

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240

February 23, 2004

In Reply Refer To:  
3100/3200/1610 (210/310) P

EMS TRANSMISSION 02/26/2004  
Instruction Memorandum No. 2004-110  
Expires: 09/30/2005

To: All WO and FO Officials

From: Director

Subject: Fluid Mineral Leasing and Related Planning and National Environmental  
Policy Act (NEPA) Processes

DD: 04/01/2004

**Program Area:** Fluid Minerals and Related Planning

**Purpose:** This Instruction Memorandum (IM) clarifies existing NEPA guidance in regard to case law concerning the implementation of land use allocation decisions and the processing of oil, gas and geothermal leasing decisions authorized under existing land use plans. This IM also clarifies and provides proper application of the Council of Environmental Quality (CEQ) regulations contained in 40 CFR 1506.1 on the implementation of existing Resource Management Plan (RMP) decisions during a planning process to amend or revise the RMP.

This IM replaces all discussion pertaining to oil and gas leasing (not APD or other permit processing) contained in IM No. 2001-191 - "Processing of Applications for Permit to Drill (APD), Site-Specific Permits, Sundry Notices, and Related Authorizations on Existing Leases and Issuing New Leases during Resource Management Plan (RMP) Development." The related IM previously issued, IM No. 2001-075 - "Bureau wide Implementation of Solicitor's Opinion on Jack Morrow Hills Coordinated Activity Plan" has expired and has been replaced a change in the Bureau of Land Management (BLM) manual handbook H-1601-1, page VII E, rel.1-1675 and by this memorandum.

**Background:** Field and State Offices have indicated the need for clearer policy direction in regard to implementing existing land use plan decisions, especially during in the process preparing a land use plan amendment or revision. In addition, further guidance has been

requested on how to proceed when new information is provided by the public regarding issues to be addressed in pending or upcoming planning efforts, or which may indicate a need to supplement existing NEPA analyses. This has become an issue of concern in regard to issuing oil, gas and geothermal leases.

There has also been confusion on the interpretation of the CEQ regulations contained in 40 CFR 1506.1(a) and (c) in regard to preserving alternatives in consideration during land use plan amendment and/or revision.

**Policy/Action:** It is Bureau of Land Management (BLM) policy that the State Directors follow current land use allocations and existing land use plan decisions for Fluid Minerals and related energy actions when preparing land use plan amendments or revisions. This policy is consistent with BLM handbook H-1624-1 "Planning for Fluid Mineral Resources" chapter I B.2, rel.1-1583. In a related matter, nothing in the CEQ NEPA regulations requires postponing or denying a proposed action that is covered by the Environmental Impact Statement (EIS) for the existing land use plan to preserve alternatives during the course of preparing a new land use plan and EIS (see 40 CFR 1506.1(c)(2)). Consequently, all Field Offices are expected to follow their respective approved land use plans in offering for sale, parcels with expressions of interest.

The Associate Solicitors for both the Divisions of Land and Water Resources and Mineral Resources have prepared a joint memorandum that addresses this issue in greater depth. That memorandum is included in attachment 1.

Fluid mineral leasing allocation decisions are made at the planning stage. The EIS associated with the RMP is intended to meet the NEPA requirements in support of leasing decisions. A determination of adequacy of the NEPA document is required in conformance with chapter III of the NEPA Handbook H-1790-1 and related NEPA instruction memoranda. Preparation of another NEPA document, plan amendment or additional activity planning is not normally required prior to issuance of an oil and gas or a geothermal lease, except as discussed below.

Additional NEPA documentation would be needed prior to leasing if there is significant new circumstances or information bearing on the environmental consequences of leasing not within the broad scope analyzed previously in the RMP/EIS. Additional NEPA analysis should be completed according to BLM manual handbooks H-1790-1, H-1601-1 (with revisions), and H-1624-1. Field Offices should also distinguish new information bearing on the impacts of currently authorized actions in the land use plan (i.e., leasing) from new land use allocation proposals that may be submitted by a member of the public. Those proposals to add new land allocations or classifications should be analyzed in the context of land use planning and its NEPA work, not in the context of current plan implementation.

The next phase of Bureau NEPA analysis occurs when the lessee or the operator submits

an application for exploration or development. When permit applications are submitted, site-specific NEPA impact analyses, as appropriate, are conducted to provide another tier of environmental protection through the development of conditions of approval to be included in the approved permits. This phased process is consistent with current policy and regulations (e.g., H-1624-1 Planning for Fluid Mineral Resources, rel. 1-1583; chapter 1, B.2. Resource Management Planning Tier; 43 CFR 10.5-3(a); Onshore Order No.1, III.G.5; 43 CFR 3162.5-1(a)) and these longstanding Bureau practices remain unchanged.

It is Bureau policy that a decision to not implement oil and gas or geothermal leasing decisions, as contained in current RMPs/MFPs must be made by the State Director with appropriate input from the affected Field Manager. The State Director must provide a letter to those who submitted the expression of interest for the tract, stating the reasons for not offering the parcel(s), the factors considered in reaching that decision, and an approximate date when analysis of new information bearing on the leasing decision is anticipated to be complete and when a decision to lease (or amend the plan) is expected to be made. This would apply to tracts deferred for more than one lease sale. That notification should be provided as soon as practicable and shall be placed in the permanent file created for the lease tracts at issue.

The Assistant Director (WO-300) shall be notified in writing when a State Director decides to postpone a tract nominated for oil and gas leasing, that would delay offering the tract for a period of four quarterly sales or one year. You should provide the information in the following table. The first report is due April 1, 2004. One comprehensive table per state should be used regardless of the number of tracts and dates of delayed sales. This table is to be sent to the Assistant Director (WO-300) whenever there is a new tract added or when the sale is eventually held. Please note that a detailed justification must be given in the "Reason" column.

State: XXXXXXXXXXXXXXXXXXXX

Date nomination submitted	Section, Township and Range	Acres	Reason Tract Postponed	Name of Land Use Plan	Proposed Leasing Decision Date	Tract Offered Date
6-12-03	2, T13N; R15W	640	Significant Cultural Resources—full justification must be detailed here.	Oil Creek	7-10-04	
9-1-03	6, T 2N;R26E	80	Sage grouse Study area—full	Hen Draw	10-1-04	

			justification must be detailed here.		
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There may be many administrative reasons for temporarily not offering a particular nominated parcel, but those reasons narrow with time. Where existing NEPA documentation is sufficient to support continued implementation<sup>1</sup>, a decision not to lease that extends beyond the one year could be considered a change in land use allocation outside of the planning process that effectively removes large parcels of land from mineral development without following appropriate planning procedures. The Bureau planning regulations state very clearly in 43 CFR 1610.5-3(a), "*All future resource management authorizations . . . shall conform to the approved plan.*" Proposals for actions that do not conform to approved land use plans should be considered through the land use plan amendment process, 43 CFR 1610.5-5. If a manager finds that a tract is more appropriately withheld from leasing in an area currently open to leasing under the RMP for periods longer than one year, the manager should strongly consider a plan amendment, with an appropriate range of alternatives, NEPA analysis and public participation.

1 - Documentation would be usually considered sufficient to support leasing when the State Director has determined there is adequate analysis of the impacts of the action detailed enough to identify types of stipulations to be attached to leases so as to retain BLM's full authority to protect or mitigate effects on other resources.

**Time frame:** This IM is in effect upon issuance.

**Budget Impact:** This IM may affect the planning schedules and scope of individual efforts and therefore may have budget implications for those projects.

**Manual/Handbook Sections Affected:** None.

**Coordination:** Preparation of this IM was coordinated with WO-170, WO-210, WO-300, WO-310, WO-320, and the Interior's Office of the Solicitor prepared the attachment included below.

**Contact:** Kermit Witherbee, WO-310, (202) 452-0319 or Tom Hare (202) 452-5182.

Signed by:  
Jim M. Hughes  
Acting Director

Authenticated by:  
Barbara J. Brown  
Policy & Records Group, WO-560

#### 1 Attachment

1 - Implementation Actions During Land Use Planning (4 pp)

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240

August 13, 2004

In Reply Refer To:  
3100 (310) P  
Ref. IM No. 2004-110

EMS TRANSMISSION 08/16/2004  
Instruction Memorandum No. 2004-110 Change 1  
Expires: 09/30/2005

To: All WO and FO Officials  
From: Director  
Subject: Fluid Mineral Leasing and Related Planning and National Environmental Policy Act (NEPA) Processes and Best Management Practices

**Program Areas:** Fluid Minerals and Related Planning.

**Purpose:** This Instruction Memorandum (IM) provides additional clarification of guidance provided in WO IM 2004-110 entitled "*Fluid Mineral Leasing and Related Planning and National Environmental Policy Act (NEPA) Processes.*" issued February 23, 2004, in regard to existing land use allocation decisions and the processing of oil, gas and geothermal leasing decisions. That IM provides direction on what constitutes appropriate deferral of leasing decisions in regard to the Bureau's ongoing land use planning process and further application of Best Management Practices (BMPs).

**Background:** Previously, some of the State Offices (SOs) and Field Offices (FOs) had identified the need for policy direction in regard to implementing existing land use plan decisions, especially while preparing land use plan amendments or revisions. The Washington Office (WO) issued IM 2004-110 to address those concerns. That IM also included a June 7, 2002 Memorandum from the Office of the Solicitor providing legal analysis and background for implementation actions during the land use planning process.

The State Directors have discretion to temporarily defer leasing on specific tracts of land based on information under review during planning (see WO IM 2004-110). This IM provides additional guidance when the Bureau has developed alternatives and has released a draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) for public review. This IM also re-emphasizes the importance of considering temporary deferral of oil, gas and geothermal leasing in those areas with active land use planning activities.

In addition, the WO issued IM 2004-194 entitled "*Integration of Best Management Practices into Application for Permit to Drill Approvals and Associated Rights-of-Way.*" on June 6, 2004, establishing the Bureau's policy on the use of BMPs for onshore oil, gas and geothermal operations. Using BMPs either as stipulations or conditions of approval can significantly mitigate impacts from oil, gas or geothermal development when they are appropriately applied to new or existing leases consistent with lease rights granted.

**Policy/Action:** All SOs are to consider temporarily deferring oil, gas and geothermal leasing on federal lands with land use plans that are currently being revised or amended. A decision temporarily to defer could include lands that are designated in the preferred alternative of draft or final RMP revisions or amendments as: 1) lands closed to leasing; 2) lands open to leasing under no surface occupancy; 3) lands open to leasing under seasonal or other constraints with an emphasis on wildlife concerns; or 4) other potentially restricted lands. Deferral, therefore, would not apply to areas designated in the alternative as open to leasing under the terms and conditions of the standard lease form.

In addition, the appropriate offices shall also evaluate the application of BMPs (see WO IM 2004-194). Often, BMPs, applied either as stipulations or conditions of approval, are more effective in mitigating impacts to wildlife resources than stipulations such as timing limitations or seasonal closures.

For existing leases, BMPs can usually be applied as conditions of approval at the permitting stage to accomplish the management goals of newly revised or amended RMPs. Section 6 of the standard federal oil and gas lease (Form 3100-11) provides the Bureau with authority to require reasonable measures to minimize adverse impacts to land, air, and water, to cultural, biological, visual, and other resources and to other uses or users. These measures may include, but are not limited to siting, design, timing, and reclamation of oil and gas facilities. Therefore, for new surface disturbing activities, FOs are directed to evaluate during the NEPA process the application of BMPs to provide the necessary level of protection for critical resources on existing leases consistent with

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This policy is intended to provide flexibility and to re-emphasize the discretionary authority of the State Director to temporarily defer leasing of specific tracts of land when there are legitimate BLM-recognized resource concerns. It does not provide for an area-wide moratorium on all leasing of oil, gas or geothermal resources during the planning process; such a policy would be inconsistent with Bureau planning requirements and not required by law.

**Timeframes:** This IM is effective on the date of issuance.

**Budget Impacts:** None.

**Statement of Adverse Energy Impact:** This policy may delay, but will not, in and of itself, reduce the production of energy. Any permanent effects would be the result of the decisions made in land use planning.

**Manual and Handbook Sections Affected:** None.

**Coordination:** Preparation of this IM was coordinated with WO-210, WO-310, WO-300 and the Department of the Interior's Office of the Solicitor.

**Contact:** Tim Spisak (WO-310) at 202-452-5061 or Tom Hare (WO310) at (202) 452-5182.

Signed by:  
Francis R. Cherry, Jr.  
Acting Director

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