suspension would extend the life of the Gato Canyon Unit so that commercial quantities of oil and gas may be produced and developed from a new offshore platform.

Samedan, the unit operator, requests suspensions of these leases so that it may produce and develop oil and gas, from a new offshore platform. Wherein granting of these suspensions extends to Samedan all rights to produce and develop these leases under the Outer Continental Shelf Lands Act, denial would terminate such rights.

The DEA identifies two proposed actions: (1) an extension to the terms of leases that would otherwise expire,[11] and (2) conduct a shallow-hazards survey and prepare an application to revise its Exploration Plan. The first action, formally termed as a Suspension of Production, is a federal activity, as defined under the Coastal Zone Management Act (CZMA, 16 U.S.C. § 1456 (c)(1)(A))[12] The second action represents steps toward production and development. It does not, in and of itself, represent a Federal activity pursuant to the CZMA) or private activity that requires a Federal permit or license; however, it establishes the reasonable intent by the operator to extend the term of the leases located in the Cavern Point Unit for the purpose of development and production.[13]

The DEA considers only potential environmental effects of the second action, while completely ignoring any consideration of environmental effects that may result from production, and development of the leases that a prudent person would conclude connected to the suspensions of leases. Therefore, we find the draft Environmental Assessment (DEA) to be seriously flawed as to its scope of analysis and conclusions.

Both the Distict Court and the Ninth Circuit Court of Appeals in *California v. Norton* stressed the far-reaching effects of lease extensions, particularly where the leasing of such tracts were not previously subject to Federal Consistency Review. "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production. Because the decision to extend these leases through the suspension process is discretionary, it does grant new rights to the lessees to produce oil and derive revenues therefrom for many years when absent the suspensions all rights would have terminated." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 24, including footnote 6.) Anything short of this level of analysis would undermine the spirit and purpose of the CZMA Federal Consistency Review and the previous legal challenge of plaintiffs in *Cal. v. Norton.*. "Defendants' claims that the future review

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[11] "What is referred to as a suspension of the lease is actually a suspension of the running of the term of the lease, that is, in effect an extension of the lease." (*California v. Norton,* No. 99-4964 (CW) N.D. Cal., p. 5.)

[12], "The Court finds that the MMS's grant of these suspensions is a federal activity, as defined by the CZMA in 16 U.S.C. § 1456(c) (1). (*California v. Norton,* No. 99-4964 (CW) N.D. Cal, p. 13.) "We are therefore convinced that section (c)(1) applies to these lease suspensions." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 27.)

[13] We note that exploration of the Gato Canyon Unit has already been performed and commercial quantities of oil and gas have been discovered; therefore, the delineation well is proposed to determine how best to tap discovered hydrocarbon reserves. See Minerals Management Service, *Delineation Drilling Activities in Federal Waters Offshore Santa Barbara County, California: Draft Environmental Impact Statement,* Camarillo, Pacific OCS Region, June 2001, pp. 1-8 and 1-9. For example: *"Delineation drilling is a form of exploration drilling used to delineated any hydrocarbon reservoir to enable the lessee to decide how to proceed with development and production. Previously announced discoveries of commercially recoverable oil and gas resources have been made on each of the subject units."*

of the EPs or DPPs that will be submitted for the milestone activities obviates the need to review the lease suspensions for consistency is not well taken. The CZMA, as amended, requires consistency review of leases when they are sold and requires review again later when the EPs and DPPs are submitted. … Thus, under CZMA, as amended, the later review of the EPs and DPPs for consistency with the CCMP does not obviate the MMS's responsibility to provide the State with consistency determination at the earlier stage when the lease is sold. Neither does it obviate the need for a consistency determination of the suspension of these leases, which were not reviewed for consistency with the CCMP at the time of their sale." (*California v. Norton,* pp. 14-15.)

Moreover, the Council on Environmental Quality ("CEQ") has determined, and NEPA case law has reinforced, that environmental impacts must be evaluated prior to making a commitment of resources (40 C.F.R. Sec. 1502.5; *Metcalf v. Daley*, 214 F.3d 1135,1142 (9th Cir. 2000)). In this case, MMS chose to defer the environmental impact analysis to a point in time where the fundamental decision-making junctures had already come and gone. Once the suspensions are granted an environmental assessment or environmental impact statement can only serve as a post hoc rationalization of the decision to allow development and production to take place. This contravenes the CEQ regulation and the case law (Idaho Sporting Congress, Inc. v. Alexander, 222 F.3d 562, 567 (9th Cir. 2000)).

To do otherwise would be to artificially separate the suspensions from the development and production activity they mandate. Dividing the project into such multiple actions is impermissible (*Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985)).

In *Thomas v. Peterson*, plaintiffs challenged Forest Service approval of a timber road designed to facilitate timber sales. The road was approved with an environmental assessment ("EA") and a finding of no significant impact ("FONSI") that considered the impacts of the road, but did not consider the combined impacts of the road and the timber sales together (*Thomas v. Peterson*, p. 757). The district court granted summary judgment for the Forest Service but the Ninth Circuit reversed, requiring the combined impacts of the road and timber sales to be addressed in an EIS:

A central purpose of an EIS is to force the consideration of environmental impacts in the decision making process. That purpose requires that the NEPA process be integrated with agency planning "at the earliest possible time," (40 C.F.R. § 1501.2), and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken (*Thomas v. Peterson,* p. 760).

In *Thomas v. Peterson,* the court held that the Forest Service was required to prepare an EIS that analyzed the combined impacts of the road and the timber sales that the road was designed to facilitate (*Thomas v. Peterson,* p. 761). The Forest Service argued that the timber sales were too uncertain and too far in the future for their impacts to be analyzed along with that of the road. It also argued that the cumulative environmental effects of the road and the timber sales would be adequately analyzed and considered in the EAs or EISs that it would prepare later for the individual timber sales. The Ninth Circuit would not allow it. The timber sales could not go forward without the road, and the road would not be built if there were no timber sales to necessitate it (*Thomas v. Peterson,* p. 759). The series of interrelated projects was "connected" for the purposes of environmental review.

The granting of the requested lease suspensions is essentially "connected actions" to the eventual development of these leases. In the Council on Environmental Quality ("CEQ") regulations "connected actions" include those that "(i) automatically trigger other actions which may require environmental impact statements" and those that "(ii) cannot or will not proceed unless other actions are taken previously or simultaneously." (40 C.F.R. § 1508.25(a)(1). Development and production of the leases granted suspensions satisfy each of these criteria.

It is undisputed that if there were no lease suspensions there would be no further development of the tracts in question unless they were leased again. The leases would expire. The lease suspensions have no utility independent of the subsequent development and production (*Wetlands Action Network v. U.S. Army Corps of Engineers*, 2000 U.S. App. LEXIS 21071 (9th Cir. August 21, 2000)). They are "connected actions" within the meaning of the CEQ regulations and so NEPA review must occur prior to the first of the actions.

We disagree with the assertion that a suspension is granted for a limited purpose, or that the MMS lacks substantive detail to examine the potential environmental effects of development and production as may be the case prior to initial leasing. Again, the suspension is, in essence, an extension of the lease term, with all rights to development. If not extended, those rights are forfeited or compensated. Moreover, the MMS has sufficient detail about how these leases would be developed and produced – installation of a new offshore platform and offshore pipelines connecting the platform to the Los Flores Canyon processing site or to Platform Hondo – to analyze potential environmental impacts at a programmatic level of review.

In conclusion, we understand that Samedan, the Gato Canyon Unit operator, would construct and install a new offshore platform, with pipelines connecting that platform to shore or to Platform Hondo, in order to produce oil and gas from the unit.[14] This level of information is sufficient to adequately identify and address activities which are reasonably expected to occur as a result of renewing these leases – production and development of commercial quantities of hydrocarbons from the unit. Among other things, the Environmental Impact Statement should address impacts of installing and operating the new infrastructure, including a new offshore platform and pipelines.

[14] Samedan Oil Corporation, Letter to Maher Ibrahim of the Minerals Management Service requesting a Suspension of Production, dated May 13, 1999 and signed by J.M. Ables, Land Manager – Offshore, item 15 on page two of the table titled “Samedan Oil Corporation, Gato Canyon Unit – Santa Barbara Channel, Suspension of Production – Proposed Schedule of Events Leading to Production.”

Attachment 3

Comments on the Draft Environmental Assessment of the Sword Unit (Leases OCS-P 0319, 0320, 0322, and 0323A)

The County of Santa Barbara ("County") requests that the Minerals Management Service ("MMS") expand the scope of the Draft Environmental Assessment (DEA) and revise its analysis of potential impacts. This revised DEA should address the connected activities of production and development that should reasonably be expected to result from any approval of a suspension. County further requests that a new DEA with an expanded scope be re-circulated for public comment. County reserves judgment as to the conclusions of DEA for granting suspensions of Sword Unit leases until a revised DEA with adequate scope and analysis has been issued.

Samedan, the unit operator, requests suspensions of these leases so that it may produce and develop oil and gas, employing extended-reach techniques from Platform Hermosa. This platform is situated on an adjacent unit. Wherein granting of these suspensions extends to Samedan all rights to produce and develop these leases under the Outer Continental Shelf Lands Act, denial would terminate such rights.

The Draft Environmental Assessment (DEA) identifies two proposed actions: (1) an extension to the terms of leases that would otherwise expire,[15] and (2) preparation of an application to revise the Exploration Plan to delineate the oil and gas reservoir. The first action, formally termed as a Suspension of Production, is a federal activity, as defined under the Coastal Zone Management Act (16 U.S.C. § 1456 (c)(1)(A))[16] The second action represents a step towards production and development. It does not, in and of itself, represent a Federal activity pursuant to the CZMA) or private activity that requires a Federal permit or license; however, it establishes the reasonable intent by the operator to extend the term of the four leases located in the Sword Unit for the purpose of development and production.

The DEA considers only potential environmental effects of the second action, arriving at an obvious conclusion that preparation of applications does not result in a significant effect on the environment. However, the DEA completely ignores any consideration of environmental effects that may result from production, and development of the leases that a prudent person would conclude connected to the suspensions of leases. Therefore, we find the draft Environmental Assessment (DEA) to be seriously flawed as to its scope of analysis and conclusions.

Both the Distict Court and the Ninth Circuit Court of Appeals in *California v. Norton* stressed the far-reaching effects of lease extensions, particularly where the leasing of such tracts were not previously subject to Federal Consistency Review. "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production. Because the decision to extend these leases through the suspension process is discretionary, it does grant new rights to the lessees to produce oil and derive revenues therefrom for many years when absent the suspensions all rights would have terminated." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 24, including footnote 6.) Anything short of this level of analysis would undermine the spirit and purpose of the CZMA Federal Consistency Review and the previous legal challenge of plaintiffs in *California v. Norton*.. "Defendants' claims that the future review of the EPs or DPPs that will be submitted for the milestone activities obviates the need to review the lease suspensions for consistency is not well taken. The CZMA, as amended, requires consistency review of leases when they are sold and requires review again later when the EPs and DPPs are submitted. … Thus, under CZMA, as amended, the later review of the EPs and DPPs for consistency with the CCMP does not obviate the MMS's responsibility to provide the State with consistency determination at the earlier stage when the lease is sold. Neither does it obviate the need for a consistency determination of the suspension of these leases, which were not reviewed for consistency with the CCMP at the time of their sale." (*California v. Norton*, pp. 14-15)

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[15] "What is referred to as a suspension of the lease is actually a suspension of the running of the term of the lease, that is, in effect an extension of the lease." (*California v. Norton,* No. 99-4964 (CW) N.D. Cal., p. 5.)
[16], "The Court finds that the MMS's grant of these suspensions is a federal activity, as defined by the CZMA in 16 U.S.C. § 1456(c) (1). (*California v. Norton,* No. 99-4964 (CW) N.D. Cal, p. 13.) "We are therefore convinced that section (c)(1) applies to these lease suspensions." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 27.)

Moreover, the Council on Environmental Quality ("CEQ") has determined, and NEPA case law has reinforced, that environmental impacts must be evaluated prior to making a commitment of resources (40 C.F.R. Sec. 1502.5; *Metcalf v. Daley*, 214 F.3d 1135,1142 (9th Cir. 2000)). In this case, MMS chose to defer the environmental impact analysis to a point in time where the fundamental decision-making junctures had already come and gone. Once the suspensions are granted an environmental assessment or environmental impact statement can only serve as a post hoc rationalization of the decision to allow development and production to take place. This contravenes the CEQ regulation and the case law (*Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562, 567 (9th Cir. 2000)).

To do otherwise would be to artificially separate the suspensions from the development and production activity they mandate. Dividing the project into such multiple actions is impermissible (*Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985)).

In *Thomas v. Peterson*, plaintiffs challenged Forest Service approval of a timber road designed to facilitate timber sales. The road was approved with an environmental assessment ("EA") and a finding of no significant impact ("FONSI") that considered the impacts of the road, but did not consider the combined impacts of the road and the timber sales together (*Thomas v. Peterson,* p. 757). The district court granted summary judgment for the Forest Service but the Ninth Circuit reversed, requiring the combined impacts of the road and timber sales to be addressed in an EIS:

A central purpose of an EIS is to force the consideration of environmental impacts in the decision making process. That purpose requires that the NEPA process be integrated with agency planning "at the earliest possible time," 40 C.F.R. § 1501.2, and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken (*Thomas*, p.760).

In *Thomas,* the court held that the Forest Service was required to prepare an EIS that analyzed the combined impacts of the road and the timber sales that the road was designed to facilitate (*Thomas v. Peterson,* p. 761). The Forest Service argued that the timber sales were too uncertain and too far in the future for their impacts to be analyzed along with that of the road. It also argued that the cumulative environmental effects of the road and the timber sales would be adequately analyzed and considered in the EAs or EISs that it would prepare later for the individual timber sales. The Ninth Circuit would not allow it. The timber sales could not go forward without the road, and the road would not be built if there were no timber sales to necessitate it (*Thomas v. Peterson,* p. 759). The series of interrelated projects was "connected" for the purposes of environmental review.

The granting of the requested suspensions is essentially "connected actions" to the eventual development of these leases. In the Council on Environmental Quality ("CEQ") regulations "connected actions" include those that "(i) automatically trigger other actions which may require environmental impact statements" and those that "(ii) cannot or will not proceed unless other actions are taken previously or simultaneously"(40 C.F.R. § 1508.25(a)(1)). Development and production of the leases granted suspensions satisfy each of these criteria.

It is undisputed that if there were no lease suspensions there would be no further development of the tracts in question unless they were leased again. The leases would expire. The lease suspensions have no utility independent of the subsequent production and development (*Wetlands Action Network v. U.S. Army Corps of Engineers*, 2000 U.S. App. LEXIS 21071 (9th Cir. August 21, 2000)). They are "connected actions" within the meaning of the CEQ regulations and so NEPA review must occur prior to the first of the actions.

We disagree with the assertion that a suspension is granted for a limited purpose, or that the MMS lacks substantive detail to examine the potential environmental effects of development and production as may be the case prior to initial leasing. Again, the suspension is, in essence, an extension of the lease term, with all rights to development. If not extended, those rights are forfeited or compensated. Moreover, the MMS has sufficient detail about how these leases would be developed and produced – extended reach drilling from an existing platform – to analyze potential environmental impacts at a programmatic level of review.

In conclusion, we understand from the DEA that Samedan plans to develop fields in the Bonito Unit from existing Platforms Hermosa. Accordingly, we request that the scope of the DEA be expanded to address, at a programmatic

level of analysis, potential new significant impacts, or increase in existing significant impacts on the environment from producing fields in the Bonito Unit from existing platforms. This expanded scope would be sufficient to adequately address activities which are reasonably expected to occur as a result of renewing these leases. Among other things, the DEA should address impacts without modifications to existing infrastructure, and impacts with increased capacity of existing infrastructure, particularly focusing on increased oil processing offshore.

Attachment 4

Comments on the Draft Environmental Assessment of the Rocky Point Unit (Leases OCS-P 0452 and 0453)

The County of Santa Barbara ("County") requests that the Minerals Management Service ("MMS") expand the scope of the Draft Environmental Assessment (DEA) and revise its analysis of potential impacts. This revised DEA should address the connected activities of production and development that should reasonably be expected to result from any approval of a suspension. County further requests that a new DEA with an expanded scope be re-circulated for public comment. County reserves judgment as to the conclusions of DEA for granting suspensions of Rocky Point Unit leases until a revised DEA with adequate scope and analysis has been issued.

Arguello, the unit operator, requests suspensions of these leases so that it may produce and develop oil and gas, employing extended-reach techniques from Platform Hermosa and Hidalgo. These platforms are situated on an adjacent unit. Wherein granting of these suspensions extends to Venoco all rights to produce and develop these leases under the Outer Continental Shelf Lands Act, denial would terminate such rights.

The DEA identifies two proposed actions: (1) an extension to the terms of leases that would otherwise expire,[17] and (2) preparation by Arguello of applications to revise Point Arguello project DPPS. The first action, formally termed as a Suspension of Production, is a federal activity, as defined under the Coastal Zone Management Act (CZMA, 16 U.S.C. § 1456 (c)(1)(A))[18] The second action represents a step towards production and development. It does not, in and of itself, represent a Federal activity pursuant to the CZMA) or private activity that requires a Federal permit or license; however, it establishes the reasonable intent by the operator to extend the term of the two leases located in the Rocky Point Unit for the purpose of development and production.

The DEA considers only potential environmental effects of the second action, arriving at an obvious conclusion that preparation of applications and analysis of previously obtained seismic date do not result in a significant effect on the environment. However, the DEA completely ignores any consideration of environmental effects that may result from production and development of the leases as connected to the granting of lease suspensions. Therefore, we find the draft Environmental Assessment (DEA) to be seriously flawed as to its scope of analysis and conclusions.

Both the Distict Court and the Ninth Circuit Court of Appeals in *California v. Norton* stressed the far-reaching effects of lease extensions, particularly where the leasing of such tracts were not previously subject to Federal Consistency Review. "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production. Because the decision to extend these leases through the suspension process is discretionary, it does grant new rights to the lessees to produce oil and derive revenues therefrom for many years when absent the suspensions all rights would have terminated." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 24, including footnote 6.) Anything short of this level of analysis would undermine the spirit and purpose of the CZMA Federal Consistency Review and the previous legal challenge of plaintiffs in *California v. Norton.*. "Defendants' claims that the future review of the EPs or DPPs that will be submitted for the milestone activities obviates the need to review the lease suspensions for consistency is not well taken. The CZMA, as amended, requires consistency review of leases when they are sold and requires review again later when the EPs and DPPs are submitted. … Thus, under CZMA, as amended, the later review of the EPs and DPPs for consistency with the CCMP does not obviate the MMS's responsibility to provide the State with consistency determination at the earlier stage when the lease is sold. Neither does it obviate the need for a consistency determination of the suspension of these leases, which were not reviewed for consistency with the CCMP at the time of their sale." (*California v. Norton*, pp. 14-15)

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[17] "What is referred to as a suspension of the lease is actually a suspension of the running of the term of the lease, that is, in effect an extension of the lease." (*California v. Norton,* No. 99-4964 (CW) N.D. Cal., p. 5.)

[18], "The Court finds that the MMS's grant of these suspensions is a federal activity, as defined by the CZMA in 16 U.S.C. § 1456(c) (1). (*California v. Norton,* No. 99-4964 (CW) N.D. Cal, p. 13.) "We are therefore convinced that section (c)(1) applies to these lease suspensions." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 27.)

Moreover, the Council on Environmental Quality ("CEQ") has determined, and NEPA case law has reinforced, that environmental impacts must be evaluated prior to making a commitment of resources (40 C.F.R. Sec. 1502.5; *Metcalf v. Daley*, 214 F.3d 1135,1142 (9th Cir. 2000)). In this case, MMS chose to defer the environmental impact analysis to a point in time where the fundamental decision-making junctures had already come and gone. Once the suspensions are granted an environmental assessment or environmental impact statement can only serve as a post hoc rationalization of the decision to allow development and production to take place. This contravenes the CEQ regulation and the case law (*Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562, 567 (9th Cir. 2000)).

To do otherwise would be to artificially separate the suspensions from the development and production activity they mandate. Dividing the project into such multiple actions is impermissible (*Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985)).

In *Thomas v. Peterson*, plaintiffs challenged Forest Service approval of a timber road designed to facilitate timber sales. The road was approved with an environmental assessment ("EA") and a finding of no significant impact ("FONSI") that considered the impacts of the road, but did not consider the combined impacts of the road and the timber sales together (*Thomas v. Peterson,* p. 757). The district court granted summary judgment for the Forest Service but the Ninth Circuit reversed, requiring the combined impacts of the road and timber sales to be addressed in an EIS:

A central purpose of an EIS is to force the consideration of environmental impacts in the decision making process. That purpose requires that the NEPA process be integrated with agency planning "at the earliest possible time," 40 C.F.R. § 1501.2, and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken (*Thomas*, p.760).

In *Thomas,* the court held that the Forest Service was required to prepare an EIS that analyzed the combined impacts of the road and the timber sales that the road was designed to facilitate (*Thomas v. Peterson,* p. 761). The Forest Service argued that the timber sales were too uncertain and too far in the future for their impacts to be analyzed along with that of the road. It also argued that the cumulative environmental effects of the road and the timber sales would be adequately analyzed and considered in the EAs or EISs that it would prepare later for the individual timber sales. The Ninth Circuit would not allow it. The timber sales could not go forward without the road, and the road would not be built if there were no timber sales to necessitate it (*Thomas v. Peterson,* p. 759). The series of interrelated projects was "connected" for the purposes of environmental review.

The granting of the requested suspensions is essentially "connected actions" to the eventual development of these leases. In the Council on Environmental Quality ("CEQ") regulations "connected actions" include those that "(i) automatically trigger other actions which may require environmental impact statements" and those that "(ii) cannot or will not proceed unless other actions are taken previously or simultaneously"(40 C.F.R. § 1508.25(a)(1)). Development and production of the leases granted suspensions satisfy each of these criteria.

It is undisputed that if there were no lease suspensions there would be no further development of the tracts in question unless they were leased again. The leases would expire. The lease suspensions have no utility independent of the subsequent production and development (*Wetlands Action Network v. U.S. Army Corps of Engineers*, 2000 U.S. App. LEXIS 21071 (9th Cir. August 21, 2000)). They are "connected actions" within the meaning of the CEQ regulations and so NEPA review must occur prior to the first of the actions.

We disagree with the assertion that a suspension is granted for a limited purpose, or that the MMS lacks substantive detail to examine the potential environmental effects of development and production as may be the case prior to initial leasing. Again, the suspension is, in essence, an extension of the lease term, with all rights to development. If not extended, those rights are forfeited or compensated. Moreover, the MMS has sufficient detail about how these leases would be developed and produced – i.e., extended-reach drilling from Platforms Hermosa and Hidalgo, processing offshore and transport onshore via existing pipelines – to analyze potential environmental impacts at a programmatic level of review.

In conclusion, we understand from the DEA that Arguello plans to produce and develop the Rocky Point Unit from existing platforms. Accordingly, we request that the scope of the DEA be expanded to address, at a programmatic level of analysis, potential new significant impacts, or increase in existing significant impacts on the environment from producing the Rocky Point Unit from existing platforms and any potential expanded offshore processing capacity that may be required. This expanded scope should address activities which are reasonably expected to occur as a result of renewing these leases.

The County reserves its judgment as to whether a programmatic EIS required, or a Finding of No Significant Impacts is sufficient, to address the action of extending a lease, until a revised DEA with adequate scope and analysis is made available. Such judgment cannot reasonably be rendered now because the scope and analysis of the current is seriously inadequate.

Attachment 5

Comments on the Draft Environmental Assessment Of the Bonito Unit (Leases OCS-P 0443, 0445, 0446, 0449, 0499, and 0500)

The County of Santa Barbara ("County") requests that the Minerals Management Service ("MMS") expand the scope of the Draft Environmental Assessment (DEA) and revise its analysis of potential impacts. This revised DEA should address the connected activities of production and development that should reasonably be expected to result from any approval of a suspension. County further requests that a new DEA with an expanded scope be re-circulated for public comment. County reserves judgment as to the conclusions of DEA for granting suspensions of Bonito Unit leases until a revised DEA with adequate scope and analysis has been issued.

Plains, the unit operator, requests suspensions of these leases so that it may produce and develop oil and gas, employing extended-reach techniques from Platforms Hidalgo and Irene. These platforms are situated on adjacent units. Wherein granting of these suspensions extends to Venoco all rights to produce and develop these leases under the Outer Continental Shelf Lands Act, denial would terminate such rights.

The Draft Environmental Assessment (DEA) identifies two proposed actions: (1) an extension to the terms of leases that would otherwise expire,[19] and (2) preparation of amendments to the DPPs for the Point Arguello and Point Pedernales projects. The first action, formally termed as a Suspension of Production, is a federal activity, as defined under the Coastal Zone Management Act (16 U.S.C. § 1456 (c)(1)(A))[20] The second action represents a step towards production and development. The preparation of applications for DPP modifications do not, in and of themselves, represent a private activity that requires a Federal permit or license; however, it establishes a clear intent by the operator to extend the term of the leases located in the Bonito Unit for the purpose of development and production.

The DEA considers only potential environmental effects of the second action, arriving at an obvious conclusion that preparation of applications does not result in a significant effect on the environment. However, the DEA completely ignores any consideration of environmental effects that may result from production, and development of the leases that a prudent person would conclude connected to the suspensions of leases. Therefore, we find the draft Environmental Assessment (DEA) to be seriously flawed as to its scope of analysis and conclusions.

Both the Distict Court and the Ninth Circuit Court of Appeals in *California v. Norton* stressed the far-reaching effects of lease extensions, particularly where the leasing of such tracts were not previously subject to Federal Consistency Review. "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production. Because the decision to extend these leases through the suspension process is discretionary, it does grant new rights to the lessees to produce oil and derive revenues therefrom for many years when absent the suspensions all rights would have terminated." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 24, including footnote 6.) Anything short of this level of analysis would undermine the spirit and purpose of the CZMA Federal Consistency Review and the previous legal challenge of plaintiffs in *California v. Norton.*. "Defendants' claims that the future review of the EPs or DPPs that will be submitted for the milestone activities obviates the need to review the lease suspensions for consistency is not well taken. The CZMA, as amended, requires consistency review of leases when they are sold and requires review again later when the EPs and DPPs are submitted. … Thus, under CZMA, as amended, the later review of the EPs and DPPs for consistency with the CCMP does not obviate the MMS's responsibility to provide the State with consistency determination at the earlier stage when the lease is sold. Neither does it obviate the need for a consistency determination of the suspension of these leases, which were not reviewed for consistency with the CCMP at the time of their sale." (*California v. Norton*, pp. 14-15)

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[19] "What is referred to as a suspension of the lease is actually a suspension of the running of the term of the lease, that is, in effect an extension of the lease." (*California v. Norton,* No. 99-4964 (CW) N.D. Cal., p. 5.)

[20], "The Court finds that the MMS's grant of these suspensions is a federal activity, as defined by the CZMA in 16 U.S.C. § 1456(c) (1). (*California v. Norton,* No. 99-4964 (CW) N.D. Cal, p. 13.) "We are therefore convinced that section (c)(1) applies to these lease suspensions." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 27.)

Moreover, the Council on Environmental Quality ("CEQ") has determined, and NEPA case law has reinforced, that environmental impacts must be evaluated prior to making a commitment of resources (40 C.F.R. Sec. 1502.5; *Metcalf v. Daley*, 214 F.3d 1135,1142 (9th Cir. 2000)). In this case, MMS chose to defer the environmental impact analysis to a point in time where the fundamental decision-making junctures had already come and gone. Once the suspensions are granted an environmental assessment or environmental impact statement can only serve as a post hoc rationalization of the decision to allow development and production to take place. This contravenes the CEQ regulation and the case law (*Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562, 567 (9th Cir. 2000)).

To do otherwise would be to artificially separate the suspensions from the development and production activity they mandate. Dividing the project into such multiple actions is impermissible (*Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985)).

In *Thomas v. Peterson*, plaintiffs challenged Forest Service approval of a timber road designed to facilitate timber sales. The road was approved with an environmental assessment ("EA") and a finding of no significant impact ("FONSI") that considered the impacts of the road, but did not consider the combined impacts of the road and the timber sales together (*Thomas v. Peterson,* p. 757). The district court granted summary judgment for the Forest Service but the Ninth Circuit reversed, requiring the combined impacts of the road and timber sales to be addressed in an EIS:

A central purpose of an EIS is to force the consideration of environmental impacts in the decision making process. That purpose requires that the NEPA process be integrated with agency planning "at the earliest possible time," 40 C.F.R. § 1501.2, and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken (*Thomas*, p.760).

In *Thomas,* the court held that the Forest Service was required to prepare an EIS that analyzed the combined impacts of the road and the timber sales that the road was designed to facilitate (*Thomas v. Peterson,* p. 761). The Forest Service argued that the timber sales were too uncertain and too far in the future for their impacts to be analyzed along with that of the road. It also argued that the cumulative environmental effects of the road and the timber sales would be adequately analyzed and considered in the EAs or EISs that it would prepare later for the individual timber sales. The Ninth Circuit would not allow it. The timber sales could not go forward without the road, and the road would not be built if there were no timber sales to necessitate it (*Thomas v. Peterson,* p. 759). The series of interrelated projects was "connected" for the purposes of environmental review.

The granting of the requested suspensions is essentially "connected actions" to the eventual development of these leases. In the Council on Environmental Quality ("CEQ") regulations "connected actions" include those that "(i) automatically trigger other actions which may require environmental impact statements" and those that "(ii) cannot or will not proceed unless other actions are taken previously or simultaneously"(40 C.F.R. § 1508.25(a)(1)). Development and production of the leases granted suspensions satisfy each of these criteria.

It is undisputed that if there were no lease suspensions there would be no further development of the tracts in question unless they were leased again. The leases would expire. The lease suspensions have no utility independent of the subsequent production and development (*Wetlands Action Network v. U.S. Army Corps of Engineers*, 2000 U.S. App. LEXIS 21071 (9th Cir. August 21, 2000)). They are "connected actions" within the meaning of the CEQ regulations and so NEPA review must occur prior to the first of the actions.

We disagree with the assertion that a suspension is granted for a limited purpose, or that the MMS lacks substantive detail to examine the potential environmental effects of development and production as may be the case prior to initial leasing. Again, the suspension is, in essence, an extension of the lease term, with all rights to development. If not extended, those rights are forfeited or compensated. The MMS has sufficient information about the operator's plans for production and development – i.e., extended-reach drilling from Platforms Hidalgo and Irene – to conduct a comprehensive, programmatic examination of potential environmental effects that may result from such production and development.

In conclusion, we understand from the DEA that Plains plans to produce and develop the Bonito Unit fields from existing Platforms Hidalgo and Irene. Accordingly, we request that the scope of the DEA be expanded to address, at a programmatic level of analysis, potential new significant impacts, or increase in existing significant impacts on the environment from producing the Bonito Unit from existing platforms and any potential new pipeline infrastructure that may be required. This expanded scope should address activities which are reasonably expected to occur as a result of renewing these leases.

The County reserves its judgment as to whether a programmatic EIS required, or a Finding of No Significant Impacts is sufficient, to address the action of extending a lease, until a revised DEA with adequate scope and analysis is made available. Such judgment cannot reasonably be rendered now because the scope and analysis of the current is seriously inadequate.

Attachment 6

Comments on the Draft Environmental Assessment of the Non-Unitized Lease p=0409 Lion Rock Unit (Leases OCS-P 0396, 0397, 0402, 0403, 0408 & 0414) Purisima Point Unit (Leases OCS-P 0426, 0427, 0432 &0435) Point Sal Unit (Leases OCS-P 0415, 0416, 0421 & 0422) Santa Maria Unit (Leases OCS-P 0425, 0430, 0431, 0433 & 0434)

The County of Santa Barbara ("County") requests that the Minerals Management Service ("MMS") expand the scope of the Draft Environmental Assessment (DEA) and revise its analysis of potential impacts. This revised DEA should address the connected activities of production and development that should reasonably be expected to result from any approval of a suspension. We further request that the MMS prepare a comprehensive, programmatic Environmental Impact Statement (EIS) to properly analyze the potential environmental effects of installing and operating three new offshore platforms offshore California, associated offshore and onshore pipelines, and onshore processing and refining facilities. The County believes an EIS is appropriate because the requested suspension would extend the life of the AERA leases so that commercial quantities of oil and gas may be produced and developed from new offshore platforms.

AERA, the unit operator, requests suspensions of these leases so that it may produce and develop oil and gas, from a new offshore platform. Wherein granting of these suspensions extends to AERA all rights to produce and develop these leases under the Outer Continental Shelf Lands Act, denial would terminate such rights.

The Draft Environmental Assessment (DEA) identifies two proposed actions: (1) an extension to the terms of leases that would otherwise expire,[21] and (2) conduct a shallow-hazards and biological surveys and prepare application to revise its Exploration Plan to perform delineation drilling. The first action, formally termed as a Suspension of Production, is a federal activity, as defined under the Coastal Zone Management Act (16 U.S.C. § 1456 (c)(1)(A))[22] The second action represents partial steps towards production and development. It does not, in and of itself, represent a Federal activity pursuant to the CZMA) or private activity that requires a Federal permit or license; however, it establishes the reasonable intent by the operator to extend the term of the two leases located in the Cavern Point Unit for the purpose of development and production.[23]
The DEA considers only potential environmental effects of the second action, while completely ignoring any consideration of environmental effects that may result from production, and development of the leases that a prudent person would conclude connected to the suspensions of leases. Therefore, we find the draft Environmental Assessment (DEA) to be seriously flawed as to its scope of analysis and conclusions.

Both the Distict Court and the Ninth Circuit Court of Appeals in *California v. Norton* stressed the far-reaching effects of lease extensions, particularly where the leasing of such tracts were not previously subject to Federal Consistency Review. "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production. Because the decision to extend these leases through the suspension process is discretionary, it does grant

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[21] "What is referred to as a suspension of the lease is actually a suspension of the running of the term of the lease, that is, in effect an extension of the lease." (*California v. Norton,* No. 99-4964 (CW) N.D. Cal., p. 5.)
[22], "The Court finds that the MMS's grant of these suspensions is a federal activity, as defined by the CZMA in 16 U.S.C. § 1456(c) (1). (*California v. Norton,* No. 99-4964 (CW) N.D. Cal, p. 13.) "We are therefore convinced that section (c)(1) applies to these lease suspensions." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 27.)
[23] See Minerals Management Service, *Delineation Drilling Activities in Federal Waters Offshore Santa Barbara County, California: Draft Environmental Impact Statement,* Camarillo, Pacific OCS Region, June 2001, pp. 1-8 and 1-9. For example: *"Delineation drilling is a form of exploration drilling used to delineated any hydrocarbon reservoir to enable the lessee to decide how to proceed with development and production. Previously announced discoveries of commercially recoverable oil and gas resources have been made on each of the subject units."*

new rights to the lessees to produce oil and derive revenues therefrom for many years when absent the suspensions all rights would have terminated." (*California v. Norton,* No. 01-16637 Ninth Circuit, p. 24, including footnote 6.) Anything short of this level of analysis would undermine the spirit and purpose of the CZMA Federal Consistency Review and the previous legal challenge of plaintiffs in *California v. Norton.*. "Defendants' claims that the future review of the EPs or DPPs that will be submitted for the milestone activities obviates the need to review the lease suspensions for consistency is not well taken. The CZMA, as amended, requires consistency review of leases when they are sold and requires review again later when the EPs and DPPs are submitted. … Thus, under CZMA, as amended, the later review of the EPs and DPPs for consistency with the CCMP does not obviate the MMS's responsibility to provide the State with consistency determination at the earlier stage when the lease is sold. Neither does it obviate the need for a consistency determination of the suspension of these leases, which were not reviewed for consistency with the CCMP at the time of their sale." (*California v. Norton*, pp. 14-15)

Moreover, the Council on Environmental Quality ("CEQ") has determined, and NEPA case law has reinforced, that environmental impacts must be evaluated prior to making a commitment of resources (40 C.F.R. Sec. 1502.5; *Metcalf v. Daley*, 214 F.3d 1135,1142 (9th Cir. 2000)). In this case, MMS chose to defer the environmental impact analysis to a point in time where the fundamental decision-making junctures had already come and gone. Once the suspensions are granted an environmental assessment or environmental impact statement can only serve as a post hoc rationalization of the decision to allow development and production to take place. This contravenes the CEQ regulation and the case law (*Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562, 567 (9th Cir. 2000)).

To do otherwise would be to artificially separate the suspensions from the development and production activity they mandate. Dividing the project into such multiple actions is impermissible (*Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985)).

In *Thomas v. Peterson*, plaintiffs challenged Forest Service approval of a timber road designed to facilitate timber sales. The road was approved with an environmental assessment ("EA") and a finding of no significant impact ("FONSI") that considered the impacts of the road, but did not consider the combined impacts of the road and the timber sales together (*Thomas v. Peterson,* p. 757). The district court granted summary judgment for the Forest Service but the Ninth Circuit reversed, requiring the combined impacts of the road and timber sales to be addressed in an EIS:

A central purpose of an EIS is to force the consideration of environmental impacts in the decision making process. That purpose requires that the NEPA process be integrated with agency planning "at the earliest possible time," 40 C.F.R. § 1501.2, and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken (*Thomas*, p.760).

In *Thomas,* the court held that the Forest Service was required to prepare an EIS that analyzed the combined impacts of the road and the timber sales that the road was designed to facilitate (*Thomas v. Peterson,* p. 761). The Forest Service argued that the timber sales were too uncertain and too far in the future for their impacts to be analyzed along with that of the road. It also argued that the cumulative environmental effects of the road and the timber sales would be adequately analyzed and considered in the EAs or EISs that it would prepare later for the individual timber sales. The Ninth Circuit would not allow it. The timber sales could not go forward without the road, and the road would not be built if there were no timber sales to necessitate it (*Thomas v. Peterson,* p. 759). The series of interrelated projects was "connected" for the purposes of environmental review.

The granting of the requested suspensions is essentially "connected actions" to the eventual development of these leases. In the Council on Environmental Quality ("CEQ") regulations "connected actions" include those that "(i) automatically trigger other actions which may require environmental impact statements" and those that "(ii) cannot or will not proceed unless other actions are taken previously or simultaneously"(40 C.F.R. § 1508.25(a)(1)). Development and production of the leases granted suspensions satisfy each of these criteria.

It is undisputed that if there were no lease suspensions there would be no further development of the tracts in question unless they were leased again. The leases would expire. The lease suspensions have no utility independent of the subsequent production and development (*Wetlands Action Network v. U.S. Army Corps of Engineers*, 2000

U.S. App. LEXIS 21071 (9th Cir. August 21, 2000)). They are "connected actions" within the meaning of the CEQ regulations and so NEPA review must occur prior to the first of the actions.

We disagree with the assertion that a suspension is granted for a limited purpose, or that the MMS lacks substantive detail to examine the potential environmental effects of development and production as may be the case prior to initial leasing. Again, the suspension is, in essence, an extension of the lease term, with all rights to development. If not extended, those rights are forfeited or compensated. Moreover, the MMS has sufficient detail about how these leases would be developed and produced – installation of three new offshore platforms, pipelines, and onshore facilities – to analyze potential environmental impacts at a programmatic level of review. We refer you to the Draft EIS released by the MMS in 2001 for public review, which provides a reasonable expectation of how the AERA leases will be developed.[24]

In conclusion, we understand that AERA would construct and install three newoffshore platform, with pipelines connecting that platform to shore or to Platform Hondo, in order to produce oil and gas from the unit.[25] This level of information is sufficient to adequately identify and address activities which are reasonably expected to occur as a result of renewing these leases – production and development of commercial quantities of hydrocarbons from the unit. Among other things, the DEA should address impacts of installing and operating the new infrastructure, including a new offshore platform and pipelines.

Lastly, we reiterated our confusion about the consolidation of the requested suspensions into a single environmental review. Specifically, as we understand it, the operator desires more time to conduct surveys and prepare application to revise its Exploration Plan on the Point Sal and Purisima Point Units. The MMS has not explained how these activities would qualify approval of suspensions for the Lion Rock and Santa Maria Units or the non-unitized lease 0409. It would appear that the MMS is treating all the AERA leases as if they were a single unit. Please explain why, and how such treatment conforms to the due diligence provisions of the Outer Continental Shelf Lands Act and the Federal regulations that govern the granting of suspensions for specific reasons.

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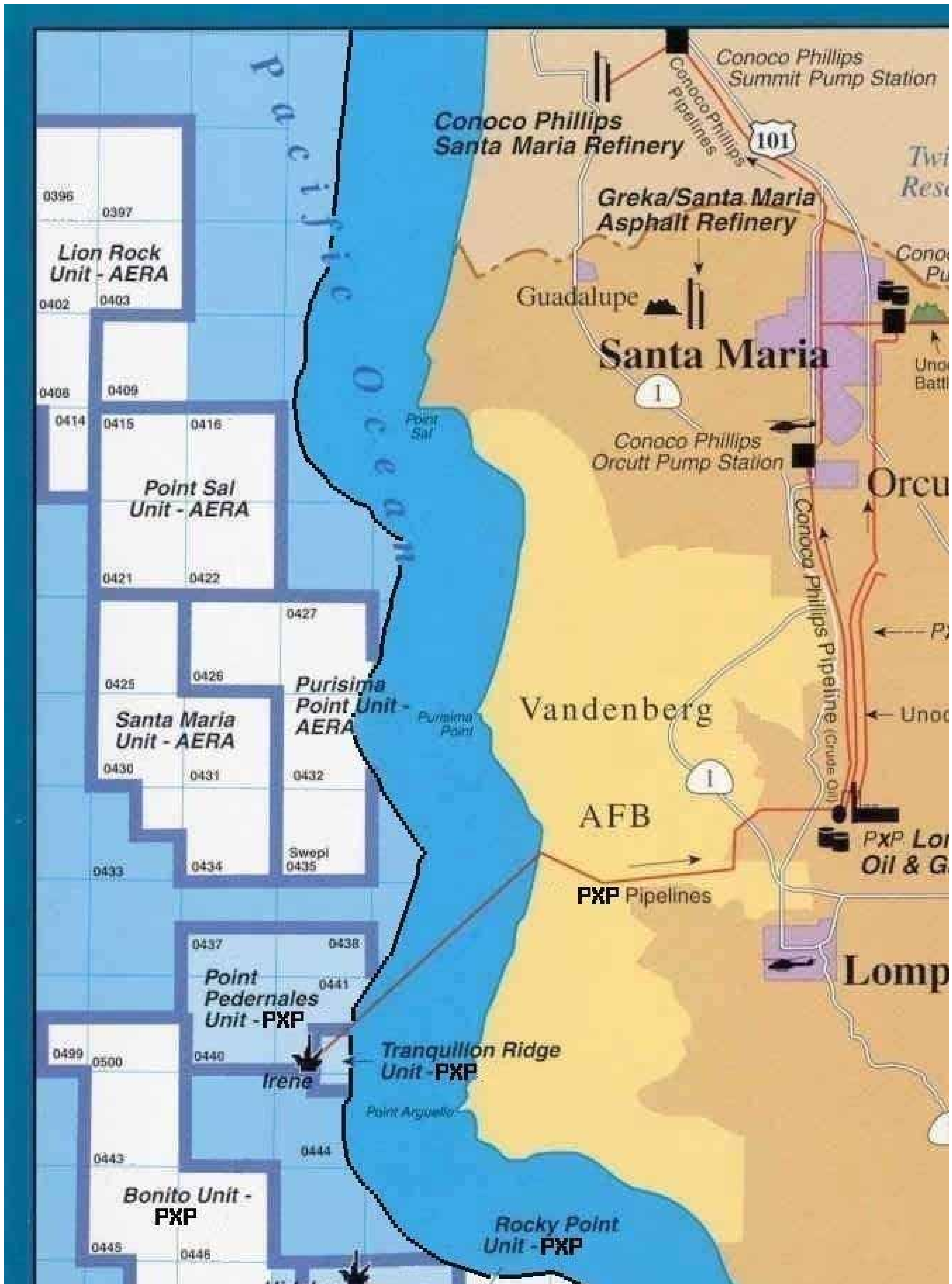
[24] Minerals Management Service, *Delineation Drilling Activities in Federal Waters Offshore Santa Barbara County, California: Draft Environmental Impact Statement,* MMS 2001-046m June 2001. Chapter 6 provides broad project descriptions for future activities on these leases, including reasonably estimated platform locations, proposed oil and gas pipelines, and onshore facilities.

[25] Samedan Oil Corporation, Letter to Maher Ibrahim of the Minerals Management Service requesting a Suspension of Production, dated May 13, 1999 and signed by J.M. Ables, Land Manager – Offshore, item 15 on page two of the table titled "Samedan Oil Corporation, Gato Canyon Unit – Santa Barbara Channel, Suspension of Production – Proposed Schedule of Events Leading to Production."



Pacific Ocean
Conoco Phillips Summit Pump Station
Conoco Phillips Pipelines
Conoco Phillips Santa Maria Refinery
101
Greka/Santa Maria Asphalt Refinery
Guadalupe
Santa Maria
1
Conoco Phillips Orcutt Pump Station
Conoco Phillips Pipeline (Crude Oil)
Point Sal
Purisima Point
Vandenberg AFB
PXP Pipelines
Point Arguello
0396
0397
Lion Rock Unit - AERA
0402
0403
0408
0409
0414
0415
0416
Point Sal Unit - AERA
0421
0422
0427
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0426
Purisima Point Unit - AERA
Santa Maria Unit - AERA
0430
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0434
Swepi 0435
0437
0438
0441
Point Pedernales Unit - PXP
0499
0500
0440
Irene
Tranquillon Ridge Unit - PXP
0443
0444
Bonito Unit - PXP
0445
0446
Rocky Point Unit - PXP