From:	Ralph D"Alessandro
To:	Stallings, William
Cc:	Wagner, Sarah L.
Subject:	SGI/GEC Proposed Anti-trust Settlement
Date:	Monday, April 23, 2012 3:02:56 PM

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April 23, 2012

William H. Stallings, Chief
Transportation, Energy and Agriculture Section, Antitrust Division
Department of Justice
450 Fifth Street NW., Suite 8000
Washington, DC 20530

Re: *United States of America* v. *SG Interests I, Ltd. et al.,*
Civil Action No. 12–CV–00395–RPM–MEH

Dear Mr. Stallings:

The following comments are submitted in response to the proposed settlement in *United States of America* v. *SG Interests I, Ltd. et al.,* Civil Action No. 12–CV–00395–RPM–MEH.

According to the complaint filed by the Department of Justice (DOJ), SG Interests (SGI) and Gunnison Energy Corporation (GEC) signed a memorandum of understanding to jointly bid on four gas leases (COC068350, COC068351, COC068352, and COC068490) in the Ragged Mountain area during 2004 and 2005. The Sherman Anti-Trust Act allows the Department of Justice ("DOJ') to bring civil or criminal charges. In this case, the DOJ brought civil charges, and it is proposing in

the presented Final Judgment that the two companies be assessed a $550,000 penalty ($275,000 per company), while allowing both companies to keep the illegally bid upon leases. It is understood that the Court is to grant deference to the government's proposed consent decree unless the remedies obtained are so inconsistent with the charged allegations that they are outside the reaches of public interest.

Accepting the fact that the DOJ has decided not to pursue criminal charges in this matter, this letter is sent within the 60 day comment period to strongly disagree with the proposed settlement and to articulate how it does not serve the public interest. The proposed settlement of a $550,000 financial penalty, while allowing the companies to keep the leases, is woefully inadequate, especially in light of the fact that DOJ could have pursued criminal charges.

A settlement by its very nature must offer something of benefit for both sides. The benefits to the defendants in this case are quite clear, but are too favorable in view of the small benefit to the public interest which the Department of Justice is mandated to be serving. While a quick resolution of the case through time and costs saved are beneficial to the government and the public, the other and more direct benefit to the public interest in the form of the penalty is much too undervalued. Such an action as the present when initiated by the government in its public's interest should exact sanctions sufficient to make an example of the defendants and be a clear disincentive to others who may contemplate future such restraints of trade. In the instant case, such disincentive and sanctions are not present. Through the alleged collusion, GEC and SGI were not good stewards of the public trust and any civil sanctions imposed through settlement need to be sufficiently onerous as to serve as real disincentives to future such restraints of trade.

The rationale for the proposed $550,000 fine is that the companies originally paid an average of $25 per acre for the four illegally bid upon leases. The nominal $550,000 penalty, as proposed in the settlement, would increase the per acre average to $175. However, the $175 per acre average is well below the $300 per acre maximum bid the companies agreed upon in the case of the fourth lease. This rationale is flawed. If these companies are to be permitted to keep the leases they acquired by defrauding the public and the United States Government, then the penalties imposed for their actions need to be sufficient to serve as a clear message to prevent future such actions where the mineral rights of the United Sates and its citizens are involved.

Working within the framework of the proposed settlement, the companies probably need to be able to keep the leases obtained through their apparent collusion if the settlement is to survive. Using that assumption, however, the financial penalty should be recast. One approach to recast the financial penalties would use the terms and amount per acre to which both previously had agreed as a maximum for payment for a lease parcel. The fourth lease parcel allegedly had a bid price agreed upon of not to exceed $300 per acre. The four lease parcels at issue totaled 3650 acres. A

more realistic penalty should require the defendants to pay that per acre amount for all 3650 acres, which would total $1,095,000 for both parties or $5,475,000 per defendant. Alternatively, a fine of $1,650,000 could be assessed by trebling the proposed financial penalty in the Final Judgment which would apportion to $825,000 per defendant.

What is particularly troubling is the DOJ's past experience in anti-trust litigation versus the present case. As the corporate intellectual property counsel for a small corporation I was involved in a merger in 2001. The DOJ initiated and maintained an action with respect to that merger to send a message that mergers, despite being below the bright line threshold of the combined companies' revenue, could be pursued if there were a perceived anti-competitive effect. Following the merger pursuant to a licensing settlement, the DOJ instituted an unmeritorious action alleging obstruction of justice and collusion. The litigation stemming from that merger, including the second action which was finally dropped in 2006 due to lack of credible evidence to support the assertions, cost the small corporation well in excess of $3 million in legal fees and an equally significant additional amount in employee time and resources to meet the demands of the litigation and its discovery. In the instant case, despite a document clearly showing collusion, virtually no time has had to be expended by the defendants' employees or counsel representing them. A mere 8 days after the complaint was filed the proposed settlement was published in the Federal Register. The minimal fine proposed and the minimal time expended to defend the alleged collusive activity is a real incentive to repeat the collusive activities in the future, albeit in a likely more creative manner.

Another troubling and, when compared to the present case in view of setting an example to prevent future actions, inequitable action is the DeChristopher case. DeChristopher, a young man from Utah who registered and bid at a BLM oil and gas lease sale in December 2008, was prosecuted by DOJ and charged with two felony counts. These were scheming to disrupt the auction and making false statements. When convicted last year, and while awaiting sentencing, Mr. DeChristopher faced up to 10 years in prison. He is currently serving two years in federal prison in California while his lawyers appeal.

If this case against SG Interests and Gunnison Energy Corporation is dismissed under the proposed Final Judgment, this will set a troubling precedent that undermines the protection and responsible use of our public lands. Indeed, the proposed settlement could send a signal to energy companies that if they illegally collude on bidding for federal mineral estate and they get caught, the worst that could happen is that they will be fined and might have to pay what they would have otherwise bid at auction, or perhaps even less. The remedies in the proposed Final Judgment are sufficiently inconsistent with the allegations as to extend beyond the reaches of public interest. As stated previously, it may actually entice further collusion and attempts to defraud the public, instead of acting as a deterrent.

I urge the DOJ and the Court to impose substantially greater financial penalties on the defendants in exchange for settling the suit to send a clear signal that the United

States government will not tolerate collusion in bidding on federal mineral estate and to adequately protect the public interest.

Respectfully submitted,

Ralph D'Alessandro