



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



April 4, 2013

In Reply Refer To:
3106/3216 (310) P

EMS TRANSMISSION 04/16/2013
Instruction Memorandum No. 2013-105
Expires: 09/30/2014

To: State Directors
From: Assistant Director, Minerals and Realty Management
Subject: Adjudication of Oil and Gas and Geothermal Operating Rights Assignments

Program Area: Oil and Gas and Geothermal Leasing.

Purpose: This Instruction Memorandum (IM) directs all oil and gas and geothermal leasing offices to adjudicate oil and gas and geothermal operating rights transfers. The Bureau of Land Management (BLM) is required to create and maintain the operating right ownership record for oil and gas and geothermal lease case files.

Policy/Action: For leases on which production began on or after October 1, 2012, BLM state offices must adjudicate operating rights assignments immediately following notification of commencement of production and adjudicate and maintain all operating rights assignments for those lease files. For leases on which production began prior to October 1, 2012, the BLM must adjudicate past operating rights assignments only to the extent necessary to enable the Office of Natural Resources Revenue (ONRR) to issue proper orders. Offices should adjudicate all remaining unadjudicated operating rights assignments as time and staffing allow.

The ONRR will provide the BLM state offices with the serial number of any lease for which it plans to issue an order or demand. The BLM state offices will adjudicate the operating rights ownership, including the relative percentages of operating rights owners' interest during the relevant time period, and update the Legacy Rehost System 2000 (LR2000) and Lease Interest Worksheet. The BLM will then provide the Lease Interest Worksheet(s) to ONRR.

For leases currently in a non-producing status, begin adjudicating operating rights assignments immediately following notification of commencement of production (known as the "memo of first production"). Adjudicate all assignments received thereafter to maintain an accurate record of both the current and past operating rights ownership. Adjudicate as soon as practical so that

ONRR can access these operating rights ownership records. The new adjudication requirement will also result in the maintenance of accurate records for operational obligations. The steps outlined in this IM will provide ONRR with the information necessary to issue orders and gradually provide the BLM with complete operating rights ownership information in oil and gas and geothermal lease case files.

State offices will record all operating rights interest on a Lease Interest Worksheet (attachment 1) and retain the worksheet in the lease case file. In addition, state offices will ensure all operating rights assignments are entered into the Customer Details Screen in LR2000 (including assignments of less than 100 percent interest). See attachment 2 for an example.

Please provide this information to all oil and gas and geothermal lease adjudication personnel, State Information Access Center staff, and other staff that deal with oil and gas and geothermal leasing.

Timeframe: This policy becomes effective upon issuance of this IM. The Washington Office will hold training sessions to provide additional guidance on the adjudication of operating rights assignments. State offices should contact Teresa Thompson, Mineral Leasing Specialist, at 801-539-4047 or t3thomps@blm.gov to schedule your session.

Budget/Workload Impact: An filing fee accompanies each operating rights assignment filed with BLM and should be deposited into the 5104 account. State offices should charge staff time spent processing oil and gas and geothermal assignments to the 5104 account. This new requirement will increase the oil and gas and geothermal adjudication workload and may require an adjustment or deferment of other discretionary work.

Background: The BLM and ONRR have two distinct and separate responsibilities for operating rights assignments. Detailed below is background information of both areas of responsibility to provide a better understanding of why the BLM must change this policy.

A. Assignments of Operating Rights and Adjudication

Section 30A of the Mineral Leasing Act, 30 U.S.C. 187a, provides in relevant part:

[A]ny oil or gas lease issued under the authority of this chapter may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this chapter, and any assignment or sublease shall take effect as of the first day of the lease month *following the date of filing in the proper land office* of three original executed counterparts thereof . . . Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed. The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond . . . [or other specified grounds not relevant here].

Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the Secretary of a request for such approval. Upon approval of any assignment or sublease, *the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee*, any conditions in the assignment or sublease to the contrary notwithstanding. . . . [Emphasis added.]

The term “sublease” includes a transfer of operating rights (43 CFR 3106.3, 3106.4-1). Thus, the statute requires that the operating rights owner file an assignment of operating rights with the BLM, and that the BLM process it promptly and either approve or disapprove the assignment within 60 days. Upon approval of an assignment of operating rights, the assignee is bound to comply with all of the terms and conditions and obligations of the lease as if the assignee were the original lessee.

Implementing BLM regulations reflect these principles. Title 43 CFR 3106.7-6(b) provides: “If you acquire operating rights in a Federal lease, you agree to comply with the terms of the original lease as it applies to the area or horizons in which you acquired rights.” Further, 43 CFR 3216.12 states: “After BLM approves your transfer, the transferee is responsible for performing all lease obligations accruing after the date of the transfer...”¹ Under these statutory and regulatory provisions, the operating rights owner (not just the lessee of record) is directly liable to the United States for all obligations under the lease, including both operating performance requirements and royalty payments.

When a lessee of an onshore Federal oil and gas lease assigns all or part of its operating rights but retains record title, or when an operating rights owner assigns all or part of the operating rights it holds, the transfer “shall be filed with the proper BLM office on a current form approved by the Director” (43 CFR 3106.4-1). The rule, promulgated in 1988, implements the statutory filing requirement. The BLM then approves (or, if one of the statutory reasons applies, disapproves) assignments of operating rights (43 CFR 3106.7-1, 3106.7-3).

However, in 1985, the BLM issued internal guidance WO IM 1986-175, Processing Oil and Gas Lease Operating Rights Transfers – Revised Streamlined Administrative Procedures for Adjudication, stating that it was not necessary for BLM state offices to “adjudicate” operating rights assignments, on the grounds that such an assignment is a “third-party contract.” “Adjudication” of an assignment (whether of record title or of operating rights) involves more than approval; it involves determining and noting who the owners of interests in the lease are and

¹ The terms of the operating rights assignment form, which the assignee signs, provide that the assignee’s signature “constitutes acceptance of all applicable terms, conditions, stipulations, and restrictions pertaining to the lease described herein” (Part B, paragraph 3), and “[u]pon approval of a transfer of operating rights (sublease), the sublessee is responsible for all lease obligations under the lease rights transferred to the sublessee” (Part C, paragraph 8).

what percentages of ownership are retained or acquired as a consequence of the assignment. While most of the BLM state offices stopped adjudicating operating rights assignments after the BLM issued this guidance, Montana and Utah continued to adjudicate operating rights assignments.

According to the 1985 guidance, the BLM must approve and file chronologically in the official oil and gas lease files (1) unadjudicated operating rights assignments for percentages of interest (or interests in specific depth intervals or subsurface formations), (2) whether the assignor of operating rights actually holds the rights the assignor is purporting to transfer, or (3) what interest the assignee has actually received.

The BLM records adjudicated record title ownership interests, including the percentage of ownership interest, in LR2000. In contrast, the BLM records the filing and approval of both adjudicated and unadjudicated assignments of operating rights in the LR2000 “Action Remarks” section, but LR2000 does not show the percentage transferred for operating rights assignments that the BLM does not adjudicate and may not identify the assignee.

The LR2000 system does not accommodate the structured collection and display of the respective lessees’ and operating rights owners’ percentages of ownership when each of these parties owns an interest in only a physically distinct portion of the subsurface estate encompassed within the lease. When the BLM records an assignment of a record title interest in only part of the lands encompassed within a lease in LR2000, the state office enters relevant information in the “General Remarks” section and LR2000 shows the percentage of ownership as 0 percent in the customer section. A review of a selected sample of state office records also indicates that BLM state offices are not consistently recording assignments of operating rights interests.

B. Statutory Royalty Enforcement Requirements Regarding Operating Rights Owners and Record Title Owners

Congress enacted the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA) in 1996. This statute amended the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1701 et seq., in several respects as to Federal oil and gas leases. (The RSFA amendments do not apply to Indian leases.) Section 6(g) of RSFA amended section 102(a) of FOGRMA, 30 U.S.C. 1712(a), to provide:

The person owning operating rights in a lease shall be primarily liable for its pro rata share of payment obligations under the lease. If the person owning the legal record title in a lease is other than the operating rights owner, the person owning the legal record title shall be secondarily liable for its pro rata share of such payment obligations under the lease.

Therefore, ONRR must seek payment from the holder of operating rights before seeking payment from a record title holder who does not own operating rights. The ONRR does not maintain records showing the lessees of record and operating rights owners in Federal onshore leases. The BLM is the office of record that approves and maintains that information in lease

files. The BLM and ONRR have a mutual responsibility to ensure production accountability and lease oversight so that the United States receives proper royalty payments. The ONRR does not possess information regarding the relative percentages of ownership if there is more than one operating rights owner (or more than one lessee of record), and the time periods in which such owners held those interests. The lack of this information has made it increasingly difficult for ONRR to order the proper parties to pay unpaid royalties in the correct percentages. The ONRR is experiencing an increasing number of appeals of royalty payment or recomputation orders on the basis that (1) ONRR failed to pursue collection from the operating rights owner first, or (2) ONRR's order requires payment of more than the appellant's percentage ownership or for periods in which appellant did not own an interest in the lease.

For reasons noted above, ONRR has found it difficult to correctly identify either operating rights interest owners or lessees of record, and the percentages of their respective ownership interests during particular audit or review periods, using the BLM's LR2000 data. This IM replaces the 1985 guidance to discontinue the adjudication of operating rights assignments. The policy of not recording complete operating rights assignment information into the LR2000 database needs to be changed at least to the extent necessary to enable ONRR to timely issue orders to the parties properly liable for unpaid royalties.

Assigned team members from the BLM and ONRR participated in several conference calls to discuss this issue. The ONRR provided four examples of LR2000 case abstracts which illustrated the difficulty ONRR experienced in retrieving the needed information, including the record title holder information. Two of the examples contained all the information necessary to determine the current lessees of record, but not the operating rights owners. The BLM reviewed the examples and agrees that the LR2000 information is not sufficient to enable ONRR to issue a royalty payment or recomputation order to the right parties in the right percentages.

Manual/Handbook Sections Affected: The BLM will incorporate this guidance into Handbook H-3106-1, *Transfers by Assignment, Sublease, or Otherwise* (O&G Adjudication Handbook), when updated next.

Coordination: The WO-310 prepared this IM in coordination with field adjudication, ONRR, and Solicitors personnel.

Contact: If there are any questions concerning this IM, please contact me at 202-208-4201, or your staff may contact Steven Wells, Division Chief (WO-310), at 202-912-7143; Atanda Clark, Senior Mineral Leasing Specialist, at 202 -912-7156 or aclark@blm.gov; or Teresa Thompson, Mineral Leasing Specialist, at 801-539-4047 or t3thomps@blm.gov.

Signed by:
Michael Nedd
Assistant Director
Minerals and Realty Management

Authenticated by:
Robert M. Williams
Division of IRM Governance, WO-560

2 Attachments

- 1 – Lease Interest Worksheet (1 p)
- 2 – Case Recordation Serial Register Page (1 p)

LEASE INTEREST WORKSHEET

SERIAL NO. _____

OPERATING RIGHTS ASSIGNMENT

_____ 933 OPTG RTS ASGN APPROVED EFF: _____;

_____ 557 TRF OPERATING RIGHTS WITHDRAWN

_____ 558 TRF OPERATING RIGHTS RETURNED UNAPPROVED

_____ % **TO:** _____ **FROM:** _____

RECORD TITLE HELD

Record Title

T. _____, R. _____, _____ _____ 100%
 Sec. ____: _____;
 Sec. ____: _____.

_____ acres
 _____ County

OPERATING RIGHTS HELD

<p>Sec. _____: _____.</p> <p><u>Surface to</u> _____ <u>Formation</u></p> <p>_____ %</p> <p>_____ %</p> <p>_____ %</p> <p>Below _____ <u>Formation</u></p> <p>_____ %</p>	<p>Sec. _____: _____.</p> <p><u>Surface to</u> _____ <u>Formation</u></p> <p>_____ %</p> <p>_____ %</p> <p>_____ %</p> <p>Below _____ <u>Formation</u></p> <p>_____ %</p> <p>_____ %</p>
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LAND LAW EXAMINER _____

DATE: _____

**BUREAU OF LAND MANAGEMENT
CASE RECORDATION
SERIAL REGISTER PAGE**

01 12-22-1987; 101STAT1330; 30USC181 ET SEC	Total Acres	Serial Number
Case Type 312021: O&G LSE COMP PD -1987	1,480.00	NTC--- - 071649
Commodity 459: OIL & GAS L		
Case Disposition: AUTHORIZED	Case File Juris:	

NAME & ADDRESS	Int Rel	%Interest
ABC Oil Company 5050 Bluebird Lane Snakesnavel, WY 82000	LESSEE	50.000000
ABC Oil Company 5050 Bluebird Lane Snakesnavel, WY 82000	OPERATING RIGHTS	0.000000
Peter's Oil LLC 25 Cave Drive Stone Age, US 00002	OPERATING RIGHTS	0.000000
XYZ Prod Corp PO Box 1234 Lionshare, TX 91001	LESSEE	50.000000
XYZ Prod Corp PO Box 1234 Lionshare, TX 91001	OPERATING RIGHTS	0.000000

Mer	Twp	Rng	Sec	Stype	Subdivision	District/Resource Area	County	Mgmt Agency
26	0120S	0280E	017	ALIQ	S2;	LOST RIVER FIELD OFFICE	DINO	BUREAU OF LAND MGMT
26	0120S	0280E	018	ALIQ	SE;	LOST RIVER FIELD OFFICE	DINO	BUREAU OF LAND MGMT
26	0120S	0280E	019	ALIQ	E2,NESW;	LOST RIVER FIELD OFFICE	DINO	BUREAU OF LAND MGMT
26	0120S	0280E	020	ALIQ	ALL;	LOST RIVER FIELD OFFICE	DINO	BUREAU OF LAND MGMT

Act Date	Code	Action	ACTION REMARKS	Pending Office
12/11/2010	387	CASE ESTABLISHED	#045	
05/20/2011	191	SALE HELD		
05/20/2011	267	BID RECEIVED	\$37,000;	
06/22/2011	237	LEASE ISSUED		
07/01/2011	496	FUND CODE	05;145003	
07/01/2011	530	RLTY RATE - 12 1/2%		
07/01/2011	868	EFFECTIVE DATE		
09/05/2011	932	TRF OPER RGTS FILED	01	
09/05/2011	932	TRF OPER RGTS FILED	02	
09/25/2011	933	TRF OPER APPROVED	EFF 10/01/2011; 01	
09/25/2011	933	TRF OPER APPROVED	EFF 10/01/2011; 02	
06/30/2021	763	EXPIRES		

Line Nr.	Remarks
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