

## Memorandum

**To:** Mayor and Council  
**From:** Tom Baker, Town Administrator  
**Date:** July 2, 2013  
**Re:** AGNC Request

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**Purpose:** The purpose of this memorandum is to receive direction from Council on the drafting of a letter to Sally Jewell, Secretary of the Interior regarding a “hold harmless on clawback of Roan lease payments”.

**Discussion:** Scott McInnis, Executive Director of AGNC has requested that members send a letter to Secretary Jewell affirming AGNC’s position against any clawback of Roan lease payments, see attached letter from “Scott” dated June 25, 2013.

Also attached is AGNC’s June 18, 2013 letter to Secretary Jewell on this topic.

**Request:** Staff requests direction from Council. If Council desires staff will draft a letter on this topic for the Mayor’s signature.



June 25, 2013

Dear Members,

As you are all aware, your AGNC recently sent a letter to Secretary of the Interior Sally Jewell, and Colorado Department of Local Affairs Director Reeves Brown, demanding that our state, and all jurisdictions within, be held harmless for any financial consequences, including a federal clawback, stemming from a withdrawal, voluntary or otherwise, of the oil and gas leases on the Roan Plateau.

I don't need to tell you all what is at stake here; each of our member governments received some level of funding, in good faith and reliance, from the proceeds of the largest onshore oil and gas lease sale ever in the continental U.S. You know better than I do even how it will hurt your communities and your citizens if that money is confiscated by a federal government clawback to help pay back the Roan leaseholders.

That is why I am urging each of you to do the same thing AGNC has done, and send your own letter to the Secretary, demanding – not asking, *demanding* – that your communities not be held liable – and subject to a federal taking – for something that is no fault of yours. None of our local governments sued anyone over the leases. We didn't issue redundant environmental studies. We are not the ones who kept those leases held up, rightly or wrongly, for almost 5 years, until it came to this point.

If any of you want some help in crafting a letter, or with contact information on who to send it to please contact me or Ava at the AGNC office in Parachute, 970-285-7630, and we will get you set up.

Folks, our economy and way of life are already coming under attack, with SB 252, and now the threat of this... and there is more to come. We will work together as an association to take the fight wherever, and to whoever we need to. For right now, that starts with all of our local governments sending a letter to the Department of the Interior, telling them that we will NOT be held liable for the actions of others.

Sincerely,

Scott



June 18, 2013

Sally Jewell, Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Reeves Brown  
Executive Director  
Colorado Department of Local Affairs  
1313 Sherman Street, Room 518  
Denver, CO 80203

Re: Hold Harmless on any Clawback of Roan Lease Payments.

Dear Secretary Jewell and Director Brown,

In August 2008, the largest onshore oil and gas lease sale ever held within the contiguous United States occurred in northwest Colorado, when 54,631 acres on the Roan Plateau were sold to private interests for the purpose developing the estimated 8.9 trillion cubic feet of recoverable natural gas located underneath. The sale was offered in accordance with a Congressional mandate to lease the land for private oil and gas development – a directive dating back to 1997 when the area, previously known as Naval Oil Shale Reserve 1, was transferred to the Department of the Interior from the Department of Energy. This sale netted the U.S. government \$113.9 million; 49% of that, or \$56 million, went to the State of Colorado. That money was subsequently disbursed to local municipal and county governments throughout Colorado, some through direct disbursement, and some indirectly as federal mineral lease bonus payment grants. Much of that money was used to deal with anticipated impacts that would result from increased economic activity on the Roan.

Since that time, due mainly to a series of lawsuits brought forth by various environmental interests, the owners of the leases on the Roan have not been able to develop those leases and consequently have not been able to realize a return on their investment. In addition, the process has been further held up by the recent decision by the Bureau of Land Management, in response

to a court ruling, to redo the Environmental Impact Statement on the area. This could potentially hold up development of the leases for another 2 or 3 years, or even longer.

Notwithstanding the merits of developing the Roan plateau leases, the repeated delays are increasing the likelihood that the leases will be withdrawn, one way or another. As it stands, four options are plausible: (1) an expedited BLM decision could allow development to proceed in short order; (2) the BLM could reverse their previous findings and vacate all or some of the leases; (3) the delays could make continued ownership of the leases economically disadvantageous, and the lease holders could withdraw the leases voluntarily; or (4) a settlement could be reached with the litigants, that would withdraw a large percentage of the leases.

In any of the last three scenarios, the current leaseholders would have a legal and moral claim to reimbursement of the money paid to the federal government for the leases. As \$56 million of that money went to the State of Colorado, and from there to our various municipal and county governments, there is great concern that some attempt may be made by the federal government to seize those funds, which would in effect be a taking.

This would be entirely unacceptable to the people and governments of northwest Colorado.

Each of our member governments received those funds in good faith and reliance, and spent those monies on energy related expenditures directly related to an anticipated ramp-up of Roan lease activity, with no expectation that they would ever need to be returned. Furthermore, none of our member governments, nor any government in the State of Colorado, are in any way responsible for any actions taken by the BLM, or any third party, that could result in a withdrawal, voluntary or otherwise, of the aforementioned leases. Finally, it goes without saying that any attempt at recovery or clawback of those funds, whether directly or through withholding of transfer payments, would pose a grievous financial hardship on local and rural governments, many of which are still struggling with the economic fallout from the oilshale bust of the 1980's as well as the recent recession.

**Therefore, the Associated Governments of Northwest Colorado, on behalf of our member governments, demand that the State of Colorado, and all jurisdictions within, be held harmless for any financial consequences of a withdrawal or vacation of any oil and gas leases on the Roan plateau.** Our member governments bear no responsibility for any of the events that could potentially lead to such an eventuality, and will not be held financially liable for those events. There is no condition that we are aware of under which the federal government reserved the right to claw back against communities that received and relied in good faith on these monies. On its face, any reasonable person would consider any attempt at such a clawback to be entirely without merit.

We realize that facing the possibility of having to refund nearly \$114 million, should the leases be vacated, is a troubling prospect for the Department of the Interior; nevertheless, we are sure you would agree that the impact on our state, communities, and citizens of having to recover

money that was spent in good faith and reliance on infrastructure, public safety, and local schools, would be entirely out of proportion to any effect on the Department of the Interior, and would be financially crippling to our region. The cleanest hands in this situation belong to the State and local governments of Colorado, a fact which needs to be recognized by the federal government in its dealings on the Roan issue.

Thank you for your attention and understanding in this critical matter.

Sincerely,



Mike Samson  
Chairman, AGNC  
Garfield County



Doug Monger  
Vice Chairman, AGNC  
Routt County