From the Doghouse

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On Saturday, Jan. 2, 2016, several individuals took over the Malheur National Wildlife Refuge near Burns, Ore., in protest of the resentencing of Dwight Lincoln Hammond Jr. and Steven Dwight Hammond. According to National Public Radio, in 2012 the two were convicted of arsons committed on federal land in 2001 and 2006 under the Anti-terrorism and Effective Death Penalty Act of 1996, which increased the minimum sentence for arson committed against federal property to five years.

Despite the Hammonds’ illegal actions, the trial court judge refused to sentence the men to the full five years, as required under the Act, because such a sentence would shock his conscience. Instead, Dwight Lincoln Hammond Jr. and Steven Dwight Hammond were sentenced to three months and to one year, respectively.

On appeal, the federal government prevailed in its argument that the sentences issued by the trial court were unlawful. Although it may seem strange that after an original conviction and sentencing, the Ninth Circuit Court of Appeals would vacate the original sentence in order to impose five-year sentences, it is not unheard of for the federal government to take a “second bite at the apple.”

While this article will not delve into the legality of the Hammond’s resentencing, the ability of the federal government to revisit the matter reminded me of the current issues facing oil and gas lessees in the White River National Forest in northwestern Colorado.

On Nov. 18, 2015, the Bureau of Land Management (BLM) announced it would re-analyze 65 existing oil and gas leases located within the federal entity. The tracts, covering 80,380 acres, were all issued between 1995 and 2002 and are located in the Piceance Basin in Mesa, Garfield, Pitkin, and Rio Blanco counties in 2n-92w and 7s–9s, 89w–96w. According to the BLM, when the US Forest Service (USFS) determines which lands may be subject to future leasing, the agency must either conduct its own environmental analysis (EA) or adopt the analysis performed by the USFS. In the case of the existing oil and gas leases, the BLM neither conducted its own analysis nor adopted the EA completed by the USFS.

As a result of their inaction, the BLM has now decided to draft its own proposed environmental impact statement (EIS) for the 65 leases. In this instance, the EIS can have one of five outcomes, ranging from re-affirming an existing parcel and leaving it unchanged to cancellation of all or a portion of a lease. The BLM has acknowledged that its proposed EIS would result in the cancelation of all or a portion of 25 existing oil and gas leases located within the Thompson Divide area.

Regardless of legality, the BLM appears to have been given a “second bite at the apple”—in this case, appearing to “resubmit” EISs for 65 existing leases that were issued 14 to 21 years ago—through no fault of the lessees.