



THE WILDERNESS SOCIETY

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BLM'S COMPETITIVE OIL AND GAS LEASING & DRILLING PROCESS

Summary

This fact sheet summarizes the process by which the Bureau of Land Management (BLM) issues leases for oil and gas development and then permits drilling of those leases. The major steps in this process are set out and, for each step, an overview is provided of how the terms of a lease are affected and the opportunities for public participation and influence of oil and gas operations.

The process starts with preparation of a resource management plan, where lands for leasing are identified and the terms that will govern how they can be developed are prescribed, with many opportunities for public involvement. After this stage, there are additional opportunities to try to influence or alter the BLM's decisions to sell specific leases (including through formal protests) or determinations as to what other restrictions may be imposed to protect natural resources from oil and gas development (including through formal administrative appeals). However, the later in the process, the less room there may be to alter the fact or manner of oil and gas development.

1. Resource Management Plan (RMP) – In general, at this is stage the BLM looks at all of the resources associated with the public lands and essentially allocates lands among one or more of the multiple uses. The BLM conducts a National Environmental Policy Act (NEPA) analysis of the RMP and discloses the expected environmental, economic and social impacts of management alternatives, including oil and gas development, usually by preparation of an environmental impact statement (EIS). In the RMP, BLM decides which lands are available for leasing or are subject to further restrictions on lease development. A map showing areas closed to leasing, open, and open with conditions will be included for each management alternative in the Draft RMP and a final map will be included in the RMP.

Effect on Lease Terms –

- In addition to specifying lands that are **open** or **closed** to leasing, the RMP will specify applicable **lease stipulations**, such as **no surface occupancy** (NSO) or other **conditional surface use** limitations (such as seasonal closures for wildlife nesting or migration). The BLM will also specify whether or not the stipulations may be varied through **exception** (one-time exemption), **modification** (temporary or permanent change to restrictions), and/or **waiver** (permanent exemption) in the RMP. The stipulations will be included in all leases offered on lands that contain the resource identified for protection (such as watersheds, endangered species, cultural resources, fossils, wilderness characteristics, etc.) in addition to BLM's standard lease terms and conditions (available at <https://www.blm.gov/FormsCentral/show-form.do?nodeId=1793#>).
- The RMP can also specify a requirement for **unitization** of leases, which requires that leases in a certain area coordinate on operations and development, essentially functioning as one lease for development and production. Unitization generally leads to less disturbance and damage to the leased lands, because fewer wells can be drilled to access the shared subsurface resource and only one operator is producing on the surface, further limiting the need for field processing equipment, roads and other related facilities.

- The RMP can also specify best management practices (**BMPs**) and other conditions for leases, such as clustering multiple wells on a single well pad or strict restoration standards, that may be incorporated in leases as Conditions of Approval (**COAs**) prior to development activity on the lease where applicable and, generally, at the BLM's discretion.
- The RMP also identifies the reasonable foreseeable development scenario (**RFD**), which is an estimate of oil and gas development activity, assuming all potentially productive areas can be open to development under standard lease terms and conditions. The RFD projects surface disturbance and serves as a basis for assessing the reasonably foreseeable impacts of oil and gas development on other resources.

Public Participation – During the RMP process, the public may provide **written and/or verbal comments** to the BLM on issues ranging from those areas that should be closed to leasing to appropriate lease stipulations to circumstances when exception, modification or waiver may be permitted. The public can also propose requirement of unitization agreements or BMPs and other conditions to apply to lease development, including seeking language making the BMPs mandatory. Comments can also focus on whether the analysis of potential impacts and proposed lease terms are sufficient in light of the amount of oil and gas development predicted in the RFD. Public comments that relate to specific, on-the-ground resources found in the planning area and propose specific actions to be taken are usually most effective. The public has the greatest opportunity to affect the terms of leases and their development at this step of the process. Once the RMP is finalized, the only opportunity to challenge the decisions is by bringing litigation in **federal court**. Also, in order for the agency to change the decisions made in the RMP, the BLM must usually make a formal amendment or revision to the RMP.

2. Nomination of Lease Parcels – Once lands are identified as available for leasing in the RMP, the oil and gas industry can nominate parcels to be included in regular lease sales (held quarterly in some states, such as Colorado, Utah and New Mexico, and more often in others, such as Wyoming). The BLM can also nominate parcels as part for inclusion in lease sales.

Effect on Lease Terms – While specific lease parcels are proposed for inclusion in upcoming lease sales, there are no determinations by the BLM regarding the lease terms at this step.

Public Participation - There is no opportunity for public comment at this stage, because the nominations are considered proprietary to the companies and are not usually made public.

3. Parcel Selection/Notice of Lease Sale – After all nominations for leases are received, the BLM decides which leases to offer¹ and conducts NEPA analysis on those parcels to identify applicable lease stipulations. The BLM will then post its intent to lease the parcels in the Federal Register (http://www.access.gpo.gov/su_docs/fedreg/frcont06.html) and on State BLM websites, a minimum of 45 days before the sale is to take place. The **Notice of Competitive Lease Sale** will identify the parcels and the applicable lease stipulations, which are generally taken from the RMP but may also be developed by the agency.

¹ BLM's current policy, as set out in IM 2004-110, Change 1 (<http://www.blm.gov/nhp/efoia/wo/fy04/im2004-110ch1.htm>), is that the agency is generally required to include nominated parcels in lease sales or provide justifications for deferring them. However, this policy also directs the BLM "to consider temporarily deferring oil, gas and geothermal leasing on federal lands with land use plans that are currently being revised or amended" in order to support protection of areas with other values, such as wildlife habitat, that may be under consideration. It should be noted, though, that aside from this policy, there is no actual legal obligation for the BLM to lease a particular parcel just because it has been nominated; the Mineral Leasing Act clearly states that leasing is discretionary.

Effect on Lease Terms – The NEPA analysis at this stage is minimal (usually only a Documentation of NEPA Adequacy) and merely ensures that the lease of these parcels is in compliance with the RMP and that the leases include applicable stipulations. Generally, lease terms are not affected during this stage of the process, although the BLM does have the opportunity to develop additional lease stipulations and include them at this stage.

Public Participation – The agency is not required to notify local communities or land owners that specific parcels in their area are about to be auctioned for lease, so the public must review the sale notice to identify leases of concern. The public may **formally protest** the sale of specific parcels during this step in the process. Protests can address failures to conduct adequate NEPA analysis or failures to comply with other specific laws (such as the Endangered Species Act or National Historic Preservation Act). Protests can be filed to seek protection of sensitive resources, such as cultural or historical sites, groundwater and sensitive species. The BLM has issued specific guidance regarding lease sale protests that require protests to be filed **no less than 15 calendar days before lease sale** and (<http://www.blm.gov/nhp/efoia/wo/fy05/im2005-176.htm>). The BLM may then decide to withdraw the parcels from the sale, deny the protest, uphold the protest or offer the parcels subject to later resolution of the protest.

4. Leases Sold/Issued – At the lease sale, parcels that are bid upon are sold to the highest bidder at oral auction. Listed parcels not sold during the official sale may also be sold by non-competitive bid for two years beginning the day after the sale date. Once payment is received, the lease is issued to the successful bidder.

Effect on Lease Terms – Leases are issued for a primary term of 10 years from date of purchase and the operator must pay a rental bid (minimum of \$2/acre). If the lease is not drilled and producing within 10 years, a one-year extension may be granted. Annual rentals of \$1.25/acre are required for the first 5 years of the lease term, and \$2/acres for the second five years. If a lease is producing, the operator may hold it indefinitely (until it is plugged and abandoned). The lease terms will include the standard lease terms and any stipulations identified in the notice of sale. Leases may also be “suspended” by the BLM for a variety of reasons. Under a suspension, the lessee still holds the lease, but is not obligated to make rental payments, and the “clock” does not run on the ten year lease term. Lease tract sizes vary to a maximum of 2,560 acres.

Public Participation – There are no additional opportunities for public participation at this step.

5. Company Seeks to Develop Lease – During this stage, the leaseholder seeks approval from the BLM to proceed by submitting relevant information and the BLM performs site-specific analysis of potential environmental consequences.

- The leaseholder can first submit a Notice of Staking (**NOS**) and then an Application for Permit to Drill (**APD**) or just submit all of the information in the APD package. The NOS may be submitted first to identify proposed well locations and necessary rights-of-way and permits, as well as triggering an on-site inspection. In either approach, the APD package will not be considered complete and will not be processed by the BLM until the agency has information on the well location, method of development, and roads, and bonds (a bond to assure compliance with all lease terms for the entire lease is required with the first APD), federal environmental permits (air and water), rights-of-way, zoning permits and state permits are submitted. Further, the APD will not be processed until an on-site inspection is completed. Once the APD package is submitted to the BLM, the agency is required to notify the leaseholder within 10 days of any inconsistencies or omissions, which the leaseholder can then remedy. Once the BLM determines that the APD package is complete, the agency has 30 days (plus additional time required for

NEPA analysis or compliance with other laws, such as the Endangered Species Act or National Historic Preservation Act) to process the APD.

- BLM's **site-specific NEPA analysis** can take the form of: determining that a categorical exclusion (**CX**) from NEPA applies; determining that the existing analysis of the area is adequate, yielding a Documentation of NEPA Adequacy (**DNA**); completing an environmental assessment (**EA**) and finding of no significant impact (**FONSI**); completing an environmental impact statement (**EIS**) where there has been a finding of potential significant impacts.
- **Split-Estate lands** – where the BLM manages the oil and gas but the surface is owned by another party (such as a private property owner), the oil and gas company is also required to make a good faith effort to notify the surface owner and negotiate an access agreement.²

Effect on Lease Terms –At this stage, the BLM can determine **COAs** that must be met prior to proceeding with drilling, including imposing **BMPs** or other **COAs** from the RMP and developing new conditions. While **COAs** can impose additional environmentally protective measures, the BLM has historically taken the position that **COAs** cannot impose substantial requirements for relocating activities or withholding or delaying activities, based on its regulations.³ BLM can also require that a leaseholder post a **separate, project-specific bond** for a given well, if it determines that the work may increase costs of restoring the lands (federal and adjacent) that may be impacted by drilling and related development activities.

Public Participation – If BLM decides that the activity is subject to a **CX** or **DNA**, then there is no automatic opportunity for public comment. For an **EA**, the BLM can post the **EA** and proposed **FONSI** for **public review and comment** prior to simply issuing the **FONSI**. For an **EIS**, the BLM must provide for public comment. During these comment opportunities, the public can identify deficiencies in the BLM's analysis of environmental consequences and required protections (**BMPs** or other **COAs**) that should be added prior to authorizing development. Once a final decision is issued, it can be appealed through an **administrative appeal** to the Interior Board of Land Appeals (**IBLA**) within 30 days, which must be accompanied by a **request for stay** if drilling is intended to be stopped while the appeal is considered. If the **IBLA** denies the administrative appeal or as an alternative route, litigation can be brought in **federal court**.

6. Finalizing Surface Operations Plan – During this step, the lease holder finalizes the drilling plan with the BLM to ensure compliance with stipulations and **COAs**. This step is informal and often the plan is amended through conversation. Further, the operator can seek a waiver, modification, or exception to stipulations during this step.

Effect on Lease Terms - This process can lead to adjustments to the lease terms, generally in terms of relaxing requirements.

Public Participation – There is no formal opportunity for public participation at this step.

² Although there are no formal requirements for these agreements in federal law or policy, a variety of Western States are in the process of considering separate legislation to mandate a negotiation process and minimum protections for surface owners.

³ 43 C.F.R. § 3131.1-2 (Surface Use Rights) states: “At a minimum, [reasonable] measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.”