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A Primer on Federal Onshore Leasing

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I. Introduction

As suggested by its title, this paper will attempt to provide introductory level insights into the leasing of Federal onshore lands, in the process acquainting the practitioner with statutory and regulatory authority, procedures, and reference materials. Purposely omitted from the scope of this paper and presentation are discussion and reference to surface mining and the leasing of Federal lands of Alaska, tar sands deposits, geothermal resources and Outer Continental Shelf lands, all of which are otherwise within the scope of Federal onshore lands subject to oil and gas leasing.

As reported by the Bureau of Land Management ("BLM"), the total area of the 50 states is just under 2.3 billion acres.[1] Of this area, the Federal Government administers approximately 657 million acres, or approximately 29% of the total.[2] BLM has exclusive jurisdiction for approximately 264 million acres (approximately one-third of which is in the State of Alaska).[3] The Secretary of the United States Department of Interior is charged with responsibility over oil and gas leasing of onshore oil and gas deposits.[4] By proper delegation from the Secretary of Interior, BLM is the Federal agency charged with the responsibility of leasing Federal oil and gas deposits.[5] Although rigidly structured, the careful practitioner will nevertheless want to familiarize himself with the full scope of the law and procedure of onshore Federal lands oil and gas leasing, and the management of these interests once they are leased.

II. Basic laws and regulations.[6]

The basic statutory framework relative to Federal oil and gas leasing is

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1 Public Land Statistics—1996; U. S. Dept. of Interior, Bureau of Land Management (March 1997), at 1.

2 Id., Table 1-3, at 6-7.

3 Id., at 1.

4 30 U.S.C. §226(a) (public domain lands) and §352 (acquired lands).

5 43 C.F.R. §3100.

6 For a more complete summary and treatment of this subject, *see* Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, Matthew Bender, New York (1982), Ch. 1 (§1.01) and Ch. 3 (§§301-305).

comprised of the Mineral Leasing Act of 1920[7], the Right-of-Way Leasing Act of 1930[8], the Acquired Lands Leasing Act of 1947[9], and the Outer Continental Shelf Lands Act of 1953.[10] The Mineral Leasing Act of 1920 has been substantially revised by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 ("the Reform Act of 1987")[11], which has in turn been modified in small but significant part by the Energy Policy Act of 1992.[12] This basic leasing authority is complemented by other oil and gas related legislation prescribing environmental compliance[13], land use restrictions[14], and royalty management and reporting[15]

III. Lands and interests available for leasing.[16]

Public Domain Lands.[17] Generally defined as lands or interests in lands which have never left the ownership of the United States, lands which have been obtained by the United States in exchange for public lands or for timber on such lands, and lands which have reverted to the ownership of the United States through operation of the public lands laws.[18] Under the Mineral Leasing Act of 1920, as substantially revised by the Reform Act of 1987, oil and gas in public domain lands and lands returned to the public domain under the procedure established by and under 43 C.F.R. §2370 are available for lease to the public, subject to the exceptions enumerated at 43 C.F.R. §3100.0-3(a)(2). The careful practitioner will familiarize himself with pre-Reform Act of 1987 as well as current authority on this subject.

Acquired Lands. Generally, acquired lands are lands which the United States has acquired or obtained by deed through purchase, gift, or

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7 30 U.S.C. §181, et seq.

8 30 U.S.C. §301-306. See, also, 43 C.F.R. §3109.1.

9 30 U.S.C. §351-359.

10 43 U.S.C. §1331-1356.

11 Included as §§5101-5113 of the Budget Act under subtitle B of Title V of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330 (1987), codified as 30 U.S.C. §226; further appearing as 43 C.F.R. Parts 3000 and 3100.

12 P.L. 102-486, 106 Stat. 3109.

13 National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321, et seq.

14 Federal Land Policy and Management Act of 1976 ("FLPMA"), 43 U.S.C. §§1701-1784.

15 Federal Oil and Gas Royalty Management Act of 1982 ("FOGRMA"), 30 U.S.C. §§1701-1757, revised substantially by the Royalty Simplification and Fairness Act of 1996, Pub. L. No. 104-185.

16 For a more complete summary and treatment of this subject, see, Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, Matthew Bender, New York (1982), Ch. 3.

17 For a stimulating treatment of the evolution of the public domain lands in the United States, see, Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, Matthew Bender, New York (1982), Ch. 2, beginning at §2.02 and continuing through §2.07.

18 Source: BLM Manual H-3100-1 – Oil and Gas Leasing.

condemnation proceedings, including lands previously disposed of under the public lands laws (including the mining laws).[19] Acquired lands are likewise available for public leasing, under the Mineral Leasing Act for Acquired Lands of 1947, subject to the exceptions enumerated at 43 C.F.R. §3100.0-3(b)(2).

Conflicts In Application. Public domain lands subject to lease under the Mineral Leasing Act of 1920 and the Reform Act of 1987 and acquired lands subject to lease under the Mineral Leasing Act for Acquired Lands of 1947 must not be confused. The acts are mutually exclusive, and an offer to lease public domain lands which is filed under the Mineral Leasing Act for Acquired Lands of 1947 must be corrected[20] or it will be rejected. Corrections are further subject to loss of priority.[21] Leases incorrectly issued are subject to cancellation.[22]

IV. Who may lease.[23]

Citizens. Leases or interests therein may be acquired and held only by citizens of the United States, associations (including partnerships and trusts) of such citizens, corporations organized under the laws of the United States or of any State or Territory thereof, and municipalities.[24]

Aliens. Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control in a present or potential lessee that is incorporated under the laws of the United States or of any State or Territory thereof, and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any Bureau of Land Management State office.[25] The careful practitioner will not rely exclusively on the absence from such a State office list the name of a particular country in advising his client, and will want to conduct additional investigation.

Minors. Leases shall not be acquired or held by one considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their

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19 Id.

20 43 C.F.R. §3110.4(c).

21 43 C.F.R. §3110.4(b).

22 43 C.F.R. §3108.3(d).

23 For a more complete summary and treatment of this subject, see, Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, Matthew Bender, New York (1982), Ch. 4. See, also, 43 C.F.R. §3102.1, et seq.

24 43 C.F.R. §3102.1.

25 43 C.F.R. §3102.2.

behalf. Such legal guardians or trustees shall be citizens of the United States or otherwise meet the provisions of [43 C.F.R. §3102.1.] [26]

Unlawful Interests. No member of, or delegate to, Congress, or Resident Commissioner, and no employee of the Department of the Interior, except as provided in 43 C.F.R. part 20, shall be entitled to acquire or hold any Federal lease, or interest therein.[27]

Limitations. For public domain lands, no person or entity shall take, hold, own or control more than 246,080 acres of Federal oil and gas leases in any one State at any one time. No more than 200,000 acres of such acres may be held under option.[28] This same limitation applies to leasehold ownership of acquired lands.[29]

V. Leasing procedure.[30]

Pre-Reform Act of 1987. Before enactment of the Reform Act of 1987, onshore oil and gas "within any known geological structure [KGS] of a producing oil and gas field" was required to be leased competitively to the highest bidder. Oil and gas underlying lands not within a KGS was required to be leased on a first-come, first-served "over-the-counter" basis or by simultaneous filing ("simo") procedures.

These procedures applied to offers to lease both public domain lands and acquired lands.[31]

The inability of BLM to adequately and timely analyze the factors necessary to classify a particular area or geologic province as a KGS led to confusion and in some cases fraud, where, as in certain publicized instances, a few knowledgeable speculators preyed on the unsuspecting public by misrepresenting a likelihood of gains to be realized by selling to the industry a lease obtained in a simo drawing.[32]

Subject to certain grandfathering[33] no longer applicable (except to the title examiner), the Reform Act of 1987 did away with the system of KGS determinations.

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26 43 C.F.R. §3102.3.

27 43 C.F.R. §3000.3.

28 43 C.F.R. §3101.2-1(a).

29 43 C.F.R. §3101.2-2.

30 For a more comprehensive treatment of this subject, see, Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, Matthew Bender, New York (1982), Chs. 5, 6 and 7, and, for the official regulations, 43 C.F.R. Subpart 3101 – Issuance of Leases.

31 Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, Matthew Bender, New York (1982), Ch. 5, §5.03[2], at 5-14.2.

32 H.R. 2851, H. Rpt. 100-378, Part 1, note 2 at 8; S. 1730, S. Rpt. 100-188, note 3 at 2.

33 Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, Matthew Bender, New York (1982), Ch. 5, §5.01, at 5-3 through 5-6.

Post-Reform Act of 1987. All oil and gas leases issued after December 22, 1987 must first be offered for lease on a competitive basis.[34] The procedure is discussed *INFRA*, but generally involves BLM listing lands available for leasing and posting a notice of the sale in which such lands will be offered for bid in the applicable state office.

VI. Competitive leasing.

Regulations specify that each BLM state office hold sales quarterly if any lands are available for bid.[35] Bidding is oral[36], with a national minimum bid of $2 per acre.[37] Prior to passage of the Energy Policy Act of 1992, the primary term of a competitive lease under the Reform Act of 1987 was five years; now the primary term under the Energy Policy Act of 1992 is ten years.[38] Generally, lands are listed by BLM as eligible for leasing pursuant to either a Resource Management Plan ("RMP") (issued under FLPMA)[39] or nomination by a potential bidder, or both. Leases are deemed issued when signed by the authorized officer, and are effective on the first day of the month following the date the leases are signed by the authorized officer.40

Competitive leases [by implication, for public domain lands and/or acquired lands] are limited in size to blocks of not more than 2,560 acres outside Alaska (and to 5,760 acres within the State of Alaska).41

The Nomination Process. The state director may accept either (formal) nominations for lease or informal expressions of interest.[42] If the former, nominations shall be made pursuant to the posting of a List of Lands Available for Competitive Nominations in accordance with instructions on such list and on a form approved by the state director.[43]

There are specific rules and requirements in connection with the submission of a nomination: specific information is required on the approved nomination form[44]; proper execution and filing, constituting a legally binding offer to lease[45]; timely filing (resulting in return of the

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34 43 C.F.R. §3120.1-1.

35 43 C.F.R. §3120.1-2, at (a).

36 Id., at (b).

37 Id., at (c).

38 43 C.F.R. §3120.2-1.

39 For a brief but enlightening treatment of the RMP process under FLPMA, see, The Rocky Mountain Mineral Law Foundation, Federal Oil and Gas Leasing Short Course (1997), Vol. I, Part 6, at 6-4 to 6-6.

40 43 C.F.R. §3120.2-2.

41 43 C.F.R. §3120.2-3.

42 See, Appendix, Section "A", Exhibit 4. (omitted)

43 43 C.F.R. §3120.3-1.

44 43 C.F.R. §3120.3-2(a).

45 43 C.F.R. §3120.3-2(b).

nomination/offer if not properly and timely filed)[46]; remittance with the nomination of a check for the minimum bid, the first year's rental and a $75 administrative fee[47], the failure of which will cause the filing to be unacceptable[48]; a "no withdrawal" (except by BLM) policy[49]; placement of nominated lands on a Notice of Competitive Lease Sale[50]; placement of non-nominated lands into noncompetitive lease availability status[51]; and refund of nomination fees to unsuccessful bidders.[52]

The Oral Auction. Parcels shall be offered by oral bidding. Nominations and nomination bids are pre-announced.[53] The winning bid is the one made by the highest oral bid by a qualified bidder that exceeds the national minimum, with the auctioneer's decision being final.[54] Ties result in a full refund and placement of the lands as available for noncompetitive leases.[55] Payment by the successful bidder of the minimum bid, the first year's rental and a $75 administrative fee is required at the close of the oral auction, with the balance (if any) due in 10 working days after the last day of the oral auction.[56] Unless the lease parcels are withdrawn by BLM, bids may not be withdrawn, and constitute a legal commitment to execute the lease form, pay the first year's rental and the $75 administrative fee.[57]

Other Formalities. The original of an offer or bid shall be signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee.[58] Certification of compliance with leasing requirements is required.[59]

VII. Noncompetitive leasing.

Perhaps the single most dramatic change in the scope of Federal onshore oil and gas leasing brought about by the Reform Act of 1987 was in the area of noncompetitive leasing. Whereas pre-Reform Act of 1987 noncompetitive leasing was accomplished procedurally under simo filings of non-KGS lands, which often generated the filing of thousands of "lottery

46 43 C.F.R. §3120.3-2(c).
47 43 C.F.R. §3120.3-2(d).
48 43 C.F.R. §3120.3-3.
49 43 C.F.R. §3120.3-4.
50 43 C.F.R. §3120.3-5.
51 43 C.F.R. §3120.3-6.
52 43 C.F.R. §3120.3-7.
53 43 C.F.R. §3120.5-1(a).
54 43 C.F.R. §3120.5-1(b).
55 43 C.F.R. §3120.5-1(c).
56 43 C.F.R. §3120.5-2.
57 43 C.F.R. §3120.5-3.
58 43 C.F.R. §3102.4(a).
59 43 C.F.R. §3102.5-2.

cards", the post-act procedure involves only, in essence, a secondary "offering" of leases for which no bids are received at a competitive sale. As provided in 43 C.F.R. Subpart 3110 – Noncompetitive Leases, §3110.1(b),

> ***Lease.*** Only lands that have been offered competitively under subpart 3120 of this title,[60] and for which no bid has been received, shall be available for noncompetitive lease. Such lands shall become available for a period of 2 years beginning on the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in §3120.3-1 of this title, or the first business day following the posting of the Notice of Competitive Lease Sale, and ending on that same day 2 years later. A lease may be issued from an offer properly filed any time within the 2-year noncompetitive leasing period.

Noncompetitive leases also are issued for primary terms of ten years.[61] As with their competitive counterparts, noncompetitive leases are deemed issued when signed by the authorized officer, and are effective on the first day of the month following the date the leases are signed by the authorized officer.[62]

Generally, offers for noncompetitive leases [excluding Alaskan lands] are subject to a minimum of 640 acres and a maximum of 10,240 acres, subject to surveying, contiguity and other requirements.[63]

VIII. The lease form.

The lease shall be issued only on the standard form approved by the Director.[64]

Important Considerations of the Form Lease:

(1) **Surface Use**: a lessee shall have the 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 leased resource in a 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.[65]

(2) **Stipulations**: the authorized officer may require stipulations as conditions of lease issuance. Stipulations shall become part of the lease and

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60 43 C.F.R. §3120.1, et seq.

61 43 C.F.R. §3110.3-1.

62 43 C.F.R. §3110.3-2.

63 43 C.F.R. §3110.3-3.

64 43 C.F.R. §3101.1-1.

65 43 C.F.R. §3101.1-2.

shall supersede inconsistent provisions of the standard lease form. Parties submitting nomination bids for competitive leases and offers to lease noncompetitive leases are deemed to have knowledge of and agreed to lease stipulations on the form of lease included with the List of Lands Available for Competitive Nominations or Notice of Competitive Lease Sale, as the case may be.[66] This requirement applies as well to lands administered by a Federal agency outside the Department of the Interior (usually the United States Forest Service, "USFS").[67] Moreover, stipulations are subject to change both before and after lease issuance.[68]

Stipulations are determined by the appropriate surface management agency. The Reform Act of 1987 requires that notice of provisions of a lease be given to the public at least 45 days prior to offering lands for competitive lease. Also, for "substantial" modification of the terms of an issued lease, 30 days advance public notice must be given by BLM. Modification of any stipulation in a manner which involves an issue of major concern to the public shall be subject to a minimum 30 day public review and comment period before implementation.[69]

A surface management agency is not required to relax, amend, or waive a no surface obstruction ("NSO") stipulation. Moreover, the failure or refusal of a surface management agency to grant relief from an NSO is not grounds for either a suspension of the term of a lease or the operating requirements of a lease.[70] Pre-Reform Act of 1987 procedure allowed a protest of stipulations prior to signing of a lease, even signing under protest.[71] The Reform Act of 1987 may have closed the door to this relief, however, as the plain language of 43 C.F.R. §§3101.1-3 and 3101.1-4 suggest that any objection to the stipulations is waived or foreclosed once the requirements for the public comment period(s) are satisfied and the lease has been signed.

Terms and Conditions (i. e., Lease Provisions):

READ INSTRUCTIONS BEFORE COMPLETING. (Self-explanatory.)

Paragraph 1.

The applicant-offeror's full, legal name if an individual, and full corporate or other legal entity name must be filled in correctly. While certain trivial errors are considered non-fatal to the application/offer, the

66 43 C.F.R. §3101.1-3.

67 43 C.F.R. §3101.7-1.

68 43 C.F.R. §3101.1-4.

69 43 C.F.R. §3101.1-4.

70 J. W. McTiernan, 136 IBLA 241 (1996); Petroleum Association of Wyoming, 133 IBLA 337 (1995).

71 Liberty Petroleum Corp., 118 IBLA 214; GFS (O&G) 14 (1991).

better course is to be correct. This applies as well to submitting the correct address of the applicant-offeror.

Paragraph 2.

(a) **Lands Category**: The applicant-offeror must select the proper category of lands for which the lease offer is being made. Recall, an incorrect offer for either acquired or public domain lands will result in rejection of the offer unless corrected[72], or cancellation if issued.[73] It is, therefore, critical that the applicant check the correct box on the current, consolidated form.

(b) **Legal Description**: Must be described accurately on a bid or expression of interest for competitive lease lands. For noncompetitive lease lands, i.e., where lands have been available for competitive leasing but are not leased, the only acceptable legal description from the day following the end of the competitive lease sale until the end of the same month is the parcel number for such lands as shown on the List of Lands Available for Competitive Lease Sale.[74] Beginning with the first day of the month following the month in which such lands become available for noncompetitive leasing, public domain lands (which are the subject of an offer to lease) must be described by legal description if surveyed (or otherwise covered by a published protracted survey), or by a proper metes and bounds description.[75] Likewise for acquired lands, beginning with the first day of the month following the month such lands become available for noncompetitive leasing they must be described by legal subdivision if surveyed, or by metes and bounds description tied to a public survey otherwise.[76]

(c) **Amount Remitted**: (Fill in as appropriate.)

Paragraph 3.

BLM will enter this information if the applicant-offeror is successful.

Signature Block. The remainder of the face page of the Offer to Lease form will be filled out and signed by BLM.

Paragraph 4.

(Found on the reverse side of the Offer to Lease face page) Contains the certification of compliance as to standing to lease (part (a)) and acceptance of the lease terms (part (b)). Must be dated and signed by the applicant/offeror or his/its legal representative.

Lease Provisions:

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72 See, also, Notes 18 and 19, supra.

73 Id.

74 43 C.F.R. §3110.5-1.

75 43 C.F.R. §3110.5-2.

76 43 C.F.R. §3110.5-3.

Sec. 1. Rentals. Due in advance, payable at proper office of lessor; $1.50 per acre during first 5 years, thereafter $2.00 per acre, for both competitive and noncompetitive leases, otherwise as provided by attachment or as specified in regulations at the time of lease issuance; modified Pugh clause where lands committed to cooperative or unit agreement; automatic termination for failure to pay, unless rentals are "waived, reduced or suspended by the Secretary upon a sufficient showing by lessee."

[Query: Are rentals due on undeveloped lease lands lying outside or otherwise not committed to a (State spacing) unit? Ans: By implication, probably not. *See*, 43 C.F.R. §3108.2-1.]

Sec. 2. Royalties. Payable to proper office of lessor; to be computed in accordance with appropriate regulations; at rates of 12-1/2% for both oil and gas for both competitive and noncompetitive leases, otherwise as provided by attachment or as specified in regulations at the time of lease issuance[77], with subprovision authorizing (for proper cause and showing) a reduction in rate; reservation by lessor of the right to take in kind; time of making payment specified; reservation by lessor of the right to establish "reasonable minimum values on products after giving lessee notice and an opportunity to be heard"; "extended storage" indemnity in favor of lessee; provision for minimum royalty in lieu of rental, with waiver, suspension or reduction subprovision; provision for payment of interest for late payment or underpayment; and a provision permitting recovery by lessor for waste committed by lessee.

Sec. 3. Bonds. To be filed and maintained as required by regulations. (Discussed *infra.*)

Sec. 4. Diligence, Rate of Development, Unitization, and Drainage. Federal equivalent of "prudent operator" standard; also reserves to lessor the right to compel lessee to submit to a cooperative or unit plan.

Sec. 5. Documents, Evidence and Inspection. Requires lessee to file within 30 days of effective date purchase contracts or "evidence of other arrangement for sale or disposal of production"; requires showing of production and sales, proceeds derived from sales, and amounts used for production purposes or unavoidably lost; requires other record keeping and maintenance, and making available to lessor of all books and records; provides for certain protection under FOIA in favor of lessee.

Sec. 6. Conduct of operations. Requires lessee to comply with all surface laws and restrictions so as to minimize adverse impact to air, soil, and water, and to cultural, biological, visual and other resources, and to other land uses and users; requires notice to lessor prior to commencement

77 *See also*, 43 C.F.R. Subpart 3103 – Fees, Rentals and Royalty, and 43 C.F.R. §3162.7-4.

of operations; and requires lessee to cease work and report to lessor if "threatened or endangered species, objects of historic or scientific interest, or substantial unanticipated environmental effects are observed".

Sec. 7. Mining Operations. Reserves to lessor the right to deny approval of mining operations where same would be substantially different or greater than those associated with normal [oil and gas] drilling operations.

Sec. 8. Extraction of Helium. Reserved to lessor, at lessor's expense.

Sec. 9. Damages to Property. Requires lessee to pay for damages to "lessor's improvements", and to save harmless Lessor from all claims for damage or harm to persons or property as a result of lease operations.

Sec. 10. Protection of Diverse Interests and Equal Opportunity. Requires lessee: to pay when due all taxes legally assessed and levied under laws of the State or the United States; to accord all employees complete freedom of purchase; to pay all wages at least twice each month in lawful money of the United States; to maintain a safe working environment; to take measures to protect the health and safety of the public; to ensure that production is sold at reasonable prices; to prevent monopoly; to adhere to the provisions of Sec. 28 of the Mineral Leasing Act of 1920 (codified as 30 U. S. C. §185) as same would apply to any oil-related pipelines or pipeline companies in which lessee had an interest or control; and to refrain from discriminatory employment practices.

Sec. 11. Transfer of Lease Interests and Relinquishment of Lease. Transfers must be filed with lessor; lessee may relinquish the lease or any legal subdivision by filing in the proper office, subject to continuing obligation to make payment of outstanding rentals and royalties.

Sec. 12. Delivery of Premises. Requires lessee to reclaim the surface, and to place wells in proper condition for suspension or abandonment (subject to right of lessor to retain "producible wells".

Sec. 13. Proceedings in Case of Default. Reserves to lessor the right to cancel the lease for a violation of any provision that is not cured within 30 days of (required) notice of default, which may be waived, "unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement which contains a well capable of production of unitized substances in paying quantities."

Sec. 14. Heirs and Successors-in-Interest. Each obligation of the lease extends to and is binding upon, and all benefits of the lease inure to, the heirs, executors, administrators, successors, beneficiaries, or assignees of both parties to the lease.

Minerals Covered by the Lease:

Lease forms utilized since adoption of the Mineral Leasing Act of 1920

have been consistent in leasing "oil and gas". "Oil" is defined in Combined Hydrocarbon Leasing Act of November 16, 1981 as "all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).[78] "Gas" is defined by regulation (definition unchanged since 1942) as "any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at ordinary temperatures and pressure conditions."[79]

By Solicitor's Opinion M-36935[80], methane in coal is deemed a gas that is not subject to coal leases issued under the Mineral Leasing Act of 1920, but is subject to oil and gas leases issued under the same act. See, however, *Southern Ute Indian Tribe v. Amoco Production Co.,* 119 F.3d 816 (10th Cir. 1997), reversing parts of the Solicitor's Opinion M-36935 and holding that coal reserved under certain acts includes coal bed methane. Carbon dioxide gas is included as a "gas" within the definition, but helium is expressly excepted (and reserved) by the Mineral Leasing Act of 1920.[81]

Surface Use Restrictions; Pooling and Unitization; and Miscellaneous:

Recall that the grant of a lease carries with it the right to use so much of the surface as is reasonably necessary to conduct operations for the drilling and production of oil and gas. This use is considered exclusive to the lessee. By practice, surface use has been extended to geophysical operations, which are covered by regulation.[82] Such use may not be exclusive, however.[83] Recall also that surface use is subject to lease restrictions imposed by stipulations that become a part of the lease.

Federal leases do not contain pooling or unitization clauses, but the lessee can be compelled (under Sec. 4 of the current lease form) to commit the lease to a plan of unitization or a communitization agreement. The interests of the Federal government are not subject to the State police power to pool and/or unitize; Federal interests may, however, with proper consent, be committed to State spacing units. There is no prescribed regulation or procedure that covers this subject. It is, therefore, the subject of negotiation with the proper official with the proper agency (usually BLM).

Federal leases do not contain shut-in gas clauses. Wells are required only to be capable of production in paying quantities in order to maintain

78 30 U.S.C. §181; 43 C.F.R. §3000.0-5(b).

79 43 C.F.R. §3000.0-5(a).

80 GFS (O&G) SO-2 (1981).

81 30 U.S.C. §181; see, also, 43 C.F.R. §3100.1.

82 43 C.F.R. Subpart 3150 – Onshore Oil and Gas Geophysical Exploration; General.

83 See, Ready v. Texaco, Inc., 410 P.2d 983 (Wyo. 1966).

the lease.[84] However, the lease (Sec. 2) and regulation prescribe the payment of a minimum royalty.[85]

IX, Bond requirements.

Before commencing any surface disturbance activities on the Federal lands, in addition to all other requirements the operator must post a personal or surety bond that is "conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond", such bond in an amount or in amounts to ensure compliance with complete and timely plugging of wells, reclamation, and surface restoration.[86] Surety bonds must be issued by companies approved by the Department of the Treasury.[87] Personal bonds must be accompanied by a Certificate of Deposit from an institution whose deposits are federally insured, a cashier's check, a certified check, negotiable Treasury securities of the United States in an amount equal to the bond (accompanied by a proper conveyance to the Secretary of Interior to sell such securities in the event of a default), or a proper letter of credit.[88]

The operator is given a "choice" of a lease bond[89], a statewide bond[90], or a nationwide bond.[91] Although not made expressly clear in Subpart 3104 of 43 C.F.R., the BLM official charged with the responsibility of setting the bond amount is the authorized officer. The regulations merely specify that the bond amount be not less than as set forth for each type of bond (i. e., $10,000 for a lease bond, $25,000 for a statewide bond and $150,000 for a nationwide bond).

There is a separate provision for obtaining a unit operator's bond for operations conducted on leases committed to an approved unit agreement. The amount of such bond also shall be determined by the authorized officer.[92]

Bonds must be filed in the proper BLM office on a current form approved by the Director. Filing of a single copy of a personal bond executed by the principal, or a surety executed by the principal and the surety is sufficient.[93]

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84 43 C.F.R. §3103.3-2.

85 Id.

86 43 C.F.R. §3104.1(a).

87 43 C.F.R. §3104.1(b).

88 43 C.F.R. §3104.1(c).

89 43 C.F.R. §3104.2.

90 43 C.F.R. §3104.3.

91 Id.

92 43 C.F.R. §3104.4.

93 43 C.F.R. §3104.6.

Bond amounts can be increased and/or adjusted for violations and defaults.[94]

X. Operations under the lease.

The operating rights owner or operator, as appropriate, shall comply with all applicable laws and regulations, with the lease terms, Onshore Oil and Gas Orders, NTLs, and with other orders and instructions of the authorized officer (which include, without limitation, proper site preparation, use of equipment that ensures reliable measurement of production and site security, and efforts that result in the maximum recovery of oil and gas).[95]

The operator (or operating rights owner, as the case may be) must permit access to the lease sites and records normally kept on the lease, without advance notice. For inspection purposes, the Secretary or his authorized representative shall have the same right to enter upon or travel across any lease site as the operator.[96]

The operating rights owner shall drill diligently and produce continuously from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage.[97]

The authorized officer may assess compensatory royalty under which the operating rights owner shall pay a sum determined by the authorized officer as adequate to compensate the lessor for such uncompensated drainage.[98]

The operator has an election to drill and produce other wells in conformity with any system of well spacing or production allotments authorized by law or by the authorized officer.[99]

The authorized officer may compel additional reasonable development of the lease, after notice in writing to the operating rights owner.[100]

Each well drilled on leased lands must be drilled in conformity with an acceptable well-spacing program at a surveyed well location approved or prescribed by the authorized officer after appropriate environmental and technical reviews.[101]

Prior to drilling, the operator must prepare and submit for approval by the appropriate jurisdictional and surface management agency or agencies

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94 43 C.F.R. §3104.5 and §3104.7.

95 43 C.F.R. §3162.1(a).

96 43 C.F.R. §3162.1(b) and (c).

97 43 C.F.R. §3162.2(a).

98 Id.

99 43 C.F.R. §3162.2(b).

100 43 C.F.R. §3162.2(c).

101 43 C.F.R. §3162.3-1(a).

an Application for Permit to Drill ("APD").[102] There is a 30-day pre-commencement filing requirement for the APD.[103]

The APD shall contain a drilling plan[104], a surface use plan[105], evidence of an appropriate bond[106], "such other information as may be required by applicable orders and notices"[107], including without limitation a detailed description of the drilling plan, a geological summary and hazard awareness and mitigation plans[108], and a surface use plan of operations that includes road and drillpad location, pad construction details, containment provisions and plans for reclamation[109].

A "Notice of Staking"[110], authorized by BLM's "Onshore Oil and Gas Order No. 1", may precede the filing of the APD; the Notice of Staking may actually shorten the approval time for the APD.

For Federal lands, the APD shall be submitted to all surface management agencies for official comment prior to approval.[111] The APD is subject to modification.[112]

Under the authority of 43 C.F.R. §3162.5, the authorized officer may require that the operator prepare an environmental record of review or an environmental assessment ("EA"). The former is an informal presentation by the operator or holder of operating rights, while an EA is a formal document, authorized under NEPA, that analyzes whether a proposed project will have a significant impact on the human environment, considering all possible alternatives, and whether an Environmental Impact Statement ("EIS") will be required. An EIS is a document, likewise authorized under NEPA, that presents for the decision maker (usually the state director) a proposed project, or action, significant issues, impacts on the human environment, alternatives, mitigations, and responses to comments from the public.

Regulations authorize BLM (or appropriate surface management agency) to prepare EAs and/or EISs. As a practical matter, this is usually delegated to the operator. The operator is well-advised to submit the name(s) and qualifications of its contractor(s) and subcontractor(s) in

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102 43 C.F.R. §3162.3-1(c).

103 43 C.F.R. §3162.3-1(d).

104 43 C.F.R. §3162.3-1(d)(1).

105 43 C.F.R. §3162.3-1(d)(2).

106 43 C.F.R. §3162.3-1(d)(3).

107 43 C.F.R. §3162.3-1(d)(4).

108 43 C.F.R. §3162.3-1(e).

109 43 C.F.R. §3162.3-1(f).

110 See, also, Appendix, Section "A", Exhibit "A" (omitted).

111 43 C.F.R. §3162.3-1(g).

112 43 C.F.R. §3162.3-1(h).

advance for approval by the surface management agency.

During the drilling and completion of a well, the operator shall, when required by the authorized officer, conduct tests, run logs, and make other surveys reasonably necessary to determine the presence, quantity, and quality of all oil, gas and other minerals, or the presence or quality of water, to determine the extent, if any, of the deviation from vertical, and the relevant characteristics of the oil and gas reservoirs penetrated.[113] Following completion of a well, the operator must conduct certain tests that will demonstrate the quantity and quality of oil and gas, the frequency and type of which are as specified in appropriate notices and orders from the authorized officer.114 Results of samples, tests and surveys must be provided to the authorized officer without cost to lessor.[115]

The operator is required to perform operations and maintain equipment in a safe and workmanlike manner, taking all precautions (reasonably) necessary to provide adequate protection for the health and safety of life and the protection of property.[116]

XI. Maintaining the Federal Oil and Gas Lease.[117]

Recall that the term of the current lease is ten years, for both public domain lands and acquired lands. Payment of the first year's rental is due upon acquisition of the lease, and each succeeding year's rental is due in advance. Other than by payment of rental, the only requirement for maintaining the lease, beginning with the discovery of oil and/or gas in paying quantities on the leased lands, is the payment of royalty when due.[118] Payment of a minimum royalty is authorized by the oil and gas lease (Sec. 2) and by 43 C.F.R. §3103.3-2. Regulations also provide for the reduction of royalty as an incentive to the greatest ultimate recovery of oil and gas.[119] A special procedure for the application for and obtaining of a royalty reduction applies to stripper wells.[120]

"Paying quantities" has two different standards/definitions, depending on the type of operation: for lease wells, requires only that production revenues exceed costs of operation (similar to Louisiana Mineral Code[121] and other state law applications); for wells subject to unit plan or agreement, the "public interest requirement" must be satisfied. The "public

113 43 C.F.R. §3162.4-2(a).

114 43 C.F.R. §§3162.4-2(b), 3262.7-2 and 3162.7-3.

115 43 C.F.R. §3162.4-2(c).

116 43 C.F.R. §3162.5-3.

117 See, also, Note 75, supra.

118 See, Note 82, supra.

119 43 C.F.R. §3103.4-1.

120 43 C.F.R. §3103.4-2.

121 LSA – R.S. 31:1, et seq., in particular, arts. 124 and 125.

interest requirement" for certification by the authorized officer of a Federal unit is that a unit well (need not be the initial well) must produce or be designated by the authorized officer as capable of producing a quantity of oil and/or gas sufficient to pay for all costs of drilling, completing, equipping and producing the well, and yield a reasonable profit.[122]

Before production in paying quantities has been established on a lease basis (as opposed to a unit basis), any lease on which "actual drilling operations" are being conducted at the end of the primary term, and any lease committed to a Federal unit upon which drilling has taken place, shall be extended for a period of two years, subject to the requirement that rental be paid.[123]

XII. Relinquishment; Termination; Reinstatement; Suspension; Cancellation.

A lease or any legal portion of a lease may be voluntarily surrendered by the record title holder or holder's agent simply by filing a written relinquishment in the proper BLM office. The relinquishment takes effect immediately upon filing, subject only to the requirements that the lessee (or its surety) make all payments due, leave all wells on the leased premises in a proper condition of suspension or abandonment, and provide for the restoration and/or reclamation of the surface.[124]

The failure to pay a rental on any lease upon which there is not a well capable of producing in paying quantities when the rental payment comes due results in automatic termination of the lease.[125] If the rental payment is made timely, but is either "nominally deficient" ("nominally deficient" is defined as not more than $100 or more than 5 percent of the total payment due), or in error due to the fault in computation by lessor, the lease may not be terminated unless the lessee fails to submit the correct amount within the time prescribed by lessor in a deficiency or error notice.[126]

Regulations permit the reinstatement of a lease by the authorized officer where (1) the rental is paid or tendered within 20 days of the anniversary date and (2) the failure was either justified or not the result of a lack of reasonable diligence on the part of lessee.[127] Reinstatement is accomplished by the filing of a petition for reinstatement, along with a $25 filing fee, the deficient rental amount, and any accrued royalty since receipt by lessee of a Notice of Termination of Lease due to late payment of

122 43 C.F.R. §3186.1, "Model onshore unit agreement for unproven areas", ¶9.

123 43 C.F.R. §3107.1. (Note in particular the explanatory language in this section.)

124 43 C.F.R. §3108.1.

125 43 C.F.R. §3108.2-1(a).

126 43 C.F.R. §3108.2-1(b).

127 43 C.F.R. §3108.2-2(a)(1) and (2).

rental.[128]

There are specific rules that apply for reinstatement of an automatically terminated lease with which the practitioner should familiarize himself.[129]

Cancellation of a lease by the Secretary is authorized whenever the lessee fails to comply with any provisions of the law, applicable regulations or the lease, where there is not a paying well on the lease or the lease is not committed to a unit or communitization agreement.[130] Where there is a paying well on the lease, or where the lease is committed to a unit or communitization agreement, cancellation for failure of the lessee to comply with any provisions of the law, applicable regulations or the lease is authorized only after judicial proceedings.[131]

Bona fide purchasers of interests subject to Federal leases are charged with constructive notice of all pertinent regulations and BLM records pertaining to a lease and lands covered thereby, but are protected from cancellation of a lease to the extent such cancellation adversely affects their title or interests, even if the interest of their predecessor in title was subject to cancellation.[132]

When the lessee is prevented from operating on the lease for reasons of force majeure, in the interest of conservation the authorized officer may grant a suspension of the lease during the period of force majeure.[133] The lessee may file an application requesting the appropriate relief from the authorized officer[134] prior to the expiration of the lease.[135] There is no prescribed form for such application; the usual means is by letter. The applicant must specify the relief requested and state in full the reasons the relief is requested.[136]

The payment of rental and the running of the term of the lease are suspended while there is in effect a waiver filed by the lessee or a suspension filed by order of the Secretary during any proceeding with respect to the regulations contained in Groups 3000 and 3100 of 43 C.F.R.[137]

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128 43 C.F.R. §3108.2-2(a)(3).

129 43 C.F.R. §§ 3108.2-2 (b), (c) and (d) and 3108.2-3.

130 43 C.F.R. §3108.3(a).

131 43 C.F.R. §3108.3(b).

132 43 C.F.R. §3108.4.

133 43 C.F.R. §3103.4-4.

134 43 C.F.R. §3165.1(a).

135 43 C.F.R. §3165.1(b).

136 Id.

137 43 C.F.R. §3108.5.

XIII. Notices; requests for relief; disputes; appeals.

BLM Matters:

BLM routinely notifies lessees and operators of violations. The notice typically prescribes a course of remediation, which, if followed, will usually end the matter.[138] It is when the lessee/operator disputes the alleged violation, or there is a dispute in connection with the remediation, that additional must be requested by the lessee/operator.

A request for such relief is made in writing to the authorized officer, and shall contain a full statement of the circumstances that render relief necessary.[139]

Any aggrieved party may seek a review of an adverse decision by the authorized officer by requesting, within 20 business days from receipt of the adverse decision, a State Director review, which may be either with or without oral presentation.[140] The aggrieved party shall submit supporting documentation, and may request additional time for submitting additional documentation, citing reasons that establish good cause for such extension.[141]

The state director must render a decision within ten days of receipt of the request for review if no oral presentation is to be made, or within ten days of the close of the record upon an oral presentation.[142]

Any adversely affected party wishing to contest the assessment of a fine or penalty must first request an administrative review before the state director.[143] No civil penalty shall be assessed until the aggrieved party has been given the opportunity for a hearing on the record in accordance with section 109(e) of FOGRMA.[144]

For relief requested from an adverse decision of the authorized officer that does not involve the imposition of a fine or penalty, the state director review is not of record, and is a somewhat informal procedure. A party may in writing request written reasons; otherwise, there is no provision for a detailed decision by the state director.

Appeal from an adverse decision of the state director is to the Interior Board of Land Appeals ("IBLA"). The procedure for appeals before IBLA is set forth in 43 C.F.R. Part 4.

Relief from an adverse decision by IBLA is by direct appeal to the

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138 See, Appendix, Section "A", Exhibit 7 (sample of BLM notice of violation) (omitted).

139 Note 133, supra.

140 43 C.F.R. §3165.3(b).

141 Id.

142 43 C.F.R. §3165.1(d).

143 43 C.F.R. §3165.3(c).

144 Id.

United States Federal district court for the district in which the dispute arose.[145] Appeal in this fashion is on the administrative record, and not de novo.[146]

USFS Matters:

Recall that regulations require the lessee/operator/operating rights owner to follow all land use regulations, and to follow the regulations of any and all applicable surface use agencies. Chief among these surface use and management agencies is the United States Forestry Service ("USFS"). Until passage of the Reform Act of 1987, USFS was only an advisor to BLM on mineral leasing matters. USFS now has full authority to deal completely with all lease surface administration matters.[147]

USFS does not consider itself bound to follow a formal or rigid adversarial process in the resolution of disputes, favoring a more informal, "first level" oral presentation.[148] Recent legislation establishes an administrative review process before judicial appeal can be taken from adverse decisions of USFS[149], and a 45-day period for decision following the administrative review before judicial appeal.[150]

XIV. Unitization and communitization.

Unitization:

Recall that Sec. 4 of the current lease form reserves in lessor the right to compel commitment of the lease to a unit or cooperative agreement. Specific regulations for voluntary unitization and communitization are found in the regulations.[151] Leases committed to a Federal unit may be extended beyond their primary terms, provided unit requirements are satisfied.

Unitization is authorized under the Mineral Leasing Act of 1920. Curiously, there is no counterpart language in the Acquired Lands Leasing Act of 1947 that deals with unitization and/or communitization. As a matter of course and practice, BLM does not distinguish between public domain lands and acquired lands vis-a-vis the unitization process, and treats all Federal lands proposed for unitization as under the Mineral Leasing Act of 1920.

The unitization process is commenced with the presentation to BLM's

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145 43 C.F.R. §3165.4(f).

146 Id.

147 The Rocky Mountain Mineral Law Foundation, Federal Oil and Gas Leasing Short Course (1997), Vol. II, Part 4, at 4-2.

148 Id., at 4-3.

149 Id., at 4-3.

150 Id., at 4-4.

151 43 C. F. R. Part 3180 – Onshore Oil and Gas Unit Agreements: Unproven Areas.

technical staff, at an area and depth conference, the proposed unitization plan. Called "an application for designation of an area as logically subject to development under a unit agreement", the proponent of the plan is supposed to submit the geologic information, including the results of any geophysical surveys, and any other available information showing that unitization is necessary and in the public interest.[152]

The use of the model form unit agreement is "acceptable" for use in unproven areas.[153] There is no prescribed form for use in "proven areas", another undefined term, although there is provision in §3181.1 for modification of the model form for unproven areas to compensate for "unique situations requiring special provisions" necessitating modification of the model form of agreement; in any event, BLM must approve all modifications to the model form.[154]

The owners of any right, title or interest in the oil and gas deposits to be unitized are regarded as proper parties to a proposed unit agreement.[155] The proponent shall submit such an agreement executed by at least 85% of the interests embraced within the unit boundary.[156] A single operator is designated as the unit operator.

Development of the unitized area is governed by the unit agreement and other applicable regulations, subject to the authority of the authorized officer to grant exceptions. Approval of plan of unitization is in the form of a certification-determination. Once the certification-determination is issued, the operator may commence development of the unitized lands under the unit agreement and the unit operating agreement, as well as applicable regulations.

Producing wells in a Federal unit are placed in participating areas, which traditionally have been configured initially in the same manner as state spacing units, subject to revision (by merger or contraction) based on well performance.

As previously stated, a Federal unit must satisfy the public interest requirement of the completion of a well capable of producing in paying quantities before the unit can be effectively certified. Producing wells that do not otherwise satisfy the public interest requirement are subject to a communitization agreement.

Communitization Agreements:

Communitization agreements are authorized under 30 U.S.C. §226(m) and 43 C.F.R. §3105.2-2 where a Federal lease (or a portion thereof) cannot

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152 43 C.F.R. §3181.2. The term "unproven areas" is not defined by statute or regulation.

153 43 C.F.R. §3181.1. See, also, §3186.1 for complete text.

154 Id.

155 43 C.F.R. §3181.3.

156 BLM Handbook H-3180 – Unitization (Exploratory).

be independently developed and/or operated under an established well spacing or development program.

There is no Federal communitization agreement form; BLM, however, has a standard form which should be utilized if a Federal lease is involved.[157] A principal requirement for BLM approval of a communitization agreement is that the agreement be submitted signed by all of the owners of the working interest within the proposed contract or unit area.[158]

Segregation:

One significant aspect of unitization/communitization is the concept and operation of lease segregation. Segregation is generally defined as the splitting of a lease (for example, by partial interest transfer or assignment, or by inclusion of a portion in and exclusion of the remainder from a unit). A transfer or assignment of 100 percent of a portion of a lease serves to segregate the lease into separate leases, each resulting lease retaining the anniversary date and terms and conditions of the original lease.[159] Segregation of Federal unit lands operates to extend the segregated portion (i. e., that portion lying outside the unit boundary) for two years, provided the unit is otherwise qualified.[160]

XV. Federal Land Records and Title Examination.[161]

Perhaps the most useful item of information that can be passed along at this stage is that the state BLM office probably has most records needed by the title examiner. Those not present at the relevant state office may be found at other Federal records centers. These records are generally organized into the following groups by type of record:

1) State Land Office

Plat books – contains plats of all townships, as well as supplemental plats showing the mineral status of an area.

Historical index – in the plat book; chronologically arranged description of actions taken in township lands, including entries no longer carried on the plat (ex: canceled homestead entries, expired oil and gas leases, etc.)

Serial register pages – land actions arranged by serial number

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157 See, Appendix, Section "A", Exhibit 8. (omitted)

158 43 C.F.R. §3105.2-3. See, also, Daniel T. Davis, 142 IBLA 317 (1998) (held, operator not entitled to rely on imputed authority of operating agreement pooling provision as a substitute to actual signatures).

159 43 C.F.R. §3106.7-5.

160 43 C.F.R. §3107.3-2. See, also, 43 C.F.R. §3183.4(b).

161 For a more comprehensive treatment of this subject, see, Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, Matthew Bender, New York (1982), Ch. 20. See, also, The Rocky Mountain Mineral Law Foundation, Federal Oil and Gas Leasing Short Course (1997), Vol. II, Part 22.

Case files – contain original documents relating to a given lease or other BLM action, copies of APDs, BLM decisions, etc.

competitive lease sale files – contain notices, publication data, and sales results

Simultaneous leasing records – contains list of lands available and relevant stipulations and results lists

Unit and communitization files – contains relevant documentation patents – showing reservations of minerals to the United States

Survey records – include surface plats (resurveys, significant surface features (including waterways) and acreage figures) and field notes (originals of surveyor's field notes

2) National archives

3) Federal records centers

4) Area and District offices

Recall that leases are submitted for filing at the appropriate State office. Likewise, transfers of leases and operating rights must be on approved forms and submitted for filing at the appropriate State office.[162]

As a general rule, but not one upon which one would rely exclusively, recordation of an instrument affecting a Federal oil and gas lease or an interest therein in the county/parish records is generally constructive notice of the instrument, even if the instrument is not filed with BLM.[163]

The unique nature of Louisiana's ten-year liberative prescription period for reserved minerals and/or mineral rights should of course be considered by the title examiner, especially in connection with reservations made prior to 1940. Louisiana Mineral Code articles 149 - 152 would appear to suspend indefinitely the running of the liberative prescription period, but prior and pending challenges to both the constitutionality and the applicability of these articles and their statutory forbears leave much uncertain.[164]

XVI. Winds of change.

There are current movements afoot to transfer all or part of BLM's leasing and surface/operations management functions to the producing states. Both the Interstate Oil and Gas Compact Commission and Independent Petroleum Association of America are studying the feasibility of such an authority transfer. To date, and certainly unofficially, the reactions from the states have been mixed.

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162 43 C.F.R. §3106.4-1.

163 The Rocky Mountain Mineral Law Foundation, Federal Oil and Gas Leasing Short Course (1997), Vol. II, Part 22, at 22-5.

164 See, LSA – R. S. arts. 149 - 152, including Comment and cases cited therein, for a more thorough discussion of this topic.

There is also, pursuant to edict from Vice President Gore, a rewriting of BLM's regulations. A reliable source has indicated that the first draft of the revision to Part 3100 of 43 C.F.R. is currently being reviewed by BLM. This revision will replace the long-used and much-quoted handbooks and handouts system, in favor of the new movement toward a "plain English" Federal regulatory system that has been previously implemented by the Internal Revenue Service, and which has received such a widespread acceptance from the public.

Time will tell, of course, on both of these scores. Meanwhile, it is business as usual at BLM, USFS and the other Federal agencies charged with management of oil and gas related functions, and it is not too late to get to know your knowledgeable, helpful, courteous public servants at these agencies.[165]

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165 For a complete listing of BLM state offices, addresses and telephone numbers, and other general information on the Eastern States Office(s), see, Appendix, Section "B" (omitted).