

OIL AND GAS LEASING – LAND USE PLANNING AND LEASE PARCEL REVIEWS

IM 2021-027

Instruction Memorandum

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Grand Junction, Colorado 81506

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To: All Field Officials

From: Deputy Director, Policy and Programs, Exercising the Delegated Authority of
the Director, Bureau of Land Management

Subject: Oil and Gas Leasing – Land Use Planning and Lease Parcel Reviews

Program Areas: Oil and Gas, Planning, and National Environmental Policy Act (NEPA).

Purpose: This Instruction Memorandum (IM) sets out the policy of the Bureau of Land Management (BLM) to ensure that oil and gas lease sales are held in accordance with the Mineral Leasing Act (30 U.S.C. § 226) and other applicable laws, as well as Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. This IM updates expired policy announced in IM No. 2010-117, Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews, issued on May 17, 2010, and supersedes existing policy announced in IM No. 2018-034, Updating Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews, issued on January 31, 2018, and supersedes any conflicting guidance or directive found in the BLM Manual or Handbook.

Administrative or Mission Related: Mission Related.

Policy/Action: The following policy applies to the leasing of Federal minerals under BLM administered surface,^[1] state-owned surface, and private surface estates.^[2] The BLM does not manage leasing on Indian lands; therefore, this policy does not apply to Indian lands.

This policy (1) addresses land use planning, lease parcel review, lease sales and lease issuance, and IM implementation; and (2) directs the BLM to incorporate the revised policy, as appropriate, into affected BLM handbooks and manuals.

I. Land Use Planning

A. Resource Management Plans

As outlined in the BLM Handbook H-1601-1, Land Use Planning, the Resource Management Plan (RMP) underlies fluid minerals leasing decisions. Through effective monitoring and periodic RMP evaluations, state and field offices will examine resource management decisions to determine whether the RMPs adequately protect important resource values in light of changing circumstances, updated policies, and new information (H-1601-1, sections V.A and B). The results of such reviews and evaluations may require a state/field office to update resource information through land use plan maintenance, amendment, or revision. It is BLM policy that existing land use plan decisions remain in effect until an amendment or revision is complete or approved. Therefore, the BLM will not routinely defer leasing when waiting for an RMP amendment or revision to be signed. Rather, when making leasing decisions, the BLM will exercise its discretion consistent with existing RMPs and the State Director should consult with the Headquarters Office (HQ-100) before deciding to defer leasing of any parcels. When necessary, state/field offices will maintain or amend RMPs to accommodate changes in lease stipulations in accordance with guidance found in H-1610-1, Land Use Planning, sections VI.H and VII.B.

B. Stipulation Consistency

The state/field offices will continue to determine appropriate stipulations for parcels offered for lease, consistent with the applicable RMP. Each state/field office has the discretion to form Interdisciplinary Consistency Review Teams (IDCR Team) for lands under its

jurisdiction. The primary purposes of IDCR Teams are to prepare lease stipulations that are written in a BLM approved format and are consistent within each state for the protection of similar resources or resource settings,^[3] and with the goal to edge-match across administrative boundaries including consideration of the management directives of SMAs of adjacent lands.

C. Adaptive Management

In applying an Adaptive Management approach^[4] to oil and gas related activities to address changing resource conditions, RMPs and associated lease stipulations must conform to the BLM permanent instruction memorandum entitled, Documentation and Tracking Requirements for Waiver, Exceptions, and Modifications for Fluid Mineral Exploration and Development Activities (WO-PIM-2019-006, dated June 14, 2019). As appropriate, stipulations will use Adaptive Management principles to incorporate the best available science and address changing resource conditions.

II. Master Leasing Plans

The BLM rescinded the Master Leasing Plan (MLP) procedures in Chapter V of BLM Handbook H-1624-1, Planning for Fluid Minerals Resources in 2018. The BLM will not initiate any new MLPs or complete ongoing MLPs under consideration as land use plan amendments.

III. Lease Parcel Review

The purpose of a lease parcel review by the state/field offices is to determine the conditions under which leasing is allowed to proceed, and to ensure conformance with the approved RMP. Lease parcel reviews will be conducted and documented simultaneously with the NEPA compliance process for lease sales.

A. Parcel Review Timeframes

State offices will hold lease sales, as required by the Mineral Leasing Act, section 226(b)(1) (A), and 43 CFR 3120.1-2(a), when eligible lands are determined by the state office to be available for leasing.^[5] When eligible lands are available, state offices may develop a sales schedule with an emphasis on rotating lease parcel review responsibilities among field offices throughout the year to balance the workload and to allow each field office to devote sufficient time and resources to implementing the parcel review policy established in this IM. State offices will extend field office review timeframes, as necessary, to ensure there is adequate time for the field offices to conduct comprehensive parcel reviews.

B. Review of Lease Sale Parcels

Field offices will form an Interdisciplinary Parcel Review (IDPR) Team of resource specialists to review lease sale parcels as part of compliance with NEPA and other legal and policy requirements for adequate review of parcels.

Lease sale parcel review may include the following steps:

1. Gather and Assess Existing Information:

State/field offices will gather and evaluate existing environmental resource information and compile documentation of compliance with applicable laws, regulations, and executive orders (e.g., NEPA analysis, Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.), and National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) resource data and consultation, and socioeconomic data pursuant to Executive Order 12989). The field offices will determine the need for additional information and develop strategies to obtain any data that may be required to support a leasing decision.

2. Plan Conformance and Adequacy:

State/field offices will determine whether leasing the parcel is in conformance with the RMP. A lease stipulation may be revised consistent with modification criteria found in the RMP, or through amendment, as necessary, given conditions or issues not anticipated in the RMP.

3. Site Visits:

Site visits are not required and should only be considered when deemed necessary by the authorized officer on a case-by-case basis. Advanced technology and information of high quality, such as Geographic Information System (GIS) and existing scientific reports should be used to the greatest extent practicable. The field office may develop a risk-based approach for determining whether site visits are appropriate, based on criteria such as proximity to a sensitive resource, the adequacy of the RMP NEPA analysis to support subsequent decision-making, proximity to other development, tribal or stakeholder considerations, etc.

4. Internal and External Coordination:

In order to achieve greater coordination and communication in managing lands and resources, state and field offices should coordinate and/or consult on the parcel review and NEPA analysis with interested parties potentially affected by the BLM's leasing decisions.

5. Public Participation:

State and field offices will provide for public participation as part of the review of parcels identified for potential leasing through the NEPA compliance documentation process (see section III.D). State and field offices will identify groups and individuals with an interest in local BLM oil and gas leasing, including surface owners of split estate lands where Federal minerals are being considered for leasing. Interested groups, individuals, and potentially affected split estate surface owners^[6] will be kept informed of field office leasing and NEPA activities through updated websites and email lists and will be invited to comment during the NEPA compliance process.

C. ESA, NHPA, and Tribal Consultation Compliance Documentation

State and field offices will meet all requirements related to the ESA and the NHPA, as well as fulfill all tribal consultation requirements (see BLM Manual 1780, Tribal Relations, and BLM Handbook H-1780-1, Improving and Sustaining BLM-Tribal Relations), and will attach the standard ESA and NHPA lease stipulations or appropriate stipulations consistent with RMPs to any lease that is offered. No additional coordination is required unless deemed necessary by the authorized officer, for example, to ensure that information is adequate to support the decision about whether to lease.

D. NEPA Compliance Documentation

The IDPR Team^[7] will complete site-specific NEPA compliance documentation for all BLM surface and split estate^[8] lease sale parcels. The IDPR Team may include the review of multiple parcels in a single document. Site-specific NEPA compliance documentation must incorporate appropriate information gained through the lease parcel review process described above. In accordance with this IM, the NEPA compliance documentation for oil and gas leasing must include an opportunity for public review, as described below, and the field office must verify that all legal requirements have been met (e.g., ESA and NHPA).

If, through the lease parcel IDPR Team review process, the authorizing official confirms that the proposed leasing action is adequately analyzed in an existing NEPA document and is in conformance with the approved RMP, a Determination of NEPA Adequacy (DNA) may be used to document NEPA compliance for the leasing decision (H-1790-1, National Environmental Policy Act Handbook, section 5.1).^[9] Although not required by law or regulation, field offices will provide a 30-day public review and comment period for the DNA. After consideration of any public comments received on the document, the field office will either finalize the DNA or initiate other appropriate NEPA compliance review. It is expected that the DNA process will only be appropriate in cases where the existing NEPA documentation has adequately incorporated the most current program-specific guidance. If a DNA is not appropriate, then the field office will determine the appropriate NEPA compliance documentation (e.g., environmental assessment (EA) or environmental impact statement (EIS)) to be prepared.

Most parcels that the field office determines should be available for lease will require site-specific NEPA analysis. This analysis will typically take the form of an EA, which would be tiered, as appropriate, to the RMP/EIS or an existing MLP/EA or EIS, if one has been completed for any of the parcels. Scoping for these EAs is optional; however, the interdisciplinary review of lease sale parcels will provide input on the issues, impacts, and potential alternatives to be addressed in the EA. The EA will analyze a no action alternative (no leasing), a proposed leasing action (leasing the parcel(s) in conformance with the land use plan), and any alternatives to the proposed action that may address unresolved resource conflicts. In cases where the field office determines that the necessary terms and conditions under which leasing would be appropriate are not in conformance with the RMP, it will be necessary to amend the RMP before leasing is appropriate. If it is necessary to amend the RMP, the leasing EA (or EIS) must either meet the standards for NEPA

documentation to support a plan amendment (see 43 CFR part 1600), or the affected lease parcels must be withdrawn or deferred from leasing until a plan amendment or revision can be completed at a later date.

Although not required by law or regulation, field offices will provide a 30-day public review and comment period for the EA and unsigned Finding of No Significant Impact (FONSI) for oil and gas leasing. Note: Plan amendments are subject to additional public involvement and protest requirements (43 CFR 1610.2). The field office will finalize the EA and FONSI considering any public comment received on those documents. If a FONSI is not warranted, the field office may recommend that the parcel be withheld from leasing or that an EIS be prepared to address the site-specific issues in compliance with NEPA.

IV. Lease Sales and Lease Issuance

A. Public Notification of Lease Sale

The state office must post the Notice of Competitive Lease Sale (sale notice) at least 45 days prior to the start of the lease sale, consistent with the Mineral Leasing Act, 30 U.S.C. § 226(f), and BLM regulations, 43 CFR 3120.4-2. Posting the sale notice involves posting it on the state office website, including on the ePlanning project page for the sale, with a link to the leasing website; posting the sale notice in NFLSS; and making it available in the public room. Field or state offices will post the NEPA compliance documentation on the BLM ePlanning website and in the public room at least 45 days prior to the start of the sale.

For online lease sales, the state office will coordinate with the internet auction provider as needed. No parcels will be withdrawn from lease sale during the active bidding period.

B. Lease Sale Parcel Protests

A 30-day protest period will begin the day the sale notice is posted. The process outlined in this IM—which includes site-specific parcel analysis and increased public participation—will help identify, address, and resolve most issues before the lease sale. When possible, state offices should attempt to resolve protests before the sale of the protested parcels. Protests that are not resolved do not prevent bidding on protested parcels at the auction. Protest decisions should advise the protesting parties of their right to appeal denied protests to the Interior Board of Land Appeals (IBLA), but that appeals will not automatically halt the auction or issuance of leases.

C. Lease Issuance

If a state office is unable to resolve all protests before the date of a sale, the sale should proceed, and the state office should resolve the protests and decide whether to issue the affected leases within 60 days after the BLM receives full payment from the successful bidder for the bonus bids, first year rentals, and administrative fees. See 30 U.S.C. § 226(b) (1) (A). Nevertheless, the state office cannot issue a lease for a protested parcel until the protest is resolved. State offices may use regional teams (discussed below) to facilitate timely protest resolution. If, for any reason, resolution of a protest may take longer than 60 days, the state office will notify the BLM Headquarters Office in a memorandum describing

the circumstances involved. If BLM grants a protest after the date of sale (and before lease issuance), the BLM should reject the bid and refund the bonus bids and rentals paid. State offices will post the protest resolution documents on the NFLSS and the appropriate state office website.

D. Regional Teams

State offices may use regional teams to help meet the goals of having reasonable and consistent stipulations; expediting adjudication of nominations; resolving protests; issuing leases; ensuring consistency among offices in their approach to preparing protest responses and providing notification of protest status; and supporting other leasing processes.

Timeframe: This policy is effective immediately. This policy will guide leasing procedures for all current and future parcels under review by the field offices as of the date of this IM.

Budget Impact: This policy will result in a minimal impact to BLM's budget. The updates to the parcel review section will allow staff resources to be shifted to meet BLM priorities.

Background: On February 27, 2020, the U.S. District Court for the District of Idaho, in *Western Watersheds Project v. Zinke*, 1:18-cv-00187-REB (D. Idaho), set aside several sections of IM 2018-034 at issue in that case and reinstated corresponding sections of IM 2010-117. The injunction applies only to oil and gas lease sales contained in whole or in part within sage-grouse habitat management areas. The provisions on public participation in this IM are also consistent with the district court decision in *WildEarth Guardians v. Bernhardt*, 1:19-cv-00505 (D.N.M.). The court urged BLM to alter the public participation language in IM 2018-034 to make it consistent with NEPA, FLPMA, and their regulations, stating that "a simple reversion to the language in IM 2010-117 would suffice." The BLM is applying these IM updates bureau-wide to provide for consistency in public participation in the leasing process and in reviewing its Federal oil and gas permitting and leasing program to implement the priorities associated with Section 208 of Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad." The BLM will provide for notice and comment opportunities throughout its lease review process.

Manual/Handbook Sections Affected: This IM transmits policy that will be incorporated into BLM Handbooks H-1790-1, National Environmental Policy Act; H-1624-1, Planning for Fluid Mineral Resources; H-3101-1, Issuance of Leases; H-3120-1, Competitive Leases; and Manual MS-3120, Competitive Leases.

Coordination: This policy was coordinated with the U.S. Department of the Interior Office of the Solicitor, the BLM state and field offices, the BLM Headquarters, Energy, Minerals, and Realty Management (HQ-300), and the BLM Headquarters, Resources and Planning (HQ-200).

Contact: If there are any questions concerning this IM, please contact Nicholas E. Douglas, Assistant Director, Energy, Minerals and Realty Management, at 970-256-4944. For program questions, your staff may contact Donna Dixon, Division Chief, BLM Headquarters Division of Fluid Minerals (HQ-310) at 505-954-2032, dbdixon@blm.gov.

Signed by:

Authenticated by:

Nada Wolff Culver
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Exercising the Delegated Authority of the Director

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Bureau of Land Management

[1] This policy will be implemented across the BLM as described. Certain provisions in this policy, however, will not apply to the National Petroleum Reserve Alaska (NPR-A) because the BLM manages that area under statutory authorities, such as the Naval Petroleum Reserves Production Act of 1976, 42 U.S.C. 6501 et seq., that apply only to that area. The BLM Alaska State Office's plan for implementing this policy will identify the provisions of this policy that will not apply to leasing in the NPR-A or in the Arctic National Wildlife Refuge.

[2] This policy does not apply to the leasing of Federal minerals under lands managed by other Federal Surface Management Agencies (SMAs). The policy, however, does apply to split estate lands within National Forest System (NFS) units (*i.e.*, lands with Federal subsurface ownership and non-Federal surface ownership).

[3] Stipulations for the protection of identical resource values may differ in different areas if such variation is necessitated by ecological, cultural, or other resource-specific factors that are scientifically validated (e.g., all mule deer winter habitat timing limitation stipulations in a state should be worded similarly unless there are, for example, ecological reasons for varying the effective seasonal closure date of the stipulation across the field office or state).

[4] For more information on adaptive management, see Adaptive Management: The U.S. Department of the Interior Technical Guide Adaptive Management Working Group, U.S. Department of the Interior, Washington, DC. See also the Department of the Interior regulations regarding implementation of NEPA at 43 CFR 46.145, as well as associated guidance issued by the Department's Office of Environmental Policy and Compliance.

[5] Eligible lands include those identified in 43 CFR 3120.1-1 as being available for leasing (BLM Manual 3120, Competitive Leases). They are considered available for leasing when all statutory requirements have been met, including compliance with the NEPA, appropriate reviews have been conducted, and lands have been allocated for leasing in the RMP (BLM Handbook H-3101-1, Issuance of Leases).

[6] For split estate lands within NFS units, the necessary NEPA analysis for a leasing decision may be done through documentation prepared jointly by the FS and the BLM or prepared by the FS and adopted by BLM.

[7] This requirement does not apply to split estate lands within NFS units if leasing decisions for such lands are analyzed in documentation prepared jointly by the FS and the BLM for lands within the external boundaries of NFS units.

[8] For split estate lands within NFS units, the necessary NEPA analysis for a leasing decision may be done through documentation prepared jointly by the FS and the BLM or prepared by the FS and adopted by BLM.

[9] The NEPA document to which the DNA refers must contain sufficient detail to address the potential direct, indirect, and cumulative effects of the proposed action(s). Consideration must be given to new information, new or revised program-specific guidance, and new or revised lease stipulations contemplated for the lease parcel that may or may not be analyzed in the existing NEPA document.

