

## **APPENDIX C LEASING PROCESS**

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In many places in the United States, National Forests lie over geological formations which do, or may, contain oil or natural gas. Private firms purchase "leases" on many of these lands to search for oil or gas, to drill exploratory wells, and to extract any oil or gas located below them.

### **LEASE**

Individuals, associations of citizens, and corporations organized under the laws of the United States or any state, are entitled to lease federal lands for these purposes under authority of the Mineral Leasing Act of 1920, as amended, and by the Mineral Leasing Act for Acquired Lands of 1947 unless the lands have been specifically withdrawn by the Department of the Interior. Leases also may be issued to a legal guardian or trustee on behalf of a minor. Aliens, whose country of origin does not deny similar privileges to United States citizens, may hold interest in leases, but only through stock ownership of United States corporations that hold leases. Aliens may not hold interest in federal oil and gas leases through units in publicly traded limited partnerships.

The issuance of a lease grants to the lessee the exclusive right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove, and dispose of all the oil and gas (except helium) in the leasehold subject to stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design or facilities, timing of operations, and specifications of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with the lease fights 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 an lease year (43 CFR 3102.1-2).

## **COMPETITIVE AND NONCOMPETITIVE LEASES**

Competitive and noncompetitive leases may be obtained for oil and gas exploration and development on lands owned or controlled by the federal government. The Leasing Reform Act of 1987 requires all public lands available for oil and gas leasing to be offered first by competitive leasing at an oral auction. Noncompetitive leases may be issued only if the competitive process results in no bids. Competitive and noncompetitive leases are issued for a ten-year period. Both are extended for the duration that they are producing oil and gas in paying quantities. The maximum competitive lease size is 2,560 acres in the "lower" 48 states and 5,760 in Alaska. The maximum noncompetitive lease size is 10,000 acres in all states.

### **Competitive Leases**

The Bureau of Land Management (BLM) conducts oral auctions for oil and gas leases on at least a quarterly basis, when there are available parcels of land. A Notice of Competitive Lease Sale lists lease parcels to be offered at auction. The Sale Notice is published at least 45 days before the date of the auction. The Sale Notice identifies any lease stipulations to uses or restrictions on surface occupancy. There are three sources for federal lands available for lease:

- (1) existing leases that have expired, and leases that have been terminated, canceled, or relinquished,
- (2) parcels identified by informal expressions of interest from either the public or BLM for management reasons, and
- (3) lands included in offers filed for noncompetitive leases (effective January 3, 1989).

On the day of the auction, successful bidders must submit a properly executed lease bid form and make a payment consisting of a share of the sale costs (\$75 per lease), one-year advance rental (\$1.50 per acre), and not less than the \$2.00 per acre minimum bonus. The balance of the bonus bid must be received within ten working days of the auction. The bid form constitutes the legally binding lease offer.

### **Noncompetitive Leases**

Noncompetitive leases may be issued only for parcels that have been offered competitively and failed to receive a bid. Lands in expired, terminated, cancelled, or relinquished leases are not available for noncompetitive leasing until they have been offered competitively. After an auction, all lands that were offered competitively without receiving a bid are available for issuance of noncompetitive leases for a period of two years.

Noncompetitive offers must be submitted on a BLM-approved form, and they must include a \$75 filing fee, and one-year advance rental (\$1.50 per acre).

Noncompetitive lease offers filed on the first business day following the auction are considered as having been filed simultaneously. The priority among multiple offers received on the first business day for the same parcel are determined by drawings open to the public.

## **LEASE RESTRICTIONS**

A lease does not convey an unlimited right to explore or an unlimited right to develop any oil or gas resources found under the land. Leases are subject to terms and conditions. These are restrictions derived from legal statutes and measures to minimize adverse impacts to other resources and are generally characterized in a lease as stipulations. Stipulations modify the rights the government grants to a lessee. The stipulations are known by potential lessees prior to any sale and must be applied at the time of Application for Permit to Drill (APD).

### **Standard Lease Terms**

The Standard Lease Terms are contained in Form 3100-11, Offer to Lease and Lease for Oil and Gas, United States Department of the Interior, BLM, June 1988 (see Appendix A). The Standard Lease Terms provide the lessee the right to use the leased land as needed to explore for, drill for, extract, remove and dispose of oil and gas deposits located under the leased lands.

Operations must be conducted in a manner that minimizes adverse impacts to the land, air, water, cultural, biological, and visual elements of the environment, as well as other land uses or users. Federal environmental protection laws such as the Clean Water Act, Endangered Species Act, and Historic Preservation Act, will be applied to all lands and are included in the standard lease stipulations. If threatened or endangered species, objects of historic, cultural, or scientific value, or substantial unanticipated environmental effects are encountered during construction, all work affecting the resource will stop and the land management agency will be contacted. Surface-disturbing operations that would destroy or harm these species or objects are prohibited.

Standard Lease Terms provide for reasonable measures to minimize adverse impacts to surface resources. These include, but are not limited to, modifications to the siting or design of facilities, timing of operations, and specifications of interim and final reclamation measures. Standard Lease Terms may not require the lessee to relocate drilling rigs or supporting facilities by more than 200 meters, require that operations be sited off the leasehold, or prohibit new surface-disturbing operations for more than 60 days each year (43 CFR part 3101.1-2).

The lease requires that the lessee meet stipulation conditions or avoid activities within all, or an identified part, of the leasehold. All leases on National Forest System lands contain the

"Stipulation for Lands of the National Forest System Under Jurisdiction of Department of Agriculture," requiring the lessee to comply with the rules and regulations of the Department of Agriculture. All leases are subject to regulations and formal orders of the Secretaries of the Interior and Agriculture in effect at the time of issuance.

### **Supplemental Stipulations**

The Standard Lease Terms can be modified by special or supplemental stipulations attached to the lease (43 CFR 3101.1-2 through 3101.1-4). Additional special stipulations can be developed specifically to meet resource concerns that cannot be mitigated by existing stipulations. All stipulations that may be applied when implementing the Forest Supervisor's decisions are detailed in Appendix A.

## **FEDERAL OIL AND GAS LEASING PROCESS**

### **Prior to the 1987 Leasing Reform Act**

The Secretary of the Interior, through the BLM, was responsible for authorizing the sale of leases for all available federal lands, including the lands of the National Forest System. The Mineral Leasing Act for Acquired Lands of August 7, 1947 (USC 351-359), provided for oil and gas leases on mineral deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulphur that are owned or may be acquired by the United States and that are within the lands acquired by the United States National Grasslands were authorized by the Bankhead-Jones Farm Tenant Act.

Individuals and firms wishing to lease parcels of the National Forests or Grasslands would make a "Request For Lease" for a specific parcel of land to the BLM. The BLM would then ask the Forest Service to make a recommendation regarding sale of the lease subject to provisions of the 1920 Mineral Leasing Act or the 1947 Act for Acquired Lands. Officers of the Forest Service would determine the stipulations necessary to protect the resources. However, only the Secretary of the Interior possessed the authority to determine which stipulations to place on the lease for minerals reserved from public domain. The final decision was appealable to the BLM.

### **After the Reform Act**

In 1987, Congress passed the Federal Onshore Oil and Gas Leasing Reform Act (P.L. 100-203). (We refer to this as the "Leasing Reform Act" throughout this document.) The Leasing Reform Act makes leasing on public domain lands very similar to that of acquired lands. It made two significant changes in the way leasing decisions are reached. First, the Leasing Reform Act expanded the role of the Secretary of Agriculture in the leasing decision process. The Secretary was authorized to identify the National Forest System lands for which leases could be sold. Also, he or his officers were authorized to determine the appropriate stipulations to apply to a lease to protect the surface resources.

The Leasing Reform Act also established a statutory requirement for processing the Surface Use Plan of Operation (SUPO) prior to ground-disturbing activities. This established a staged decision process for sale of a lease and approval of a permit to drill and operate. That is, before a company can drill an exploratory well or extract oil or gas from National Forest System lands, the Forest Service must first authorize sale of a lease, and then must approve or disapprove a detailed SUPO at the time of an APD. The lease decision is based on, among other things, an environmental analysis in accord with the requirements of the National Environmental Policy Act (NEPA) (40 CFR part 1502) that identifies stipulations needed to protect the environment. The approval of drilling also is based on an environmental analysis in accord with NEPA, which is specific to the proposed plan of operation.

### **The Regulations Implementing the Reform Act**

The Leasing Reform Act modified the authorities of the Secretaries of the Interior and Agriculture and established the foundation for staged decision-making, but the procedures to be used were defined in implementing regulations. The Forest Service developed those regulations over a two-year period and published the "Final Rule" in the Final Register on March 21, 1990 (36 Code of Federal Regulations, Part 228, 100 et. seq.; 55 FR 10423).

In the implementing regulations, the Secretaries of Agriculture and Interior have caused the leasing decision to be made based on a level of information appropriate to the speculative nature of oil and gas exploration. The text of the regulations that describes this decision process is as follows:

"(c) Leasing Analyses: ... the authorized Forest officer shall:

- (1) Identify on maps those areas that will be:
  - (i) Open to development subject to the terms and conditions of the standard oil and gas lease form (including an explanation of the typical standards and objectives to be enforced under the Standard Lease Terms);
  - (ii) Open to development but subject to constraints that will require the use of lease stipulations such as those prohibiting surface use on areas larger than 40 acres or such other standards as may be developed in the plan for stipulation use (with discussion as to why the constraints are necessary and justifiable) and;
  - (iii) Closed to leasing, distinguishing between those areas that are being closed through exercise of management direction, and those closed by law, regulation, etc.
- (2) Identify alternatives to the areas listed in paragraph (c) (1) of this section including that of not allowing leasing.
- (3) Project the type/amount of post-leasing activity that is reasonably foreseeable as a consequence of conducting a leasing program consistent with that described in the proposal and for each alternative.
- (4) Analyze the reasonable foreseeable impacts of post-leasing activity projected under paragraph (c)(3) of this section.

(d) Area or Forest-wide Leasing Decisions (Lands Administratively Available For Leasing)

Upon completion of the leasing analysis, the Forest Supervisor [as designated by the Regional Forester] shall promptly notify the Bureau of Land Management as to the area or Forest-wide leasing decisions that have been made, that is, identify lands which have available for leasing.

(e) Leasing Decisions for Specific Lands

At such time as specific lands are being considered for leasing, the Forest Supervisor shall review the area or Forest-wide leasing decision and shall authorize the BLM to offer specific lands for lease subject to:

- (1) Verifying that oil and gas leasing on the specific lands has been adequately addressed in a NEPA document, and is consistent with the Forest Land and Resource Management Plan.
- (2) Ensuring that conditions of surface occupancy identified in section 228.102(c)(1) are properly included as stipulations in resulting leases.
- (3) Determining that operations and development could be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy.

(36 Code Of Federal Regulations, part 228.102 Leasing Analysis and Decisions)

Figure C-1 is a graphic depiction of the process that the Forest Service will use to implement the regulations and identifies decision points in the leasing, exploration, and development phases of the program. The steps displayed in that figure are briefly described here and detailed on the following pages.

The Leasing Analysis is the first step in the process mandated by the regulations. The Forest Service has decided to administratively combine it, and its resultant decision, with the second step, the Leasing Specific Lands Decision. Both of these decisions will be documented in a

single Record of Decision. Once these decision have been made and provided to the BLM, the BLM and Forest Service coordinate to delineate specific lease parcels. Any pre-sale offers submitted by industry will be considered during the delineation of the parcels. The Forest Service will implement the decision and authorize or deny the lease parcel advertisement. After purchase, a lessee may propose to develop the lease and will request approval for construction in an APD. That proposal will be analyzed through the federal environmental process and documented in the appropriate NEPA document prior to approval, modification, or denial. If the proposal is approved ground-disturbing activities will occur, if not approved the lessee may make another proposal.

Figure C-2 further displays the roles of the BLM and Forest Service in the process and identifies the rights granted to the lessee at the decision points. The BLM and Forest Service as cooperating agencies entered into the Leasing Analysis. At that point that a Record of Decision is signed for the availability and specific lands decision, there is no authority granted to the BLM lease. That authority is granted after the lease proposal has been received and reviewed by the Forest Service.

## **THE STAGED DECISION PROCESS**

The legally required, staged-decision process is designed to accommodate the tentative nature of oil and gas exploration and development. Exploration for oil and gas resources is costly and speculative. Firms must commit costly equipment, purchase a variety of land rights and use expensive environmental protection technologies to begin exploration for oil or gas. Driven by pressures to be efficient and minimize risk, the nature of the enterprise has evolved over decades into a form in which exploration and development requires long-term planning by many loosely associated, mutually dependent industries. There is no guarantee that the expensive commitment of exploratory resources will result in a discovery of oil or gas as only about 15 percent of exploratory wells drilled in the United States result in a paying discovery of oil or gas.

Consequently, companies or individuals pursuing oil and gas must be able to plan in advance to most efficiently use their exploratory resources. One tactic they rely on to stage commitments of their own resources is the purchase of public land leases. Developers want to know what

lands are available for exploration and development and they want to be assured of continued future opportunities. Leasing of public lands is a way to do this.

However those purchasing leases do not automatically or immediately drill exploratory wells on these leaseholds. In any given time period, exploration firms must match geologic characteristics with the commitment of technology, capital, available equipment, and market conditions in a decision to risk a drilling operation. As a result, federal land lease are bought, relinquished, expire, and may be bought and sold again many times without ever being drilled upon. This demonstrates a major distinction between oil and gas leasing and other activities that are authorized by the Forest Service. Most activities are reasonably certain to proceed to development authorized by the Forest Service. Most activities are reasonably certain to proceed to development after the permit or contract is issued. Even though there is great uncertainty at the time of lease authorization as to whether a well will be drilled and, if so, when and where, the effects of a typical well in a given location can be estimated reliably on the basis of past experience.

The federal government wants to respond to industry concerns, but must ensure that future activities will neither unduly harm the environment nor unduly interfere with other uses of these public lands. A regulatory framework has been created to meet industry's needs while protecting other resources. The regulations include staged permitting of oil and gas exploration and development. Those stages include public disclosure at the following decision points: (1) the determination of lands available for leasing, (2) the leasing specific lands decision, (3) Application for Permit to Drill, and (4) analysis of field development if production is established. The staged process is designed to minimize the risk of making a decision that could lead to undisclosed irreversible or irrevocable environmental impacts. Each decision is based on environmental analysis and disclosure of the probable effects in accord with NEPA. Each decision is appealable to the responsible federal agency.

The United States Supreme Court in Robertson v. Methow, Valley Citizens Council, 104 L.Ed.2d 351 (1989), upheld the use of more than one stage of NEPA compliance after a Forest Plan is issued. In the Methow Valley situation, there was a permit stage (which allowed no ground-disturbing activities) and a faster development plan stage that involved another NEPA process and decision by the government before environmental effects would be experienced. This is very similar to the situation that is involved here.

### **Stage One - Lands Available for Leasing**

The decision regarding lands available for leasing is based on disclosure and analysis provided in a "Leasing Analysis." No rights are granted by the government to other parties when the Leasing Analysis is completed and the decision described in 36 CFR 228.102(d) is made. This EIS was prepared to satisfy the requirements of NEPA for the Leasing Analysis.

The decision will identify which, if any, lands will be available for leasing. The Forest Plans will be amended, if necessary, at the same time so that the decisions made on the basis of this EIS will be consistent with the Forest Plans.

### **Stage Two - Leasing Decisions for Specific Lands**

The Leasing Reform Act also provides for consent by the Forest Service for the issuance of oil and gas leases for specific lands. The regulations implementing the Leasing Reform Act require the following before consent can be given for one or more leases to be issued by the BLM:

- verifying that oil and gas leasing on the specific lands has been adequately addressed in a NEPA document, and is consistent with the Forest Plans
- ensuring that conditions of surface occupancy identified in section 228.102(c)(1) are properly included as stipulations in resulting leases
- determining that operations and development could be allowed somewhere on each proposed lease, except where stipulations would prohibit all surface occupancy

### **Stage Three - Application for Permit to Drill and Surface Use Plan of Operations**

This document, and its Record of Decision, do not authorize any ground-disturbing activities. Subsequent to lease award, the activities will be proposed through an APD and SUPO submitted to the Forest Service for approval. The Forest Service will analyze environmental

effects of the proposed operations and issue a decision document. The Forest Service decision to approve or not approve the SUPO is forwarded to the BLM for incorporation into their decision of whether or not to approve the APD.

If modification or changes in the APD are needed, based on drilling conditions encountered or some other unforeseen circumstance, the operator submits a Sundry Notice to the BLM for review and approval. If the change involves surfaced disturbance or potential affects on surface resources, a copy is forwarded to the Forest Service for approval or comment. Depending on the extent and nature of the change additional NEPA analysis may be necessary.

#### **Stage Four - Field Development Plan**

If economically recoverable quantities of oil and gas resources are found through exploratory drilling, industry may submit a Field Development Plan after evaluation of the discovery well and available geologic information. The Forest Service in cooperation with the BLM would analyze the environmental effects associated with the proposed field development and identify reasonable and necessary mitigation measures. Specific well sites and access routes may not be known at the time the Field Development Plan is analyzed in which case additional NEPA analysis tiered to the Field Development Plan may be necessary once a specific well is proposed.

#### **IMPACTS OF A LEASE**

The authorization of a lease grants rights to explore for and develop oil and gas within the terms and stipulations of the lease. The exercise of these rights results in environmental effects. The regulations direct the Forest Service to consider the subsequent actions that would be authorized by a lease, and their potential environmentally disturbing effects, as connected actions. These actions also meet the definition of connected actions in the procedural requirements for NEPA (40 CFR 1502).

These expected actions are the basis of the environmental analysis from which the leasing decisions will be made. The decision on the lands that will be administratively available, and the subsequent decision authorizing leases, are based upon analysis of the likely environmental effects of the connected actions.