



BLM Considers Changes to Royalty and Rental Rates, Minimum Accepted Bids, Bonds, and Civil Penalties

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On April 21, 2015, in the Federal Register at Volume 80, No. 76, the Bureau of Land Management (“BLM”) gave Advanced Notice of Proposed Rulemaking (“ANPR”) seeking comments and suggestions regarding the possible updating of the BLM’s rules regarding: (a) the current royalty rates attached to federal oil and gas leases issued as a result of the competitive bidding process; (b) adjustment of the minimum annual rentals provided for in federal oil and gas leases; (c) adjustment of the minimum accepted bids for federal oil and gas leases issued as a result of the competitive bidding process; (d) the raising of bonding requirements attached to new federal oil and gas leases; and (e) the removal of caps on civil penalties imposed for the violation of various trespass and takings of federal minerals.

ROYALTY RATES

Under the Mineral Leasing Act of 1920 (“MLA”) and other statutes, the Secretary of the Interior, in this case acting through the BLM, is authorized to issue leases for the exploration of the minerals underlying federal lands. Under the MLA, the minimum royalty the BLM may seek is 12.50% for those oil and gas leases issued through the competitive bidding process. The BLM’s current regulations proscribe a flat rate of 12.50% for all oil and gas leases issued pursuant to the competitive bidding process. 43 CFR 3103.3-1(a)(1). Through this ANPR, BLM is seeking comments and suggestions regarding the possible modification to the current flat rate of 12.50% for oil and gas leases issued pursuant to the competitive bidding process. The BLM states this possible change has been brought about as the result of several studies conducted by the Government Accountability Office and other entities, both governmental and private, which raise questions as to the adequacy of the current fiscal system employed by the BLM. However, these reports present some inconsistencies, especially when trying to determine which systems (i.e. other states or other countries) the BLM’s current system should be compared to. As a result, the BLM has requested comment on how to assess, and to what system the current royalty system should be compared. Additionally, the BLM has requested information and comment on how an adjustment to the current royalty rates may impact the attractiveness of new federal oil and gas leases to the industry, how any drop in demand for leases would positively impact the environment, and how industry strategy of obtaining an oil and gas lease on federal lands might be changed as a result of a raise in the royalty rate attached to a federal oil and gas lease obtained through the competitive bidding process. Because the royalty rate attributable to federal oil and

gas leases obtained through the non-competitive process is set by statute and not BLM regulations, the royalty rate attributable to non-competitive federal oil and gas leases would not be impacted by the proposed rulemaking.

OIL AND GAS LEASE ANNUAL RENTAL PAYMENTS

Under the MLA and amendments thereto, prior to obtaining production under a federal oil and gas lease issued by the BLM, the lessee is required to pay an annual rental of “not less than \$1.50 per acre per year for the first through the fifth years of the lease and not less than \$2 per acre per year for each year thereafter.” 30 U.S.C. 226(d). These rates were adopted as the rental rates by the BLM in 1987 at 43 CFR 3103.2-2(a) and have not been adjusted since. Because the MLA only set these rates as the floor that the BLM may seek, the BLM now seeks comment and suggestions regarding the raising of these rental rates. More specifically, the BLM is seeking information regarding the rental rates currently sought under state and privately issued oil and gas leases. Additionally, the BLM is seeking comment on the possible impacts the raising of the rental rates would have on the desirability of federal oil and gas leases, and more specifically if a higher rate on non-competitive federal oil and gas leases should be considered to offset the losses on the lower bonus amounts paid for the non-competitive leases.

MINIMUM ACCEPTED BID

Under the MLA, the BLM is required to accept “the highest bid from a responsible qualified bidder which is equal to or greater than the national minimum accepted bid, without evaluation of the value of the land.” 30 U.S.C. 226(b)(1)(A). The national minimum accepted bid was set at \$2 per acre in 1987 for a two year period, which, upon the expiration of the stated period, the Secretary, through the BLM, could then set by regulation a minimum bid for federal oil and gas leases upon a finding that such action is necessary. 30 U.S.C. 226(b)(1)(B). The BLM is seeking comment and information regarding the minimum acceptable bids used by states that issue state oil and gas leases. Additionally, the BLM would like comment on any potential impacts the raising of the minimum accepted bid from its current \$2 level may have.

OIL AND GAS LEASING BOND

Pursuant to the MLA, the Secretary, here through the BLM, is tasked with ensuring through bond, surety, or other financial arrangement, the reclamation of the lease tract and restoration of any surface or waters adversely impacted by lease operations prior to the initiation of any surface activities on the leased tracts. 30 U.S.C. 226(g). This mandate was addressed in 43 CFR 3104.1, which set forth the following bond amounts: Lease/Individual Bond \$10,000; Statewide Bond \$25,000; Nationwide Bond \$150,000; and Unit Operator’s Bond to be set by Authorized Officer. The BLM is seeking comment on how and to what extent the required bond amounts should be adjusted.

CIVIL PENALTY ASSESSMENT

Pursuant to concerns raised by the Interior Department’s Office of Inspector General (OIG) regarding the BLM’s policies and procedures to detect and deter, through monetary means, potential trespass on federal mineral rights, the BLM “is seeking input on removing or modifying

the caps on civil penalty assessments currently imposed by its existing regulations.” The OIG and the BLM are concerned that the current caps, set in the 1980s, do not provide a significant enough deterrent to prevent and deter trespass upon federal mineral rights.

In addition to general comments, the BLM has set forth a list of questions for which it seeks direct responses, all of which relate to the above described topics [[link](#)].

If you would like a complete listing of these questions or further information relating to any of the above summarized issues, please contact [Ryan McKee](#) at Beatty & Wozniak, P.C.

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