



Split Estate

Rights, Responsibilities, and Opportunities



www.blm.gov/bmp



HB 790 SUBCOMMITTEE
March 16, 2006
Exhibit 3



Planning and Lease Sales

The BLM manages 700 million acres of subsurface mineral estate nationwide, including approximately 58 million acres where the surface is privately owned. In many cases, the surface rights and mineral rights were severed under the terms of the Nation's homesteading laws. These and other Federal laws, regulations, and BLM policy directives give managers the authority and direction for administering the development of Federal oil and natural gas resources beneath privately owned surface:

- Coal Lands Acts of 1909 and 1910
- Agricultural Entry Act of 1914
- Stock Raising Homestead Act of 1916
- Mineral Leasing Act of 1920 and amendments
- Federal Land Policy and Management Act of 1976
- Onshore Oil and Gas Orders Nos. 1 and 7
- Oil and Gas Gold Book
- BLM Instruction Memorandums

Under these laws, regulations, and procedures, the leasing and development of Federal oil and natural gas resources occur in four phases:

- Planning and Lease Sales
- Permitting and Development
- Operations and Production
- Plugging and Surface Reclamation

In each phase, the BLM, the lessee/operator, and the private surface owner have rights, responsibilities, and opportunities.

Parcels of land or mineral estate *open* for leasing under the terms of a BLM land use plan may be nominated for leasing by members of the public. The BLM reviews every nomination to ensure that leasing the parcel would conform with the terms of the land use plan, which has been developed previously with broad public input.

The initial term for a Federal oil and gas lease is 10 years, but production can extend the lease period. Successfully bidding on and acquiring the oil and gas lease gives the lessee or designated operator the right to enter and occupy as much of the surface as is reasonably required to explore, drill, and remove the oil and natural gas resource on the leasehold. However, this right is not absolute. The BLM works to encourage coordination and cooperation among all parties that have rights and responsibilities in split estate situations.

Operations and Production

Plugging and Surface Reclamation

The Bureau of Land Management:

Must notify the public when preparing land use plans and amendments and when lease sales are pending.

Strongly encourages the operator to contact the private surface owner as early as possible in the process and **requires** the operator to make a good faith effort to negotiate surface use and access agreements.

Will invite the surface owner to participate in the pre-drilling onsite inspection.

Seeks the private surface owner's recommendations on development issues during review of the Application for Permit to Drill.

Offers the private surface owner the same level of protection provided on federally owned surface.

Carefully considers the private surface owner's views and the effects on the private surface owner's uses before determining mitigation measures.

Does not participate in negotiations between the operator and the private surface owner on the terms of surface use agreements and damage compensation.

Must bond the operator for operations and reclamation in accordance with Chapter 43, Section 3104 of the Code of Federal Regulations (3104 Bond).

3814 Bond

Bonds the operator separately (3814 Bond) for an amount sufficient to protect the private surface owner against reasonable and foreseeable damage to or loss of *crops and tangible improvements*, if a good-faith effort does not produce an agreement with the surface owner.

Advises the private surface owner of the right to appeal the sufficiency of a 3814 Bond and **reviews** the sufficiency if the private surface owner appeals the bond amount.

Must fulfill the requirements of the National Environmental Protection Act, the National Historic Preservation Act, the Endangered Species Act, the Clean Water Act, and other applicable laws that protect surface resources.

Takes enforcement action to address operations not complying with lease and permit terms.

Must seek the private surface owner's written concurrence that reclamation is satisfactory.

The Lessee/Operator:

May participate in and comment on preparation of land use plans and amendments.

May nominate parcels for leasing.

Should coordinate and consult with the BLM and the private surface owner as early as possible.

Must participate in the onsite inspection the BLM schedules for the Notice of Staking or the Application for Permit to Drill.

Must identify the private surface owner and include the owner's name, address, and phone number in the Notice of Staking, Application for Permit to Drill, and Sundry Notices.

Must make a good faith effort to obtain an access agreement with the private surface owner.

Must certify to the BLM that he or she made a good faith effort to notify the surface owner before entry and an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed.

Must submit an adequate 3104 Bond for operations and reclamation.

Must submit a separate 3814 Bond if efforts to obtain a surface use agreement fail.

Is responsible for making access arrangements with the private surface owner prior to entry upon the lands for the purpose of surveying, staking, or to conduct cultural or biological surveys.

Must comply with the terms of the lease, the Application for Permit to Drill, and the Conditions of Approval.

Must include a surface reclamation plan in the Surface Use Plan of Operations.

Must complete reclamation to the satisfaction of the BLM and the private surface owner.

The Private Surface Owner:

Is strongly encouraged to participate in and comment on the preparation of land use plans and amendments.

Has the right, as a member of the public, to comment on pending lease sales and proposed lease stipulations, including the right to protest the inclusion of a specific parcel in a lease sale.

Will be invited to participate in the BLM's onsite inspections during the Notice of Staking and Application for Permit to Drill process.

Can expect to be contacted by the lessee/operator prior to entry and staking to discuss the terms of the surface use agreement or waiver.

Is entitled to the same level of surface protection that is provided on Federal surface.

Will be asked to sign the statement certifying the effort to conclude a surface use agreement.

Can respond to the BLM's request for recommendations on addressing surface construction and reclamation issues.

Will have his or her views on protection standards and limits ~~considered~~ considered as the BLM determines the surface use conditions of approval.

Has the right to appeal the sufficiency of the 3814 Bond to the BLM and will be advised of this right by the BLM if a 3814 Bond is necessary.

Is entitled to seek compensation from the operator for damages to *crops or tangible improvements*, and if not satisfied, can file a claim in court for payment under the 3814 Bond.

Will have bond-sufficiency appeals reviewed by the BLM in a timely manner.

Is encouraged to report non-compliance incidents to the BLM.

Can expect to have appropriate inspection and enforcement action taken.

May concur that final reclamation is satisfactory or recommend additional actions.

