



Position Statement

P.O. Box 7226, Arlington, VA 22207
703-935-0916

www.publicland.org
info@publicland.org

FEDERAL ONSHORE OIL AND GAS PROGRAM REFORM BALANCING USE AND CONSERVATION

EXECUTIVE SUMMARY

The onshore public lands administered by the Bureau of Land Management have been an important source of the Nation's energy needs for over a century and it is likely that the exploration and development of Federal oil and gas resources on the public lands will continue to be important to the Nation's economy for the future. It is unlikely there will be an immediate transition to alternative energy sources or an end to oil and gas exploration and development on the public lands. However, improvements to the Federal oil and gas program can be made and the Public Lands Foundation has identified several recommendations and proposals for legislative, administrative, and management actions to address and improve the program.



Drill Rig - Wyoming, BLM photo

BACKGROUND

The BLM manages about 700 million acres of onshore Federal subsurface mineral estate. At the end of 2018, about 26 million acres (3.7 percent) were leased for oil and gas development, of which approximately 12.8 million acres were producing oil and gas in economic quantities from over 96,000 wells on approximately 24,000 producing leases. In FY 2018, BLM generated nearly \$3.1 billion in Federal royalties, rental payments and bonus bids, of which approximately 50 percent was returned to the states in which the revenue was generated.

There have been increasing calls to modify oil and gas leasing procedures on the public lands over the past decade. There have also been demands to modify regulations for oil and gas exploration and development activities on the public lands. Current holders of Federal oil and gas leases have a contractual agreement with the U.S. Government that allows them to explore and develop Federal oil and gas resources. If those contracts are broken, the ensuing litigation would expose the Federal Government to large financial settlements to lessees for lost income and States for lost royalty revenue.

In addition, where Federal resources are commingled with State and private holdings, drainage of the Federal mineral estate, from adjacent production activity, would deprive the Federal government of royalty income and the subsequent payment to States for their royalty portion.

The Public Lands Foundation advocates and works for the retention of America's Public Lands in public hands professionally and sustainably managed for responsible common use and enjoyment.

PUBLIC LANDS FOUNDATION POSITION

Based on BLM's multiple-use mandate in the Federal Land Policy and Management Act, along with the fiduciary requirements of the Mineral Leasing Act of 1920, a thoughtful and reasoned approach balancing resource use and conservation is recommended for any Federal oil and gas program reform. The PLF recommends the following actions in the areas of legislative, administrative, and management actions.

Legislative Modifications

- Under the Mineral Leasing Act of 1920 (MLA), revise and lower the initial oil and gas lease term to less than 10 years.
- Also under the MLA, revise and increase Federal oil and gas royalty rates to bring them in line with those on private and state lands. The current Federal royalty rate is 12.5 percent. State and private royalty rates currently range between 16.67 percent and 25 percent.
- Raise the minimum bid for competitive leases at auction to in the range of \$5 - \$10/acre.
- Eliminate the current "over-the-counter" leasing process for leases that receive no bids at auction. No bid parcels at auction indicate very low or no oil and gas potential and provide minimal financial return on investment for the Federal government once they are leased through the over-the-counter leasing process.
- Implement a Pugh clause for Federal oil and gas leases which would require the expiration of any portion of the lease not in use by the operator at the end of the lease primary term. (The Pugh Clause originated in 1947, when a Louisiana lawyer, Lawrence G. Pugh, drafted a clause to prevent the holding of non-pooled acreage in his client's lease while certain other portions of the lease acreage were being held under pooled arrangements. The main purpose of the Pugh Clause is to protect the lessor from the situation of having the entire property held under the lease by production from a very small portion. The clause is designed to "foster reasonable development of leased property". Simply put, a Pugh Clause means that at the end of a primary term, the lease will expire as to any part of the land that is not being used by the oil and gas company.)
- Raise oil and gas lease rental fees for non-production. Current rental is \$1.50/acre for years one through five, then \$2.00/acre thereafter.
- Create a funding stream for reclamation and restoration of subsurface and surface resources associated with legacy orphaned wells. For example, revise and expand Section 365 of the Energy Policy Act of 2005 (42 U.S. C. 15924) BUREAU OF LAND MANAGEMENT PERMIT PROCESSING to include a portion of the fees for this purpose.
- Strengthen and broaden Federal unitization requirements to foster increased collaboration with intermingled Federal, State, and private oil and gas lease holders, which results in a substantial decrease in environmental impacts. Federal unitization allows for the exploration and development of oil and gas from intermingled leases as a single lease under a single operator. This process, currently based solely on a geologic concept, should be broadened to also consider environmental or other concerns.

Administrative Modifications

(regulations, handbooks, manuals, instruction memoranda, and land use planning)

Most of the Federal oil and gas program procedures are administrative in nature and can be changed without legislation. Recommendations include:

-
- Increase the 50-year-old Federal oil and gas bonding requirements to ensure sufficient funds are available for plugging wells and restoring abandoned well sites.
 - Increase oil and gas exploration and development inspection financial penalties to ensure public safety and establish a consequence for poor operator performance.
 - Increase funding for reclamation monitoring.
 - Update and revise BLM off site compensatory mitigation guidelines to allow operators to reduce or eliminate landscape-scale resource conflicts and/or impacts on the public lands. Current policies restrict the use of compensatory mitigation.
 - Develop adaptive management guidelines that allow for subsequent management actions when environmental or other impacts occur beyond what was estimated or allowed.
 - Develop methane and waste prevention (venting and flaring) regulations which reflect responses to recent 2016 and 2018 court rulings.
 - Review BLM land use planning guidance and instructions regarding oil and gas leasing decisions to ensure the assumptions and decisions (and related resource protection assumptions and decisions) used in the planning process are science-based, analyze an appropriate range of alternatives, contain a reasonable range of oil and gas development scenarios, and the process follows appropriate public participation practices. Recently approved Resource Management Plans should also be reviewed for these factors.
 - Review the results of any previous and future Alaska National Wildlife Refuge lease sales, prior to the issuance of any final leases, to determine what immediate actions may or may not be necessary to comply with all appropriate laws and to respond to possible subsequent litigation.
 - Review the climate change impact analysis procedures to be included in NEPA documents to ensure adequacy with current climate change guidance.
 - Develop techniques and procedures to provide timely and legally complete environmental analysis of oil and gas field development, such as a standard range of alternatives and a standard set of mitigation measures that are always part of the Proposed Action. This will reduce impact analysis and the size / complexity of NEPA documents.

Management Modifications

- Modify the national BLM oil and gas program budget process to allow for a better balance in funding for monitoring, inspection, and enforcement activities with oil and gas permitting.
- Implement the use of landscape conservation initiatives where a consortium of Federal, State, and local governments along with private landowners take actions independent of ownership to offset the impacts of oil and gas development.
- Improve the management of downstream aspects of oil and gas development by developing standards and streamlining authorizations that eliminate natural gas waste from pipelines and gas facilities.

March 2022