



## Key Issues Confronting Industry in Federal Oil and Gas Leasing and Permitting – A Series

### Topic 4: Suspension of Operations and/or Production

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This fourth installment in our series on key issues in federal oil and gas leasing and development addresses obtaining suspension of federal leases to extend their primary term.

The primary term of a federal oil and gas lease is ten years. However, there are several ways to extend the life of a federal lease, with or without previous production on that lease. This article discusses the different types of suspensions as well as other mechanisms to extend the terms of federal oil and gas leases.

Suspension of Operations or Suspension of Production. The Mineral Leasing Act (MLA) and BLM regulations authorize a suspension of operations or a suspension of production when the lessee is prevented from operating or producing a well on the lease by reasons of *force majeure*, *i.e.* by matters beyond the reasonable control of the lessee. A suspension of operations or suspension of production is only authorized for a lease that contains a well capable of production. During the suspension period for operations or production, rentals or minimum royalties remain due.

Suspension of Operations and Production. The MLA also permits a suspension of all operations and production, and relieves a lessee of the obligation to pay rent or minimum royalties during the suspension, where the authorized officer consents to a suspension in the interest of the conservation of natural resources. Suspending a lease is in the interest of conservation if BLM denies “timely access” to, or beneficial use of, a lease. Therefore, a suspension of operations and production is authorized when the lessee is prevented from operating on the lease or producing from the lease because of administrative delays in addressing environmental concerns or other matters beyond the control of the lessee.

The IBLA has specifically found that the only proper suspension for a lease that does not contain a producing well is a suspension of operations and production. The most common request for suspension of operations and production is delay caused by BLM’s approval of applications for permits to drill. Under the MLA and Onshore Order No. 1, BLM is required to issue a decision on whether to grant an APD within thirty days of determining that the APD is administratively

complete. However, because of delays associated with reviews and consultations under the National Environmental Policy Act, National Historic Preservation Act, and Endangered Species Act, BLM's processing timeframe extends well beyond these thirty days. During this delay, lessees are entitled to a suspension of operations and production to extend the term of the leases.

The IBLA has also confirmed that "the Secretary is obligated to grant a suspension of operations and production where the Secretary takes some action or fails to act such as to prevent a lessee from commencing drilling operations during the primary or extended term of its lease." The IBLA has further construed the MLA provision for suspension of operations and production "as a matter of right where, through some act, omission, or delay by a Federal agency, beneficial enjoyment of a lease has been precluded."

Inclusion in a Federal Unit or with a Communitization Agreement. Under the MLA and BLM's regulations, federal oil and gas leases can be extended by inclusion in a federal exploratory unit. As long as the operator meets the terms to establish the federal unit, including the drilling of the unit obligation well, all leases in the unit are treated as a single lease and receive the benefits of the unit well. In other words, a unit well serves to extend all leases in the unit by reason of production. Likewise, federal leases included in a state spacing unit may be extended when BLM approves a Communitization Agreement for the lands in the state spacing unit. Federal Units and Communitization Agreements will be discussed in further detail in upcoming articles.

In sum, lessees and holders of federal oil and gas leases should be aware of the multiple ways to extend the life of federal oil and gas leases. These statutory and regulatory mechanisms can be utilized to extend the term of a federal oil and gas lease and add value to projects with significant federal minerals where preserving the lease by production is not immediately feasible.

For more information regarding federal oil and gas leasing issues, please contact [Bill Sparks](#).

Previous and upcoming articles in this series include:

- BLM's Discretion to Lease – December 2014 [[view](#)]
- BLM's Lease protest process and opposition to leasing – January 2015 [[view](#)]
- Modifying Lease Terms and Cancelling Existing Leases – March 2015 [[view](#)]
- Lease Terminations: Leases in Extended Term With and Without a Well Capable of Production
- Class I and Class II Reinstatements
- Drilling-over Extensions & Diligent Development
- Federal Exploratory Units and Communitization Agreements – A Brief Overview