3160-10 - SUSPENSION OF OPERATIONS AND/OR PRODUCTION

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3160-10 - SUSPENSION OF OPERATIONS AND/OR PRODUCTION

.01 Purpose. This Manual Section provides guidelines and procedures for reviewing, processing, approving, and terminating suspensions of operations and/or production (SOP) on onshore Federal (except the National Petroleum Reserve in Alaska) and Indian oil and gas leases, including those within an approved or prescribed plan for unit or cooperative development and operation.

.02 Objectives. The objective of this program is to provide a mechanism for relieving lessees from lease operating and producing requirements under situations beyond the lessee's control.

.03 Authority.

A. 43 CFR 3103.4-2, Suspension of operations and production.

B. 43 CFR 3107.2-3, Nonproduction from leases capable of production.

C. 43 CFR 3165.1, Relief from operating and producing requirements.

D. 25 CFR 225.32, Duration of leases.

E. 25 CFR 225.54, Suspension of production; Remedial workover/shut-in.

.04 Responsibility.

A. State Director. The State Director (SD) is responsible for:

1. Reviewing and approving SOP's for Federal leases.

2. Reviewing SOP's for Indian leases when requested by Bureau of Indian Affairs (BIA)

3. Notifying Minerals Management Service (MMS) for suspensions involving a suspension of rental/minimum royalty.

4. Assuring that SOP's for Federal leases are timely terminated.

5. Advising BIA when diligent remedial workover operations commence and cease on SOP's for Indian leases.

B. District Manager. If delegated, the District Manager (DM) may be responsible for all or any of the responsibilities of the SD. Redelegation of the above responsibilities to the District Manager is greatly encouraged.

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.05 References.

A. Onshore Oil and Gas Order No. 1, Approval of Operations on Onshore Federal and Indian Oil and Gas Leases (Circular No. 2538).

B. BLM Manual Handbook H-3103-1, Fees, Rentals, and Royalty.

.06 Policy. Under the Mineral Leasing Act (MLA), holders of Federal oil and gas leases have the full primary term to develop the resources subject to their leases. Suspensions, when deemed necessary by the appropriate authority, will be given only in the interest of conservation of natural resources (see Appendix 1) or in a force majeure case, and when the lessee has diligently pursued lease development and has timely filed an application for suspension.

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.1 Background. No suspension of the operating and producing requirements of a lease shall be granted except where the authorized officer directs or consents to a suspension in the interest of conservation of natural resources. No suspension of the operating or producing requirements of a lease shall be granted except where the authorized officer directs or consents to a suspension in a force majeure situation that may include actions taken in the interests of conservation of natural resources.

.11 Tolling of the Lease Term. Section 39 of the MLA provides for a suspension of operation and production, under which the term of the lease shall be extended by adding any such suspension period thereto. Likewise, Section 17(f) of the MLA provides in part that no lease shall be deemed to expire during a suspension of either operations or production. Although there was an uncertainty as to whether suspension under section 17(f) of the Act also tolls (stops) the running of the lease term, the Solicitor has advised that this was indeed the Congressional intent (Appendix 2). Therefore, for leases not in their extended term due to production, a suspension tolls the running of the lease term and adds the period of suspension to the term of the lease.

.12 Waiver of Rental or Minimum Royalty. Section 39 of the MLA provides a suspension of rental or minimum royalty payment requirements during the period of any suspension of operation and production. However, section 17(f) provides no similar suspension of payments during the period of any suspension of operations or of production. The Solicitor has advised that the lessee must continue these payments during the period of suspension under section 17(f), unless the lessee separately qualifies for a waiver, reduction, or suspension of rental or minimum royalty under the first sentence of section 39.

.2 Guidelines.

.21 Suspension--Federal Leases.

A. Types of Suspension. The interpretation of the requirements related to suspensions are largely based on the Solicitor's Opinion in Appendix 2, which should be studied in its entirety. Note that the interpretation contained in that Appendix should be applied only to suspensions that are directed or approved after the date of the memorandum.

1. Suspension of Operations and Production. Suspension of operations and production under Section 39 of the MLA suspends both operations and production activities. Therefore, the lessee is denied all beneficial use of the lease. Such suspension may be granted, even though the lease does not contain a producible well. The suspension may be granted by the authorized officer only in the interest of conservation of natural resources. Suspension of operations and production tolls the running of the term of a lease and adds the period of suspension to the term of the lease. Any payment of rental or of minimum royalty also shall be suspended during the period of suspension of operations and production. Activities designed to benefit the lease (operations or production) may not be commenced or continued on the lease while the lease is so suspended. This requirement applies to Federal oil and gas leases regardless of the surface ownership. However, casual uses that do not require a permit under the lease (e.g., survey and staking) or activities that may be conducted without the need for a lease (e.g., seismic exploration) may be conducted during the period of suspension. Furthermore, there is the obvious exception for operations that consist strictly of routine maintenance in order to prevent damage to wells but shut in as a result of the suspension. Such operations do not constitute beneficial use of the lease. When all operations and production are suspended, the commencement of operations (as defined in the Glossary) or production shall be regarded as terminating the suspension and the suspension of the rental and minimum royalty payment. However, if necessary, the lessee may then apply for a suspension of operations or production, whichever would be appropriate.

2. Suspension of Operations. Suspension of operations under Section 17(f) of the MLA suspends the operational obligation of the lessee. Suspension of operations may be directed or consented to by the authorized officer in cases where a lessee is prevented from operating on the lease, despite the exercise of care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee. A suspension of operations tolls the running of the term of the lease and adds the period of suspension to the term of the lease, but does not suspend the payment of rental or minimum royalty.

3. Suspension of Production. Suspension of production under Section 17(f) of the MLA suspends the production obligation of the lessee. Suspension of production may be directed or consented to by the authorized officer in cases where a lessee is prevented from producing from the lease, despite the exercise of due care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee. A lessee may conduct operations during a suspension of production, but the lease must be producible before a suspension of production may be granted. No lease shall be deemed to expire during the suspension of production. However, it does not suspend the payment of rental or minimum royalty. Suspension of production is unnecessary in most cases, since the ability of a lease to produce in paying quantities, regardless of whether or not it is actually producing, will generally prevent the lease from expiring. An exception to this is that 43 CFR 3107.2-3 requires production from a lease containing a well(s) that is specifically bound by a written order to produce; unless, of course, a suspension of production is granted. It may be appropriate under certain extraordinary circumstances as determined by Washington Headquarters, such as the sharply declining oil prices in early 1986, to grant a suspension of production to a producible lease (the lease may be either in its primary or extended term) in order to avoid the premature abandonment of the wells and resulting loss of recoverable reserves. As nationwide unique situations develop, Headquarters will issue appropriate guidance. If part of the lease is subject to drainage, the protective well on the lease must continue to produce in order to protect the Federal or Indian interests. In that case, granting of a suspension of production for the lease would not be appropriate.

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B. Circumstances That Normally Warrant Suspensions. The following examples illustrate circumstances under which granting of suspensions may be appropriate. Each case must be considered on its merit.

1.

Suspension of Operations and Production	Suspension of Operations
BLM orders a suspension of all operational activities on a lease to protect natural resources (e.g., delay oil and gas drilling to allow extraction of coal).	Action of other Federal or State agencies that prevent commencement or continuation of operations.
Operational proposal was denied by BLM for reasons of conservation of natural resources, but the likelihood of denial was not specified as a lease term or stipulation.	Extraordinary weather conditions, that is, conditions that are not reasonably expected, or that are more severe than reasonably expected, for the location and time of year, or other catastrophe that prevents roads construction or drilling.
BLM or other surface managing agency (SMA) initiates environmental studies (Environmental Assessment/Environmental Impact Statement/Resource Management Plan) that prohibit beneficial use of the lease(s).	Inability to conduct cultural resources or threatened and endangered species survey due to extraordinary weather conditions.
BLM or other SMA needs more time to arrive at the decision on the proposal.	Litigation over title to lease or surface access being diligently pursued by lessee.
Environmental litigation related to issuance of leases or BLM lease management related issues, and meanwhile no operational proposal can be approved.	Operational proposal was denied by BLM for reasons other than for conservation of natural resources, but the likelihood of denial was not specified as a lease term or stipulation.

2. Determining the Type of Suspension. It is not always clear whether a particular application should be considered for suspension of operations and production or for suspension of operations. The major distinction between the two suspensions should be based on judicious determination as to whether or not the hardship is generated by the action of, or need by, the BLM for conservation of natural resources, rather than situations that are simply beyond the control of the lessee/operator. No suspension of operations and production may be granted for the latter situation. As actions taken in the conservation of natural resources are a type of force majeure situation, suspension of operation may be granted for any of the circumstances described under the above column for Suspension of Operations and Production.

C. Circumstances That Normally do not Warrant Suspensions. Examples of cases where a suspension should not normally be granted are: (1) Applications for Permit to Drill (APD's) submitted incomplete or untimely (less than 30 days before lease expiration); (2) spacing exceptions untimely applied for; (3) the lessee is merged or taken over; (4) the lessee files bankruptcy; (5) the lessee is involved in farm in/out agreements; (6) the lessee fails to obtain a rig when proper rigs are available in the open market; (7) proposed operations are not on the lease and unconnected to the suspension proposal by any approvable Federal agreement; (8) restrictions on the proposed activity were clearly specified in the lease term or stipulation; and (9) weather conditions, although severe, are reasonably expected for the location and time of year.

.22 Suspension--Indian Leases. According to 25 CFR 225.54, the Secretary (defined in this case as the BIA Superintendent) may authorize suspension of producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner, provided that such remedial operations are conducted with reasonable diligence during the period of nonproduction. Any such suspension shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract. An application for permission to suspend producing requirements for economic or marketing reasons on an oil and/or gas well capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of production.

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.3 Procedures.

.31 Federal Leases.

A. Filing of Applications. Suspensions apply to the entire leasehold and not just to any portion thereof. The suspension application must be preceded by a request from the operator to conduct leasehold operations.

1. Parties Executing the Application. The application for suspension must be executed by all lessees of record or, in the case of an approved Federal unit, by the unit operator on behalf of committed tracts or by all lessees of such tracts. Suspensions executed only by the holders of operating rights or by a designated operator of a single lease or communitization agreement are not valid. A lessee may authorize another party to act on the lessee's behalf by means of a power of attorney.

2. Other Requirements. All suspension applications must be filed in triplicate with the authorized officer prior to the lease expiration date. An oral request for a suspension made prior to the lease expiration date and followed by a written request after the lease expiration date does not meet the requirements of the regulations.

3. Documentation. The applicant requesting the suspension must submit thorough documentation of reasons for requesting a suspension. This should include evidence that activity has been attempted on the lease (such as filing a Notice of Staking or an APD) and the activity has been stopped by actions beyond the operator's control.

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B. Processing of Applications. Upon receipt of a suspension application, the authorized officer must review the application and decide whether to approve or disapprove the application.

1. Background Information. To facilitate the review, the following should be compiled and retained in the case file: Land description; expiration date of lease; present lessee(s); and any special lease stipulations. In cases where the reason for filing for a suspension on a lease applies to other leases not included in the suspension application (e.g., other leases in the same unit or wilderness study area), the information should be recorded so that suspension applications for the other leases may be speedily considered when applications are received.

2. Late Filing Application. A suspension application must be denied if it is received after the lease expiration date. A suspension application received prior to the lease expiration date but related to an APD that was filed less than 30 days prior to the lease expiration date should normally be denied unless: (1) Unusual circumstances are involved; (2) the authorized officer was able to process the APD in a shorter time; or (3) necessary environmental reviews precluded completing processing earlier. Examples of such denial letters are shown as Illustrations 1 and 2.

3. Approval/Disapproval. For those applications timely filed, the authorized officer reviews and evaluates the documented reasons for the request and the background information. The authorized officer should discuss the request with the appropriate surface managing agency if the requested suspension is on land managed by that agency. If the reasons for the request are acceptable and justify a suspension, the application will be approved. Illustration 3 is an example of a letter to the applicant granting a suspension. Copies of the approval letter must be sent to the State Office (Adjudication Unit), Minerals Management Service, within 5 working days and the local office of the surface managing agency where applicable. If a disapproval is concluded, the letter of notification of disapproval must inform the applicant of the right to request a technical and procedural review and appeal in accordance with 43 CFR 3165.3 and 3165.4, respectively.

C. Effective Date and Termination of Suspensions.

1. Effective Date. Suspensions are normally effective the first day of the month in which the application is filed. However, suspensions may become effective on any day specified by the authorized officer.

2. Termination. The authorized officer should grant the suspension for an indefinite term, rather than for a definite term, because it is difficult to predict the period of delay. The suspension terminates automatically:

a. If operations (see Glossary of Terms) or production is resumed.

b. On the first day of the month in which the lessee is notified in writing of a decision not to approve the APD.

c. On the first of the month in which actual operations are commenced after the APD has been approved. If the lessee has not timely commenced operations within the time specified as a condition of approval (usually 30 days after all necessary approvals of APD have been granted), the suspension terminates on the first of the month in which the time specified for commencement of operations terminates.

3. Monitoring the Suspension. The authorized officer shall monitor the suspension on a regular basis to determine if conditions for granting the suspension are extant, and should terminate the suspension when it is deemed no longer necessary. When the authorized officer terminates such a suspension, the effective date should normally be the first day of the second month following the month in which the termination notice is dated. Illustration 4 is an example of a letter terminating a suspension. Copies of the termination letter must be sent to the State Office (Adjudication Unit), Minerals Management Service, within 5 working days and to the local office of the surface managing agency, where applicable.

4. Rental and Minimum Royalty. Rental and minimum royalty payments shall be suspended during any period of suspension of operations and production directed or assented to by the authorized officer beginning with the first day of the lease month on which the suspension of operations and production becomes effective; or if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day the termination of the suspension of operations and production is effective. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease.

D. Coordination. The authorized officer is responsible for promptly notifying the State Office Adjudication staff in accordance with Handbook H-3103-1 for appropriate lease case file processing.

.32 Indian Leases. If requested by BIA, the authorized officer will timely review the technical aspects of a suspension involving Indian leases and provide BLM evaluation or recommendation to BIA.

.4 Specific Situations.

.41 Secretary's Potash Area (Southeastern New Mexico). The concurrent development by the oil and gas and potash industries in the area designated as the Secretary's Potash Area is subject to specific Secretarial instructions. Several Secretarial Orders have been issued, and Departmental Decision A-28449 granted a suspension in the interest of potash conservation on an oil and gas lease in the Potash Area, which had no producing wells.

.42 Other Minerals. Situations similar to the Potash Area involving other minerals are likely to arise and require the establishment of development priorities or first development rights. (Normally, the first developer has priority; however, because of various lease stipulations and other factors, this is not always true.) When situations of this type result in denial of an oil and gas lessee's right to develop a lease, a suspension of operations and production is justified. Applications should be processed as described in this Manual Section.

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Glossary of Terms

-F-

force majeure: an unexpected and disruptive event operating to excuse a lessee from a lease contract, such as these caused by strikes; acts of God; Federal, State or municipal laws or agencies; unavoidable accidents; uncontrollable delays in transportation; inability to obtain necessary materials or equipment in the open market despite diligent effort; or other matters beyond the reasonable control of the lessee.

-I-

interest of conservation: the protection of all natural resources, subsurface and surface. As used in this Manual Section, the term includes the preparation of environmental studies made to comply with the National Environmental Policy Act (42 U.S.C. 4321-4347). An action taken in the interest of conservation is also a type of force majeure situation.

-O-

operations: all beneficial use of the lease, including construction of access roads on the leased land, site preparation, well repair, drilling or similar activity.

-P-

production in paying quantities: lease production of oil and/or gas of sufficient value to exceed direct operation costs and the cost of lease rentals or minimum royalty.

-S-

surface management agency: a Federal agency, other than BLM, having jurisdiction and responsibility for protecting and managing the surface resources and uses of certain public land that has been leased for oil and gas development.

suspension: a temporary abrogation of a lessee's obligation to perform specific functions stipulated in Federal oil and gas lease terms, regulations, etc., due to the fact that a suspension stops the running of the term of the lease.

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Example of a Letter Denying a Suspension
Because of Expiration of Lease Term

DECISION

(Date)

_____
_____
_____
_____

Gentlemen:

Your application for suspension of operations and production on lease _____ was received _____.

Our records indicate that your application for a permit to drill on this lease was submitted to the _____ Office on _____, _____ days after the lease expiration date of _____.

Since the lease terms automatically expired prior to your submittal of the application for suspension, there is nothing in existence for the Bureau of Land Management to suspend. Therefore, your request for suspension of operations and production is denied.

You may request a technical and procedural review of any instructions, orders, or decisions issued by the Bureau of Land Management as described in 43 CFR 3165.3, or you may appeal pursuant to 43 CFR 3165.4 and 43 CFR 4.400, either directly or following the technical and procedural review. Copies of these regulations are enclosed.

Sincerely yours,

Authorized Officer

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Example of a Letter Denying a Suspension
Because of Untimely Filing of Application

DECISION

(Date)

_____
_____
_____
_____

Gentlemen:

Your application for suspension of operations and production on lease _____ was received _____.

Our records indicate that your application for a permit to drill on this lease was submitted to the _____ Office on _____, _____ days prior to the lease expiration date of _____.

As you have been informed by our Office and Onshore Oil and Gas Order No. 1, "Approval of Operations on Onshore Federal and Indian Oil and Gas Leases," an application for a permit to drill filed less than 30 days prior to the lease expiration date may not allow adequate time for processing. Your drilling application is not considered timely filed. Therefore, your request for suspension of operations and production is denied.

You may request a technical and procedural review of any instructions, orders, or decisions issued by the Bureau of Land Management as described in 43 CFR 3165.3, or you may appeal pursuant to 43 CFR 3165.4 and 43 CFR 4.400, either directly or following the technical and procedural review. Copies of these regulations are enclosed.

Sincerely yours,

Authorized Officer

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Example of a Letter Granting a Suspension

(Date)

_____
_____
_____
_____

Dear _____:

Your letter of _____ on behalf of _____ requests that a suspension of operations and production be granted for _____ of the Federal leases committed to the _____ unit agreement, should environmental considerations prevent the timely commencement of the initial unit well. Said leases are listed in Exhibit A, attached.

The _____ unit agreement was approved and became effective on _____, and the application for a permit to drill the initial unit well was filed on _____. The Forest Service subsequently advised that it would not be able to complete its environmental study and approve the well location before _____. Until the Forest Service has completed its tasks in this regard, the BLM cannot approve the application for a permit to drill the initial unit well.

Therefore, pursuant to the provisions of 43 CFR 3103.4-2, approval of your application for suspension of operations and production on the leases shown in Exhibit A is granted. The suspension is effective _____, the first day of the month in which the application was filed, and shall remain in effect for an indefinite term. The suspension will terminate upon commencement of operations, approval or denial of the application to drill, or when the authorized officer deems the suspension is no longer in the interest of conservation. The approval of this suspension does not suspend the filing requirements of Form 3160-6, "Monthly Report of Operations." In addition, the 5-day reporting requirements in 43 CFR 3162.4-1(c) must be complied with.

Sincerely yours,

Authorized Officer

cc: State Office (Adjudication Unit)
Minerals Management Service
Local office of the surface managing agency, where applicable

NOTE: When only one or a few leases are involved, the lease numbers may be incorporated in the letter rather than be attached.

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Example of a Letter Terminating a Suspension

(Date)

_____
_____
_____
_____

Dear _____:

By letter dated _____, this office approved a suspension of operations and production effective _____ for an indefinite term for Federal leases _____.

This suspension terminated effective _____ due to (state reason, for example, commencement of operations on _____/the approval on _____ of an application for permit to drill/the determination that the suspension is no longer in the interest of conservation).

Sincerely yours,

Authorized Officer

cc: State Office (Adjudication Unit)
Minerals Management Service
Local office of the surface managing agency, where applicable

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INTERIM GUIDANCE

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

JUL 14 1975

Memorandum

To: Director, Geological Survey

From: Assistant Solicitor--Minerals
Division of Energy and Resources

Subject: Suspension of the operating and producing requirements of onshore Federal oil and gas leases for environmental reasons.

You have asked about the authority of the Department to direct or assent to suspensions of operations or production or both while environmental studies are being made. This authority has been exercised in the past, most notably with respect to the suspension of operations and production on July 7, 1971, on 163 Federal oil and gas leases in the Ocala National Forest, Florida. That suspension was extended from time to time through July 22, 1974, for the express purpose of allowing sufficient time for the Department to determine whether additional special terms and conditions should be imposed to prevent damage to the environment within that national forest. Ample authority existed for the action of the Secretary in making that suspension. Section 39 of the Mineral Leasing Act, as amended (30 U.S.C. § 209), states that: "In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this Act, . . . the term of such lease shall be extended by adding any such suspension period thereto." Through the years the Department has interpreted section 39 as authorizing the Secretary to suspend operations and production, or either, in the interest of conservation.

The term "interest of conservation" has probably been interpreted differently through the years. It should be noted that in the first sentence of section 39 the phrase is "conservation of natural resources" and the normal reading of the second sentence which I have quoted above is that the simple term "conservation" as used there refers back to the first sentence and thus means conservation of all natural resources. There is no indication in section 39 that a suspension is to be merely

for the conservation of the resources subject to the lease or even of the resources subject to the Mineral Leasing Act. Instead the normal reading is that it should be for the conservation of all natural resources.

The term "natural resources" is not defined in the Mineral Leasing Act at any point. In Gulf Oil Corporation v. Morton, 493 F.2d 141 (9th Cir. 1974), the Court of Appeals for the Ninth Circuit concluded that "natural resources" as used in the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1331-1343) should be interpreted as meaning all natural resources and not just minerals. As used in that statute, the court stated, it incorporated the definition of "natural resources" in section 2(e) of the Submerged Lands Act (43 U.S.C. § 1301(e)). In the Submerged Lands Act the term is defined to include minerals and marine animal and plant life. Obviously the OCS Act and the Submerged Lands Act have no direct connection with section 39, but I believe that the Gulf case shows the type of definition which a court would give to the term "natural resources". Section 102(1) of the National Environmental Policy Act (NEPA) (42 U.S.C. § 4332(1)) directs that to the fullest extent possible the laws of the United States should be interpreted and administered in accordance with the policies set forth in NEPA. The policies set forth in NEPA require a wise use and protection of the environment and of all the resources of the environment. These policies are said to be to encourage the "productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation". 42 U.S.C. § 4321. The preparation of environmental impact statements comes within the scope of those purposes, and, therefore, section 102(1) of NEPA provides a positive direction that section 39 is to be interpreted in a manner that is most consistent with protection of the environment and the preparation of environmental studies. It is possible to interpret "interest of conservation" as including the preparation of environmental studies, and, since this interpretation is possible under the requirements of NEPA, it is an interpretation which should now be adopted. Accordingly, it seems clear that the Secretary of the Interior is authorized to suspend operations and production for the preparation of environmental impact studies.

If the Secretary has this authority, the next question is inevitably whether he is under a duty to exercise this authority. It seems evident that it is the intention of the Congress that, where it is in the interest of conservation that operations should be prevented for a time, the lessee should not be deprived of any of the full term of his lease. When section 39 was added to the Mineral Leasing Act in 1933, the long delays for environmental studies which we now experience were

not expected but, nevertheless, Congress provided the means by which the Secretary could see to it that, despite the long delays inevitable in the compliance with NEPA procedures, lessees would not lose any of the time to which they are entitled. Congress has determined that the holder of a noncompetitive oil and gas lease should have a full ten years in which to develop the resources subject to his lease. The Congress has also directed the Secretary to engage in lengthy environmental studies. The only way in which these two purposes of Congress can be effectively reconciled is by authorizing suspension and consequent extension. Accordingly, it is my view that the Department ought in all cases, where the preparation of an environmental impact statement or other environmental studies is required, to suspend operations and thus assure the lessee that he will receive an extension comparable to the period during which operations are prohibited and thus not be deprived of any of the development period which the Congress has granted him.

I recognize that in some circumstances, such as when a lessee has failed to take any action until the last two or three months of his lease term or perhaps even the last week and then requests a suspension when he submits a drilling plan, his equitable rights will not be readily evident. Nevertheless I think it only proper that, where drilling plans are submitted and where approval must be delayed for environmental studies, suspensions and resulting extensions be granted.

Frederick N. Ferguson

Frederick N. Ferguson

Enclosures

INTERIM GUIDANCE

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

BLM.ER.0336

May 31, 1985

Memorandum

To: Director, Bureau of Land Management

From: Frank K. Richardson, Solicitor

Subject: Oil and gas lease suspensions

You have requested an interpretation of the lease suspension provisions set out in sections 39 and 17(f) of the Mineral Leasing Act of 1920 (Act), 30 U.S.C. §§ 209 and 226(f). You have also asked what effect, if any, our interpretation may have on leases which were suspended in a manner contrary to this memorandum, particularly cases where lease activity may have been allowed during the period of suspension.

SUMMARY

We conclude as follows:

(1) A suspension of operations and production under section 39, which by law extends the term of the lease for the period of suspension, must be a suspension of both operations and production such that the lessee has been denied beneficial use of the lease by the Department in the interest of conservation. Lease activity (operations or production) is beneficial use and may not be allowed to commence or continue while the lease is suspended.

(2) Suspensions of operations or of production under section 17(f) toll the running of the lease term but do not suspend the payment of rental or minimum royalty.

(3) Previous suspensions that were granted, but where the Department allowed lease activity during the period of suspension, were made in the absence of clear legal guidance to the contrary. One was based on the surname of the Solicitor. In such situations, later advice that the action taken is

not in accordance with a proper interpretation of the statute should only be given prospective application. However, in the future, suspensions should only be granted or directed in a manner consistent with the law as interpreted in this memorandum.

BACKGROUND

The Act prescribes that oil and gas leases be issued for a primary term (5 years competitive, 10 years noncompetitive) and for so long thereafter as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e). The Act further provides that a lease will not expire for lack of actual production if it contains a well capable of producing oil or gas in paying quantities. 30 U.S.C. § 226(f). In addition, the Act allows various extensions beyond the primary term for specific reasons and specific periods, such as two years if diligent drilling operations are being conducted at the end of the primary term. 30 U.S.C. § 226(e); also 30 U.S.C. §§ 187a, 226(g), 226(j). Thus, a lessee seeking to preserve a lease in the absence of one of the statutory extensions referred to in the previous sentence must be producing in paying quantities from the lease at the end of a primary or extended term, or have a well capable of production in paying quantities on the lease at the end of the primary or extended term.

Section 17(j) of the Act, 30 U.S.C. § 226(j), allows leases to be combined under unit, cooperative or communitization agreements. Leases committed to these agreements are subject to the same requirements as regular leases, that is, the leases expire at the end of the primary term unless they qualify for a statutory extension or unless actual production or a well capable of production in paying quantities exists at the end of the primary or extended term. The difference is that production, or a well capable of production, under the terms of the unit, cooperative or communitization agreement satisfies the requirements for all committed leases regardless on which lease (or non-federal property) the well is located. 30 U.S.C. § 226(j).

The Act provides two exceptions to the prescribed lease term -- section 17(f), 30 U.S.C. § 226(f), and section 39, 30 U.S.C. § 209. Section 17(f) provides in part: "No lease shall be deemed to expire during a suspension of either operations or production." Section 39 of the Act provides in part:

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> In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this Act, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operation and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provisions of this section shall apply to all oil and gas leases issued under this Act, including those within an approved or prescribed plan for unit or cooperative development and operation.

In some instances, an applicant for suspension will seek to construct roads on the lease, prepare a well site, or conduct well repair operations during the suspension. This would give the lessee more time to initiate actual drilling or to complete a well before the lease would otherwise expire after the suspension is lifted. Over the past several years, the propriety of allowing such lease activity has been discussed with this office but we have issued no written opinion. Two such cases have generated some controversy.

True Oil Company (True), operator of the Deadman Unit, and Arco Exploration Company (Arco), operator of the Rock Creek Unit, sought suspensions of operations and production under section 39 for the leases committed to their respective units. The applicants further requested that they be authorized to continue certain repair and drilling activities during the period of the suspensions. A detailed chronology of the facts of each case has been prepared by the Bureau of Land Management (BLM); rather than repeat all the facts, a brief summary is set out below.

Each operator had encountered severe difficulty in drilling a unit well and had spent considerable time attempting to overcome down-hole problems encountered during drilling operations. Both had expended large amounts of money in their drilling activity. Both stated as a basis for the suspension that they wished to preserve the affected leases for the additional period of time necessary to complete the unit wells then being drilled. Both operators had very little time remaining in the extended terms of leases critical to the unit within which to complete wells capable of production in paying quantities. Both, therefore, sought permission to correct the down-hole problems and to finish drilling during the period of suspension. In both cases the suspensions were granted along with authorization to continue lease activity.

True's application was the first received. After several months of discussion with True and within the Department, the BLM prepared a memorandum recommending that the application be granted and lease activity be allowed which was surnamed by then Solicitor Coldiron.1/ Subsequently, when BLM processed

Arco's application, it did not seek review by the Office of the Solicitor but merely granted the suspension, allowing lease activity to continue on the basis of the precedent set in the True suspension.

DISCUSSION

1. Lease Activity During Suspension of Operations and Production

As described above, the Act specifically establishes the primary term of an oil and gas lease and provides for the extension of the term under specific circumstances. Although section 39 refers to extending the term of a lease, it must be remembered that this "extension" differs from other extensions in two important respects. It is designed to correspond to, or make up for, the suspension period, in recognition that: (1) no time elapsed from the lease term during the suspension; and (2) no rental or minimum royalty was due during the suspension of all operations and production. To avoid confusion and to clarify the difference in types of "extensions", we will refer to section 39 extensions as "tolling the running of the lease term."

1/ True filed a request for a retroactive suspension to give it lease extensions for the period of time spent in recovering drill pipe lost in the hole. BLM denied the request in October 1982. In November 1982, True reinstated its request. The Office of the Solicitor advised BLM that a retroactive suspension might be permissible: if True had been denied beneficial use of its lease, it might be possible to extend the lease term for the period of time that beneficial use was previously denied. This advice was consistent with prior Departmental decisions. E.g., Jones-O'Brien, Inc., 85 I.D. 89 (1978). However, no conclusion concerning the propriety or the effect of the well repair and drilling operations during the proposed period of suspension was communicated to BLM prior to the surname by Solicitor Coldiron on the BLM recommendation.

Prior to the enactment of section 39 in the Act of February 9, 1933, 47 Stat. 798, the Secretary could use his general supervisory authority over the public lands to order the suspension of operations and production, but he lacked the authority to toll the running of a lease term. Lessees owning suspended leases, although they could not produce from or otherwise use their leases, were forced to continue rental payments. E.g., Maurice M. Armstrong, 49 L.D. 445 (1923); Ralph A. Shugart, 51 L.D. 274 (1925). Congress recognized this situation as one where the lessee, during the period of suspension, had "but a paper title the legal use of which is suspended." S. Rep. No. 812, 72d Cong., 1st Sess. 3 (1932). Both the House and Senate reports relied upon this inequity--denial of beneficial use to the lessee because no operations or production were allowed--to provide a justification for tolling the running of the term of the lease and suspending rentals.2/ S. Rep. No. 812, supra at 3; H.R. Rep. No. 1737, 72d Cong., 1st Sess. 3 (1932). In 1935, Congress changed the term of oil and gas leases from a fixed period with renewal, under which production was not necessary to continue a lease beyond its initial term, to a fixed period and "for so long thereafter as oil or gas is produced in paying quantities." Thus, after 1935, a suspension which did not toll the lease term had the added adverse consequence of potential lease expiration.

Congress remedied the inequity by giving the Secretary the authority to toll the running of the term of a lease accompanied by a suspension of rental for the period of time that he suspended operations and production, although it phrased the authority as a directive to extend the term of the lease by the period of suspension. The extension would cover the period that the lessee was denied beneficial use of its lease by the Department in the interest of conservation. A lessee who is allowed to continue operations during a "suspension" is not being

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2/Suspension of minumum royalty was added in 1946 when annual payment of minimum royalty (one dollar per acre) was added to section 17 of the Act. Act of August 8, 1946, 49 Stat. 676.

denied beneficial use of its lease by the Department, even though no rental or minimum royalty would be due, the lease term would be tolled, and the lessee would be given an extension of the lease. Although the Secretary has the authority to issue regulations and to do all things necessary to carry out the purposes of the Act, 30 U.S.C. § 189, this general authority has never been construed to allow alteration of specific statutory requirements. Solicitor's Opinion M-36779 (Supp.), 92 I.D. ___ (1985)(signed August 13, 1984). Congress has provided specific primary terms and has allowed extensions of those terms for specified reasons. During these periods, the lessee has the right of beneficial use consistent with the terms and conditions of the lease. Section 39 cannot be used to expand the actual period beneficial use granted a lessee beyond that prescribed by Congress, no matter how justified such an expansion appears in a given case. Section 39 can only serve to postpone the period of beneficial use in order to preserve the length of this use specified by the Act.

In behalf of its request for suspension, True submitted to the Department an argument which relied in part on American Resources Management Corp., 40 IBLA 195 (1979),[3/] to support its request for a force majeure extension of the leases under the provisions of section 39 and the unit agreement. In American Resources, the unit operator had been unable to complete a well capable of production in paying quantities despite conducting well operations up to the date of lease expiration. The operator subsequently requested suspensions under the unavoidable delay authority set out in section 25 of the standard unit agreement. 43 C.F.R. 3186.1. In discussing this argument, the Board of Land Appeals misleadingly refers to the regulations implementing section 39 of the Act and to the Jones-O'Brien, Inc., 85 I.D. 89 (1978), decision which interprets section 39 of the Act. Although the Board rejected the operator's argument because the suspension request was not filed prior to lease expiration, these references leave the implication that had the request been timely filed, the nonproducing leases could have been suspended under section 25 of the unit agreement, the terms of the leases could have been extended past the expiration date by the period of suspension, and well operations could have continued during the period of suspension.

3/The suit for judicial review of this administrative decision was remanded to the Board of Land Appeals by stipulation of the parties in American Resources Management Corp. v. U.S. Department of the Interior, Civil No. 77-0362 (D. Utah April 28, 1982). On remand, it is docketed as IBLA 82-797. A hearing has been held and the Administrative Law Judge has submitted a recommended decision to the Board. Neither the recommended decision nor the exceptions filed by appellant raise the issue discussed above.

This implication is incorrect. A unit agreement requires, among other things, that wells be drilled at specific time intervals until discovery and mandates contraction of the unit to participating areas five years after the effective date of the initial participating area "unless diligent drilling operations are in progress" on lands not then entitled to be in a participating area. Section 25 of the unit agreement allows suspension of all "obligations under the agreement requiring the unit operator to commence or to continue drilling or to operate or to produce unitized substances" (emphasis added) when the unit operator is prevented from doing so for reasons beyond his control, that is, for unavoidable delay. However, neither section 25 nor other parts of the unit agreement alter the underlying lease term that will expire if the operator is not diligently drilling at the end of the primary term, or has not completed a well capable of production in paying quantities prior to expiration of leases committed to the unit. In fact, the unitization provisions of the Act, 30 U.S.C. § 226(j), require a discovery of oil or gas under the terms of the unit agreement prior to lease expiration. Section 25 only relieves the operator from compliance with unit drilling, operating and producing requirements. In the absence of production or of a well capable of production, the operator must still obtain a section 39 suspension, and must comply with the requirements of section 39, to prevent leases from expiring while he is excused from unit requirements. The Board in American Resources partially noted this distinction when it stated that "the Secretary may suspend only in the interests of conservation" under the section 39 regulations, despite the much broader suspension authority for unit drilling, operating and producing requirements in section 25 of the unit agreement. 40 IBLA at 199. Since the Board did not need to address the further question of operations while a lease is under a section 39 suspension, this confusion has resulted.

We conclude that a "suspension of operations and production" under section 39 of the Act means just that--no operations are allowed and no production is allowed. 4/ Section 39 was enacted

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4/ There is the obvious exception of operations necessary to maintain wells capable of production in paying quantities but shut in as a result of the suspension. Such operations do not constitute beneficial use of the lease. To conclude otherwise would be contrary to the statutory purpose of "in the interest of conservation." In addition, activity which may be conducted without the need for a lease, such as seismic exploration, may be conducted during a period of suspension under applicable permit requirements. Similarly, casual use which does not require a permit under the lease, such as survey and staking work, may be conducted during a period of suspension.

to provide extraordinary relief when lessees are denied beneficial use of their leases. No Congressional statement or Departmental precedent recognizes section 39 as granting a lessee relief from lease expiration while at the same time allowing the lessee to conduct operations he should have completed during the primary term or the extensions authorized by the Act. Therefore, if a lease is suspended under section 39 of the Act, the lessee may not conduct activity on the leased lands which would otherwise be beneficial use authorized under the terms and conditions of the lease.

2. Suspensions under section 17(f)

You have also asked us to analyze whether there is any difference between suspensions granted under section 39 and suspensions granted under section 17(f). Because the suspension provision contained in the second sentence of section 17(f) is silent as to the effect on the lease of the suspension (other than to prevent expiration), you specifically ask whether a section 17(f) suspension tolls the lease term and extends the lease for the period of suspension and whether a section 17(f) suspension also suspends rental and minimum royalty. Moreover, the question was asked whether section 17(f) may be used to suspend production on a lease while allowing operations to continue.

Section 17(f) was added to the Act in 1954 principally to provide relief for lessees who have a well capable of production but are not actually producing and to expand the then-existing provision for relief from lease expiration when production ceases but drilling operations are being conducted by allowing 60 days for diligent drilling or reworking to commence to reestablish production. Act of July 29, 1954, 68 Stat. 583; S. Rep. No. 1609, 83d Cong., 2d Sess. 2 (1954). Congress also added the suspension provision: "No lease shall be deemed to expire during a suspension of either operations or production" (emphasis supplied). The language of section 17(f) differs from section 39, in addition to the scope of activity suspended, in three important elements: (1) it does not specifically toll the lease term; (2) it does not specifically suspend rental and minimum royalty payments; and (3) it provides no standard under which to grant suspensions. Compare 30 U.S.C. § 226(f) with 30 U.S.C. § 209. To understand what Congress intended, we turn to the history of section 17(f).

This suspension language, along with a similar suspension of rental payments, was originally added to section 17 by the Act of August 21, 1935, 49 Stat. 676:

> Provided further, That in the event the Secretary of the Interior shall direct or shall assent to the suspension of operations or of production of oil or gas under any such

> lease, any payment of acreage rental as herein provided shall likewise be suspended during the period of suspension of operations or production: . . ..
>
> * * * * *
>
> Provided, That no such lease shall be deemed to expire by reasons of suspension of prospecting, drilling, or production pursuant to any order or consent of the said Secretary: . . ..

The legislative history of the 1935 law provides no explanation for these provisions nor does it explain their relationship to section 39, which had been added two years earlier. Congress deleted both quoted provisions of the 1935 amendment to section 17 in the Act of August 8, 1946, 49 Stat. 676, as part of a consolidation of various relief provisions in section 39. S. Rep. No. 1392, 79th Cong., 2d Sess. 3 (1946).

The committee reports on the 1954 legislation quote with approval the following BLM analysis of the suspension language:

> Under existing law and interpretation by the Department, where operations and production are suspended, that period is added to the term of the lease, but not so if either operations or production is suspended. The proposed change in paragraph 2 of section 17 [now section 17(f)[5/]] would remedy this situation and have the same effect if relief is granted for operations alone, or for production alone, as it now has when relief is granted for suspension of both operations and production.

S. Rep. No. 1609, 83d Cong., 2d Sess. 3 (1954); H.R. Rep. No. 2238, 83d Cong., 2d Sess. 3 (1954).

Congress thus thought that the stay of lease expiration contained in section 17(f) would also toll the running of the lease term as in section 39. If the lease term were not tolled, some suspensions would be meaningless. For example, if operations are suspended and the suspension lasts past the end of the primary or extended term of a lease in the absence of a well capable of production, there would be no time left to complete a well when

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5/ Section 17 was subdivided into its current paragraphs by the Mineral Leasing Act Revision of 1960, 74 Stat. 790. Minor wording changes were made to the first and third sentences of section 17(f) but the second sentence, containing the suspension provision, was not altered.

the suspension is lifted. The lease would expire for lack of production. Congress could not have intended this absurd result when it enacted a relief provision. The committee reports clearly reflect Congressional intent that a section 17(f) suspension tolls the running of the lease term and adds the period of suspension to the term of the lease. You should amend 43 C.F.R. 3103.4-2(e) to be consistent with this opinion.

Nothing in the legislative history of section 17(f) suggests that Congress reconsidered the other relief provision (quoted first above) deleted in 1946 which had suspended rental payments. Thus, a suspension under section 17(f) does not relieve the lessee from paying an annual holding cost, either rental or minimum royalty. However, a lessee whose lease is suspended under section 17(f) may also qualify for suspension, waiver or reduction of rental or minimum royalty if the lessee meets the tests for this relief set out in the first sentence of section 39. (Suspension of operations and production is set out in the third sentence.) In fact, this rental relief provision was added in 1946 as part of the consolidation of relief provisions referred to above, in which the section 17 rental suspension provision was deleted.

The legislative history of section 17(f) is also silent regarding the standards under which suspensions are ordered or approved. The current regulation, 43 C.F.R. 3103.4-2(a), contains no specific standards for granting section 17(f) suspensions other than the conservation standard set out for section 39 suspensions.6/ Under the Secretary's general authority to carry out the purposes of the Act, 30 U.S.C. § 189, you are free to adopt the section 39 standard or another appropriate standard for section 17(f). Whatever standard you choose should be adopted through rulemaking. 30 U.S.C. § 189.

6/In 1959, the Acting Solicitor construed this regulation as applying the section 39 standard to section 17(f) suspensions. Memorandum from Solicitor to Director, U.S. Geological Survey, Application for suspension of operations under Las Cruces 060585 et al. (March 24, 1959). Although this opinion is cited in Texaco, Inc., 68 I.D. 194, 197 (1961), as stating that section 17(f) suspensions may only be granted in the interest of conservation, the 1959 opinion does not support such a broad interpretation because it only construed the regulation, not the statute.

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A lessee may conduct operations during a suspension of production, but there must be production before such a suspension may be granted. H.K. Riddle, 62 I.D. 81, 87 (1955). In the absence of a well capable of production, a suspension of operations that allowed lease activity would be a contradiction in terms. Regardless of our conclusion on the extent of the relief granted by a section 17(f) suspension, Congress clearly thought it was providing relief in a situation where a lessee was prevented from exercising lease rights.

3. Effect of the suspensions previously granted

Under our above conclusions, True and Arco would not have been allowed to conduct down-hole repair and drilling operations while their leases were suspended. We are advised that other lessees have also been allowed to conduct on-lease activity such as road construction and site preparation while their leases were suspended. While this issue has been discussed with the Office of the Solicitor, no written opinion has been given until now on the propriety of this practice. Moreover, the Solicitor approved the BLM document which recommended that True be allowed to conduct these operations while its leases were suspended. We now address the question whether this opinion affects those earlier actions.

The question of retroactive effect has been addressed several times in the past where the Department has concluded that a prior interpretation or practice was inconsistent with the Act. Several decisions and opinions have concluded that the Secretary has the discretion to apply the new, legally correct interpretation prospectively only: E.g. Solicitor's Opinion M-36945, 89 I.D. 610 (1982) (railroad affiliates may not acquire interests in coal leases--existing interests may remain); Solicitor's Opinion M-36888 (Supp. II), 84 I.D. 171 (1977) (opinion concluding that certain gas production which is not sold is subject to royalty will not be applied to past production); Solicitor's Opinion M-36686, 74 I.D. 285 (1967) (noncompetitive oil and gas lease applications must be rejected if lands are within known geological structure of a producing oil or gas field at the time the lease would be issued regardless of status of lands at the time the application was filed--no action should be taken against leases issued under the discarded interpretation); Franco Western Oil Co. (Supp.), 65 I.D. 427 (1958) (opinion concluding that partial assignments filed for approval during the last month of the five-year extended term cannot effectuate lease segregation and further extension because the lease expires the day before the assignment would become effective should not be applied to assignments approved under the discarded interpretation); see also, Extension of Oil and Gas Lease Pursuant to Acts of December 22, 1943, and September 27, 1944, where Leased Lands are Partly Within Known Producing Structure, 58 I.D. 766 (1944); Rights-of-Way Across Tribal and Allotted Indian Reservation, Montana, 58 I.D. 319 (1943). One element is common to all of these new or revised interpretations--retroactive application of the current rule would cause hardship to those who acquired and relied on contractual rights created under the discarded interpretation.

The issue of retroactive application of a changed interpretation has been addressed in two court decisions involving oil and gas leases. In Safarik v. Udall, 304 F.2d 944 (D.C. Cir.), cert. denied, 371 U.S. 901 (1962), the court affirmed the Department's decision in Franco Western Oil Co. (Supp.), supra, not to apply the corrected interpretation retroactively. The court noted that both interpretations were reasonable and that retroactive application would adversely affect lessees who had relied on the original interpretation. The court then held that the Secretary has much discretion in the administration and management of the public lands, including the authority to apply a changed interpretation prospectively in order to avoid injustice or hardship. In Enfield v. Kleppe, 566 F.2d 1143 (10th Cir. 1977), the court upheld application of the Department's new regulation, which limited lessees to one drilling extension under 30 U.S.C. § 226(e), to leases issued before the change. The court held that the repealed regulation, which allowed more than one drilling extension, was void and unenforceable because it was directly contrary to the plain language of 30 U.S.C. § 226(e). The Enfield court distinguished the Safarik decision because, in Safarik, the first interpretation was not void from the beginning and, more importantly, because "the question whether the Secretary could properly apply a new ruling retroactively was not before the trial court in this case." 566 F.2d at 1143.

Neither case clearly settles the issue of retroactive application of this opinion other than to recognize the Department's authority, in a proper case, to apply a changed interpretation prospectively only. Retroactive application here would affect two categories of lessees: (1) those who have received suspensions, who have been allowed to conduct lease activity during the suspension, and who continue to hold their leases either by production or by further extension such as unit termination; and (2) those existing lessees who may seek a suspension in the future and who also seek to conduct lease activity under the prior practice. In the first category, lessees have utilized their leases as valid contracts and exercised their rights under those contracts, both during the period of suspension and after the suspension was lifted, but prior to announcement of the correct interpretation. In the second category, lessees are seeking to obtain the benefit of an erroneous interpretation after it has been corrected.

In Enfield, the Department applied its new interpretation to a lessee who was seeking a second drilling extension which would have been available under the discarded interpretation. 566 F.2d at 1141. The case did not involve, as the Safarik case did, a lessee who had obtained the benefit of the incorrect interpretation before it was overruled. A similar distinction was used in the retroactive application of Solicitor's Opinion M-36686, supra, to lease applications pending on the date of the opinion but not to leases actually issued under the discarded interpretation. See McDade v. Morton, 353 F. Supp. 1006 (D.D.C.), aff'd without opinion, 494 F.2d 1156 (D.C. Cir. 1973). This distinction should be applied here.

We will discuss the True and Arco leases although the same principles should be applied to other leases in similar circumstances. The Deadman Unit resulted in no producing well, but the leases were preserved and were later extended for two years under section 17(j) by unit termination. Another unit was then formed and new exploratory drilling was commenced within five months. In the Rock Creek Unit, the additional drilling discovered gas in two different formations but of insufficient quality or quantity to warrant completion of the well as a well capable of production for purposes of continuing the leases. Thus, the lessees have utilized their leases as valid contracts and exercised their rights under those contracts. If the suspensions are now considered ineffective, many leases that were in these units would have expired. This would not only cause hardship to True and Arco, but also to other lessees who participated in the units and those who have combined with some of the former Deadman leases in a new unit. In light of the potential hardship to the lessees, the reliance placed by the lessees on the Department's actions in these cases and the lack of guidance from the Office of the Solicitor to BLM on the correct legal interpretation, this opinion should not affect suspensions granted in the past where lease activity was allowed.

CONCLUSION

In the future, a suspension of operations and production should prohibit all beneficial use of the lease. No lessee should be allowed to conduct access road construction on the leased lands, site preparation, well repair, drilling or similar activity while a lease is suspended as to both operations and production or as to operations. Thus, a suspension ends when lease activity, not just actual drilling, commences. Separate suspensions of operations or production may be approved, under appropriate standards, which toll the running of the lease term but which do not suspend rental or minimum royalty payments. Finally, the interpretations contained in this memorandum should only be applied to suspensions which are directed or approved after this date.