



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

Topic 3: Modifying Lease Terms And Cancelling Existing Leases

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This third installment in our series on key issues in federal oil and gas leasing and development discusses BLM's retro-active rejection and modification of existing leases. Earlier installments addressed BLM's broad discretion to offer federal lands for lease [\[view\]](#) and BLM's lease protest process and opposition to leasing [\[view\]](#).

Lease issuance does not end the question of whether you will ultimately be able to drill a federal oil and gas lease. Even after BLM rejects lease protests and actually issues leases, there is no guarantee that a lessee will be able to actually drill and develop their lease. BLM may attempt to retroactively modify lease terms, conduct additional analysis under NEPA to add additional lease stipulations or lease notices, or outright cancel your lease. In addition, the U.S. Forest Service may independently and retroactively withdraw its consent to lease, thereby mandating lease cancellation.

Several examples illustrate federal agencies' interpretations of the Mineral Leasing Act and other federal statutes as authorizing them to modify lease terms and/or cancel valid existing lease rights if lessees fail to accept the amended terms. First, in the eighth year of a valid federal lease, BLM sought to make an entire lease subject to no surface occupancy (NSO) lease stipulations because BLM alleged that it had inadvertently failed to apply the stipulations when it issued the lease. If the lessee did not agree to the NSO stipulation, BLM indicated it would cancel the lease. The lessee appealed this decision to the Interior Board of Land Appeals (IBLA) arguing that BLM could not retroactively apply NSO stipulations. The IBLA rejected BLM's approach and held that BLM's applicable Resource Management Plan (RMP) did not mandate application of the NSO stipulation on the entire lease.

Second, despite the years spent developing resource management plans and determining which lands are available for oil and gas leasing and under what conditions (lease stipulations and lease notices), BLM maintains that it may revise its land use plans and determine whether the leases

should be voided, reaffirmed or subject to additional stipulations, notices, or mitigation measures for site-specific development proposals. For example, in Colorado's Thompson Divide Area, BLM is proposing to revise its RMP and, as part of that process, BLM maintains that it can retroactively amend leases that BLM issued in 2003. This process is currently on-going.

For lands in national forests, BLM must obtain the prior written consent of the surface management agency (U.S. Forest Service) to lease federal minerals. In approximately 2006, BLM issued several leases in what is referred to as the Wyoming Range area with the consent of the U.S. Forest Service. Years later, after the passage of the Wyoming Range Act, the Forest Service decided to revise its Land Use Plan and make those lands unavailable for leasing. As it related to leases issued in this area, the Forest Service attempted to "withdraw" the written consent that it had granted years before. Several lessees and an oil and gas trade association appealed the Forest Service's proposed amendment to its land use plan. Based on these appeals, the Forest Service withdrew its proposed plan to retroactively withdraw its consent to leasing (thereby mandating lease cancellation). It has yet to issue a revised plan.

In sum, all companies that have obtained federal oil and gas leases should be aware that legal challenges, changes in resource management plans, Forest Service land use plans, and changes in leasing philosophy and management of public lands may dictate the management of existing federal oil and gas leases.

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

Upcoming articles in this series will address:

- Suspensions of Operations and/or Production
- Lease Terminations
- Class I and Class II Reinstatements
- Drilling-over Extensions & Diligent Development
- Leases in extended term with no well capable of production
- No production, but Leases in extended term with a well capable of production

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