



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
Washington, DC 20240  
<http://www.blm.gov>



February 5, 2014

In Reply Refer To:  
2300/3800 (350/320) I

EMS TRANSMISSION 02/07/2014  
Instruction Memorandum No. 2014- 042  
Expires: 09/30/2015

To: All Field Office Officials

From: Director

Subject: Implementation of *Casey E. Folks, Jr., et al*, 183 IBLA 24 (Sept. 20, 2012)  
Regarding Expired FLPMA Withdrawals **DD: 03/31/2014**

**Program Areas:** Lands and Realty, Minerals, Resources, and the National Landscape Conservation System.

**Purpose:** This Instruction Memorandum (IM) establishes policy guidance for implementing and addressing the Interior Board of Land Appeals' (IBLA) decision in *Casey E. Folks, Jr. et al*, 183 IBLA 24 (Sept. 20, 2012) *recon. denied* 183 IBLA 359 (May 2, 2013) (*Casey Folks* decision).

**Policy/Action:** This policy and action pertains to the expiration of term land withdrawals created under the authority of Section 204 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1714, when the Bureau of Land Management (BLM) has not published an opening order in the *Federal Register* pursuant to 43 CFR 2091.6 and when the lands are not covered by an overlapping withdrawal or segregation still in effect. The guidance provided in this IM does not apply to withdrawals made under authorities other than Section 204 of FLPMA; however, the BLM encourages state and field offices to communicate in a timely manner with affected agencies or offices regarding the expiration and management of all withdrawals.

### Mining Claim Recordation

Consistent with the *Casey Folks* decision, lands within an expired FLPMA withdrawal that withdrew lands from the mining laws and that are not subject to an overlapping withdrawal or segregation still in effect, are automatically and immediately open to mineral location and entry upon expiration of the withdrawal. If a mining law adjudicator determines that a mining claim or

site is located on Federal lands included within a FLPMA withdrawal after the expiration date but before the BLM has removed the withdrawal from the Master Title Plat (MTP), and the lands are not covered by an overlapping withdrawal or segregation still in effect, the adjudicator will accept and record mining claims and sites as they normally would for open lands and pursuant to the provisions under 43 CFR part 3830 and current adjudication procedures. Additionally, when a BLM office receives a notice or plan of operations under 43 CFR subpart 3809 or a request for concurrence under 43 CFR subpart 3715 for any mining claims located in the circumstances described above, the field office should process the notice or plan as they normally would for open lands and in accordance with any applicable resource management planning directives for the lands affected.

### **Records Notation**

Opening orders previously required under 43 CFR 2091.6 are no longer needed or required to open lands that were included under expired FLPMA withdrawals. Offices should immediately remove expired FLPMA withdrawals from the MTPs and make proper notations to the Historical Indexes (HI). Future FLPMA withdrawals noted to the HIs must include the date of expiration as part of the records notation.

Offices must record all current and future FLPMA withdrawals in the Legacy Rehost 2000 (LR2000) case recordation system and include action code 763 EXPIRES with the action date, noting the future expiration date of the withdrawal. If the withdrawal is extended, the action date will be updated to reflect the new expiration date. When a withdrawal expires, all offices will note LR2000 with action codes 234 EXPIRED, 873 OPEN TO ENTRY (provided the lands are not covered by an overlapping withdrawal still in effect or segregation), and 970 CASE CLOSED.

Proper data input is essential to ensure that withdrawals nearing the end of their term do not inadvertently expire before the field offices notify the administering agency. To ensure the review of existing withdrawals to determine if they qualify for an extension, all offices must enter action code 853 COMPLIANCE/REVIEW DUE DATE in LR2000. FLPMA withdrawal action dates should be set 3 years prior to the expiration date in order to allow enough time for the BLM to contact the administering agency and process an extension application if needed. Offices should run a systematic query report for this action code at least quarterly and action taken to timely notify administering agencies of upcoming withdrawal expiration dates.

### **Administering Agency Notification**

Until the *Casey Folks* decision, the BLM applied 43 CFR 2091.6 to lands withdrawn under FLPMA such that the lands remained closed after the expiration of a FLPMA withdrawal until publication of an opening order in the *Federal Register* opening the lands to location and entry under the mining and other applicable public land laws. Under *Casey Folks*, all expired FLPMA withdrawals are automatically open without publication of an opening order unless the lands are encumbered by an overlapping withdrawal or segregation still in effect. To prevent automatic or inadvertent openings, the field office will contact the administering agency at least 3 years prior to the expiration date of the withdrawal and notify it of options if it wishes to extend the

withdrawal and continue the protection (i.e., extension, right-of-way, or other applicable authorization). The same timeline and options would also apply where BLM is the administering agency. Attached to this IM are a sample pre-expiration notification letter and memo (attachment 1) and a list of withdrawals due to expire within the next 5 years (attachment 3).

For those FLPMA withdrawals that have already expired and for which no opening order has yet been published, the field office must immediately contact and notify the administering agency that:

1. The lands automatically opened to mineral location and entry upon expiration of a withdrawal from the mining laws as a result of the *Casey Folks* decision;
2. Their authorization to occupy and use the lands (if the withdrawal was the authorizing instrument) has expired along with their withdrawal and a separate land use permit will need to be issued;
3. If protection or use of the lands is still needed and is not provided by some other instrument, a new application and accompanying National Environmental Policy Act (NEPA) analysis for a withdrawal, right-of-way, or other appropriate authorization is required; and
4. If the expired withdrawal transferred jurisdiction to and/or reserved lands for another Federal agency, and if the administering agency no longer has a need for the withdrawal, then they must file a Notice of Intent to Relinquish in accordance with 43 CFR 2372.1. The BLM will then process the relinquishment under its regulations at 43 CFR part 2370.

Notification to the administering agency should be through a letter sent by certified, return receipt mail. All notification letters should be included as part of the official case file. Attached are a sample expiration notification letter and memo (attachment 2) and a list of expired withdrawals for which an opening order was not yet published (attachment 4). All offices can also obtain information on expired withdrawals from the LR2000 reporting database using the appropriate case type codes along with action codes 763 EXPIRES or 234 EXPIRED.

### **Expired Withdrawals**

Each state office will review and verify the list of expired FLPMA withdrawals in attachment 4 and categorize each of the withdrawals in the state as either no longer needed or as still needed. Each state office is responsible for providing this information to the Division of Lands, Realty and Cadastral Survey (WO-350) no later than March 31, 2014.

1. Withdrawal no longer needed. If the withdrawal is no longer needed, also note:
  - If the withdrawal has been removed from MTP(s) and HI(s) noted;
  - If LR2000 has been updated;
  - If another type of authorization was issued instead (right-of-way, airport lease, etc.).
2. Withdrawal/protection needed. If the withdrawal (or protection through another instrument) is still needed, also note:

- If an application (specify type) has been filed;
- If not filed, what is the anticipated application date.

**Timeframe:** This IM is effective immediately. The pertinent regulation 43 CFR 2091.6 will be modified to conform to the *Casey Folks* decision.

**Budget Impact:** None.

**Background:** On September 20, 2012, the IBLA reversed several decisions of the BLM Nevada State Office declaring certain mining claims null and void *ab initio*. The mining claimants located the claims at issue on lands that were included in an expired FLPMA withdrawal. The BLM issued the voidance decisions on the grounds that the lands were not open to mineral entry because the BLM had not issued an opening order pursuant to 43 CFR 2091.6. The regulations at 43 CFR 2091.6 provide that lands included in a withdrawal that is revoked, terminates, or expires do not automatically become open, but are opened through publication in the *Federal Register* of an opening order.

However, the IBLA ruled that 43 CFR 2091.6 does not apply to lands withdrawn under the authority of Section 204 of FLPMA and that lands included in such a withdrawal automatically open on the date the withdrawal expires unless certain specific actions are taken (i.e., the conditions for extending the withdrawal are satisfied or some other action segregates the land).

The BLM requested reconsideration of the *Casey Folks* decision on November 19, 2012. On May 2, 2013, the IBLA denied the request for reconsideration. The IBLA concluded that the BLM has no authority to continue to withhold land under the provisions of an expired FLPMA withdrawal unless the conditions for extending the withdrawal are satisfied or some new and different action segregates the land.

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

**Coordination:** The Division of Lands, Realty, and Cadastral Survey coordinated this guidance with State Office Lands Program Leads, the Division of Solid Minerals, and the Office of the Solicitor. The State Office Program Leads are aware of this data request and have begun gathering the necessary information.

**Contacts:** If you have any questions concerning this IM, please contact Michael D. Nedd, Assistant Director, Energy, Minerals, and Realty Management at 202-208-4201. For questions regarding application of this policy, your staff may contact Vanessa Engle, National Withdrawals Program Lead at 202-912-7339, email address [vengle@blm.gov](mailto:vengle@blm.gov), or Mike Barnes, National

Withdrawals Coordinator at 503-808-6155, email address mlbarnes@blm.gov. For questions regarding mining law adjudication, contact Sonia Santillan at 202-912-7123, email address ssantill@blm.gov. For questions regarding mining law surface management, contact Adam Merrill, at 202-912-7044, email address amerrill@blm.gov.



Steven A. Ellis  
Deputy Director

#### 4 Attachments

- 1 – Example Extension Notification Letter and Memo (2 pp)
- 2 – Example Expired Notification Letter and Memo (2 pp)
- 3 – Withdrawals Expiring Prior to 2019 (3 pp)
- 4 – Expired FLPMA Withdrawals by State (4 pp)

**Administering Agency Notification Letter Example  
Withdrawal Extension**

SEND BY CERTIFIED RETURN RECEIPT MAIL

In Reply Refer To:

*(Insert case file #)*

2310 *(Insert office code)*

*(Insert agency name)*

*(Insert agency contact name and/or position title)*

*(Insert agency address)*

Dear *(Insert agency contact name or position title)*:

This letter notifies you that Public Land Order (PLO) No. *(insert number)*, which withdrew under Section 204 of the Federal Land Policy and Management Act, 43 U.S.C. § 1714, *(National Forest System or public)* lands from the *(insert here whatever was stated in the PLO as it may be open to the public or general land laws and mineral location and entry)* to protect the *(Insert Withdrawal name)* in the *(Insert location, i.e., National Forest or County)*, will expire on *(Insert expiration date)*. Enclosed is a copy of the PLO. Pursuant to 43 CFR 2310.4, the *(insert agency name)* has the option to apply to extend the withdrawal for another *(insert # of years of original term)* year term or allow the existing PLO to expire. Please be advised that if the withdrawal expires, the lands will automatically open to *(insert here whatever was stated in the PLO as it may be open to the public or general land laws and mineral location and entry)* without further action.

To apply for an extension the *(Insert agency name)* is required to comply with the filing requirements pursuant to 43 CFR 2310.1-2(c), which describes the content for making a withdrawal extension application. In addition, subsequent to filing the application, the *(insert agency name)* will need to provide the Bureau of Land Management with the information required under 43 CFR 2310.3-2(b).

Please notify this office within the 45 days if the *(insert agency name)* plans to allow the PLO to expire or file an extension application. Should you need clarification or assistance with the withdrawal extension process, please contact *(insert staff contact name)* of my staff at *(insert phone number)*.

Sincerely,

*(Insert Name and Title of signatory)*

Enclosure

**BLM Administering Agency Notification Memo Example  
Withdrawal Extension**

SEND BY CERTIFIED RETURN RECEIPT MAIL

In Reply Refer to:

*(Insert case file #)*

2310 *(Insert office code)*

Memorandum

To: District Manager, *(Insert Office and Office Code)*

From: *(Insert Title and Office Code)*

Subject: Notice of Withdrawal Expiration, *(Insert Withdrawal Name, State)*

This memorandum notifies you that Public Land Order (PLO) No. *(insert number)*, which withdrew public land from *(insert here whatever was stated in the PLO as it may be open to the public or general land laws and mineral location and entry)* under Section 204 of the Federal Land Policy and Management Act, 43 U.S.C. § 1714, to protect the *(insert Withdrawal name)*, will expire on *(insert expiration date)*. Attached is a copy of the PLO. Pursuant to 43 CFR 2310.4, you have the option to apply to extend the withdrawal for another *(insert # of years of original term)* year term or allow the existing PLO to expire. Please be advised that if the withdrawal expires, the lands will automatically open to *(insert here whatever was stated in the PLO as it may be open to the public or general land laws and mineral location and entry)* without further action unless they are covered by an overlapping withdrawal or segregation still in effect.

An application for an extension requires compliance with the filing requirements of 43 CFR 2310.1-2(c), which describes the content of an application to extend a withdrawal. In addition, subsequent to filing the application, the District will need to provide this office with the information required under 43 CFR 2310.3-2(b).

Please notify this office within the next 45 days if you plan to let the PLO expire or submit an application for extension. *(One of the considerations should be whether this withdrawal could be replaced by a right-of-way (ROW) grant. Although a ROW does not prevent mineral entry location, it would require the claimant to mitigate the Bureau of Land Management's surface use before entering the land.)* Should you have any questions or concerns or wish to discuss this further, please contact *(insert name and title)* at *(insert phone number)* or via email at *(insert email address)*.

Attachments

## Administering Agency Notification Letter Example Withdrawal Expiration

SEND BY CERTIFIED RETURN RECEIPT MAIL

In Reply Refer To:  
2310 *(Insert office code)*  
*(Insert case file number)*

*(Insert agency name)*  
Attn: *(Insert agency contact name or position title)*  
*(Insert agency address)*

Dear *(Insert contact person's name or position title)*:

This letter is to inform you that the *(insert Withdrawal name)* withdrawal held by the *(insert agency name)* within your management authority expired on *(insert expiration date)* (see enclosed copy of Public Land Order *(insert number)*). Pursuant to the Interior Board of Land Appeals (IBLA) Decision in *Casey Folks, Jr., et al.* 183 IBLA 24 (Sept.20, 2012) *recon. denied* 183 IBLA 359 (May 2, 2013), withdrawals made under the authority of Section 204 of the Federal Land Policy and Management of 1976 (FLPMA) (43 U.S.C. 1714) are open to *(insert here whatever was stated in the PLO as it may be open to the public or general land laws and mineral location and entry)* at the time of expiration with no further action. *(Insert if applicable: The expiration of the withdrawal also effectively terminates the (insert agency name) authority to use these lands unless a separate authorization was granted. Please be advised that your agency remains responsible for the reclamation and disposition of any infrastructure or hazardous materials that may be located on the affected lands.)*

Since these lands are no longer withdrawn, the Bureau of Land Management (BLM) *(insert State)* State Office Lands and Realty staff has updated Legacy Rehost 2000 and submitted a Title and Records Request to update the affected land records by updating the Historical Index(s), and remove the withdrawal status notations from the affected Master Title Plat(s). Your agency will be responsible for updating any internal records you may have including agency GIS datasets.

If these lands are under the management jurisdiction of the BLM and you wish to apply for a FLPMA right-of-way under 43 CFR 2800, please contact the *(insert BLM Field Office name)*. If your agency determines the need for a new withdrawal, you are required to submit a new withdrawal application *(insert "petition/" before "application" if the administering agency is within DOI)* pursuant to 43 CFR 2310.1-2 *(insert "and 43 CFR 2310.1-3" if the administering agency is within DOI)* to the *(insert State name)* State Director, *(insert address)*. This filing will initiate a new withdrawal action that must be approved by the Secretary of the Interior.

If your agency determines that these lands are no longer necessary for the *(insert agency name)* mission, you are required to submit to the BLM *(insert Field Office name)* a completed "Notice of Intent to Relinquish", as established in 43 CFR 2372.1, to determine the current status of those lands and to direct their disposition. Please forward the completed "Notice of Intent to Relinquish" to the attention of the *(insert Field Office Field Manager, and address)* for further action.

Should you have any questions or concerns please contact *(insert contact information)*.

Sincerely,

*(Insert Name and title of signatory)*

Enclosure



## BLM Administering Agency Notification Memo Example Withdrawal Expiration

SEND BY CERTIFIED RETURN RECEIPT MAIL

In Reply Refer To:  
2310 *(Insert office code)*  
*(Insert case file number)*

Memorandum

To: Field Manager, *(Insert name of Field Office)*

Through: *(Insert District Manager's name)*  
District Manager, Name of District Office

From: *(Insert name)*  
State Director

Subject: *(Insert title of withdrawal and PLO#)* *(insert case file number)* Status Update

This memo is to inform you that the above-mentioned withdrawal within your management area expired on *(insert expiration date)* (see attached Public Land Order *(insert number)*). Pursuant to the Interior Board of Land Appeals (IBLA) Decision in *Casey Folks, Jr., et al.* 183 IBLA 24 (Sept. 20, 2012) *recon. denied* 183 IBLA 359 (May 2, 2013), withdrawals made under the authority of Section 204 of the Federal Land Policy and Management of 1976 (FLPMA) (43 U.S.C. 1714) are open to *(insert here whatever was stated in the PLO as it may be open to the public or general land laws and mineral location and entry)* at the time of expiration with no further action.

Since these lands are no longer withdrawn and the withdrawal can no longer be extended, the *(insert office code)* Lands and Realty staff has updated Legacy Rehost 2000 and submitted a request to Title and Records to update the Historical index and remove the withdrawal status notations from the affected Master Title Plat(s). Your office will be responsible for updating any internal records you may have including GIS datasets.

If you believe that further withdrawal of these lands is necessary, you will need to submit a new petition/application pursuant to 43 CFR 2310.1-2 and 2310.1-3 to the State Director.

Should you have any questions or concerns please contact *(insert contact information)*.

Attachment

