

Split Estate Brochure - 2007

Preface

Let's assume that we are in a frame that is behaving sustainably: Borrowing / Returning with complete accountability. How would this particular concept of Split Estate be reframed?

Rights, Responsibilities, and Opportunities

www.blm.gov/bmp (Best Management Practices) 2007

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

- Coal Lands Acts of 1909 and 1910
- Agricultural Entry Act of 1914
- Stock Raising Homestead Act of 1916
- Mineral Leasing Act of 1920 and amendments
- Federal Land Policy and Management Act of 1976
- Onshore Oil and Gas Orders No. 1 and No. 7
- BLM and Forest Service Oil and Gas Gold Book
- BLM Instruction Memorandums

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

- Planning and Leasing
- Permitting
- Drilling and Production
- Surface Reclamation

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

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

The initial term for a Federal oil and gas lease is 10 years, but production can extend this lease period. Successfully bidding on and acquiring the oil and gas lease gives the lessee or designated operator the right to enter and occupy as much of the surface as is reasonably required to explore, drill, and produce the oil and natural gas resources on the leasehold, subject to applicable Federal laws, regulations, lease stipulations, and permit requirements. The BLM works to encourage coordination and cooperation among all parties that have rights and responsibilities in split estate situations.

The Bureau of Land Management:

Planning and Leasing

Must involve the public when preparing land use plans and amendments.

Must notify the public when oil and gas lease sales have been scheduled.

Permitting

Encourages the lessee/operator to contact the surface owner as early as possible when operations are contemplated.

Requires the lessee/operator to certify that a good faith effort has been made to negotiate a surface use agreement with the surface owner.

Will invite the surface owner to participate in the pre-drilling onsite inspection/meeting, and **seeks** the surface owner's input on development and reclamation issues.

During permit review, **offers** the surface owner the same level of resource protection provided on federally owned surface.

Carefully considers the surface owner's views and the effects on the surface owner's uses of the land before determining mitigation requirements and approving operations.

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

Bonding

Performance Bond: Requires a bond from the lessee/operator to ensure compliance, including costs of plugging, reclamation, and restoration in accordance with 43 CFR 3104. The bond is held by the BLM for the benefit of the BLM.

Surface Owner Damages Bond: If a good-faith effort by the lessee/operator does not produce a surface use agreement with the surface owner, the BLM requires a separate bond from the lessee/operator for an amount sufficient (minimum \$1,000) to protect the surface owner against reasonable and foreseeable loss or damages (such as loss or damages to crops or tangible improvements), or as otherwise required by the specific statutory authority under which the surface was patented and the terms of the lease.

Prior to approving the Application for Permit to Drill, **advises** the surface owner of the right to review the bond and to file an objection with the BLM of the sufficiency of a lessee/operator's proposed Damages Bond.

Reviews and determines the sufficiency of the Damages Bond, considering any objection of the surface owner to the bond amount.

May approve the Application for Permit to Drill if the BLM determines the bond is sufficient.

Advises the surface owner and lessee/operator of the right to appeal the BLM's final bonding decision and **forwards** any appeals to the Interior Board of Land Appeals.

Drilling and Production

Conducts compliance inspections, consults with surface owner as appropriate, and takes enforcement action when necessary to ensure permit compliance.

Surface Reclamation

Must carefully consider the surface owner's views on reclamation requirements and seek concurrence that final reclamation is satisfactory.

The Lessee/Operator:

Planning and Leasing

Is encouraged to participate in and comment on preparation of land use plans and amendments, particularly those parts of the plan where energy issues and mitigation are discussed.

May nominate parcels of eligible and available land for leasing and protest and/or comment on pending lease sales.

Permitting

Should coordinate and consult with the BLM (or other surface management agency) and the surface owner as early as possible.

Is responsible for making a good faith effort to reach access arrangements with the surface owner prior to entry upon the lands for the purpose of surveying, staking, or conducting cultural or biological surveys.

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

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

Is encouraged to incorporate environmental Best Management Practices into the Application for Permit to Drill–Surface Use Plan.

Must make a good faith effort to provide a copy of the Application for Permit to Drill–Surface Use Plan to the surface owner at the time the Plan is filed with the BLM.

Must certify to the BLM that a copy of the Surface Use Plan of Operations was provided to the surface owner or that a good faith effort was made if unable to provide the document to the surface owner.

Must make a good faith effort to notify the surface owner before entry and obtain a surface use agreement with the surface owner.

Must certify to the BLM that a good faith effort was made to notify the surface owner before entry and a surface use agreement was reached with the surface owner or a good faith effort to reach an agreement had failed.

Bonding

Performance Bond: Must submit an adequate bond for the benefit of the BLM to ensure compliance, including costs of complete and timely plugging, reclamation, and restoration.

Surface Owner Damages Bond: Must submit a separate Damages Bond (minimum \$1,000) to the BLM for the benefit of the surface owner to cover loss or damages (such as loss or damages to crops or tangible improvements) if good faith efforts to obtain a surface use agreement fail.

May appeal the BLM's final decision on the amount of the Damages Bond to the Interior Board of Land Appeals.

Drilling and Production

Must make a good faith effort to provide a copy of the approved Application for Permit to Drill–Conditions of Approval to the surface owner, and for later operations, make a good faith effort to provide the surface owner a copy of any proposal involving new surface disturbance.

Must certify to the BLM that a good faith effort was made to provide a copy of any proposal involving new surface disturbance

to the private surface owner.

Must comply with the terms of the lease, the Application for Permit to Drill, and the Conditions of Approval. **Must** conduct operations to minimize adverse effects to surface and subsurface resources and prevent unnecessary surface disturbance.

Should notify the surface owner within 24 hours of any emergency situation that involves surface resources.

Has the right to enter and occupy as much of the surface as is reasonably necessary to explore, drill, and remove the oil and natural gas resource on the leasehold, subject to obtaining the BLM's approval of the drilling and surface use plans.

Surface Reclamation

Must provide a reclamation plan to the BLM when filing the Application for Permit to Drill, to change an existing plan, or prior to abandonment if a plan is not on file with the BLM.

Must complete reclamation to the satisfaction of the BLM in consultation with the surface owner.

The Private Surface Owner:

Planning and Leasing

Is encouraged to participate in and comment on the preparation of land use plans and amendments, particularly those parts of the plan where management of split estate, development of energy resources, and environmental protection measures are discussed.

Has the right to protest and/or comment on pending lease sales.

Permitting

Provided the surface owner can be identified and contacted:

Will be contacted by the lessee/operator prior to entry and staking to discuss access arrangements and begin discussions on the terms of a surface use agreement.

Will be invited by the BLM to participate in onsite inspection/meetings during the Notice of Staking and/or Application for Permit to Drill process.

During permit review, **is entitled** to the same level of resource protection provided on federally owned surface.

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

Will have views on protection standards and construction and operation issues carefully considered by the BLM as the BLM determines appropriate permit mitigation measures.

Bonding

Surface Owner Damages Bond: Has the right to object to the sufficiency of the Surface Owner Damages Bond. Will have bond-sufficiency objections reviewed by the BLM in a timely manner.

Has the right to appeal the BLM's final bonding decision to the Interior Board of Land Appeals.

Is entitled to seek compensation from the lessee/operator for loss or damages (such as loss or damages to crops or tangible improvements), and if not satisfied, can file a claim in court for payment by the BLM under the Damages Bond. **May** also be entitled to other legal remedies under State law.

Drilling and Production

Is encouraged to report any environmental and surface-disturbance-related concerns to the BLM.

Can expect to have timely and appropriate inspection and enforcement action taken.

Surface Reclamation

May provide views on reclamation to the BLM for careful consideration.

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

The Bureau of Land Management Today

Our Vision

To enhance the quality of life for all citizens through the balanced stewardship of America's public lands and resources.

Our Mission

To sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

Our Values

To serve with honesty, integrity, accountability, respect, courage, and commitment to make a difference.

Our Priorities

To improve the health and productivity of the land to support the BLM multiple-use mission.

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