

## **PETITION FOR RULEMAKING**

**MODERNIZING PUBLIC LAND AND RESOURCE MANAGEMENT  
IN RESPONSE TO THE CLIMATE CRISIS:**

**ESTABLISHING A COHESIVE, TANGIBLE, AND ENFORCEABLE  
REGULATORY FRAMEWORK TO FULFILL THE PROMISE OF  
THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976**

*Submitted By:*

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POLICY ♦ CHACO ALLIANCE ♦ CITIZENS CARING FOR THE FUTURE  
♦ CITIZENS FOR A HEALTHY COMMUNITY ♦ CLIMATE ADVOCATES  
VOCES UNIDAS ♦ CONSERVATION VOTERS NEW MEXICO ♦ EARTH  
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WATCH ♦ FRIENDS OF THE EARTH US ♦ GREAT OLD BROADS FOR  
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WILDEARTH GUARDIANS ♦ WILDERNESS WORKSHOP**

**MAY 18, 2022**

May 18, 2022

The Honorable Debra Haaland  
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SENT VIA EMAIL and U.S. Mail

Dear Secretary Haaland and Director Stone-Manning:

The world is facing intersecting geopolitical, energy, and climate crises. These crises demand strong action to open new doors to a thriving, resilient future for all people—a future where public lands serve as a cornerstone of ecological and community resilience in the face of a changing climate. The United States can and must lead the nations of the world in taking such action to secure a far more stable, just, and equitable economy grounded in clean, renewable energy—action necessary to constrain global warming to 1.5°C. To do this, the U.S. Department of the Interior (“Interior”), by and through the U.S. Bureau of Land Management (“BLM”), must manage federal public lands as part of our country’s portfolio of climate solutions, not problems, and in trust for the sustained, long-term benefit of the country and all its people.

Pursuant to the Federal Land Policy and Management Act of 1976 (“FLPMA”), 43 U.S.C. §§ 1701 *et seq.*, 5 U.S.C. § 553(e) of the Administrative Procedure Act (“APA”), and 43 C.F.R. §§ 14.1 *et seq.*, we hereby respectfully petition Interior to immediately initiate a rulemaking to promulgate a cohesive, tangible, and enforceable regulatory framework that implements climate and conservation-centered powers contained in FLPMA that have been too long ignored. Our recommended framework would empower Interior to take climate action in the public interest and commensurate with the scale of the intersecting crises we face, most notably the climate crisis. Such action is well within, and in fact compelled by, Interior’s scope of authority and duties; FLPMA expressly obliges Interior to “issue regulations necessary to implement the provisions of [FLPMA] with respect to the management, use, and protection of the public lands ...” 43 U.S.C. § 1733(a).

**I. Purpose and Need for Proposed Rulemaking.**

Last month, the International Panel on Climate Change (“IPCC”) published its final report in the “scientific trilogy” of working group reports making up the Sixth Assessment Report (AR6).<sup>1</sup> In recognition of the scientific consensus of the urgency at hand, IPCC chair, Hoesung Lee, remarked:

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<sup>1</sup> IPCC 2022, [Mitigation of Climate Change](#). In: Climate Change 2022. Working Group III Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (April 2022).

We are at a crossroads. **This is the time for action.** We have the tools and know-how required to limit warming and secure a liveable future ... [H]uman-induced climate change is widespread, rapid, and intensifying. It is a threat to our well-being and all other species. It is a threat to the health of our entire planet. Any further delay in concerted global climate action will miss a rapidly closing window.<sup>2</sup>

The global climate crisis has already resulted in “irreversible impacts as natural and human systems are pushed beyond their ability to act.”<sup>3</sup> The IPCC explains that “[p]rotecting and restoring ecosystems is essential for maintaining and enhancing the resilience of the biosphere ... Degradation and loss of ecosystems is also a cause of greenhouse gas emissions and is at increasing risk of being exacerbated by climate change impacts, including droughts and wildfire.”<sup>4</sup> Further, “[c]onservation, protection and restoration of terrestrial, freshwater, coastal and ocean ecosystems, together with targeted management to adapt to unavoidable impacts of climate change, reduces the vulnerability of biodiversity to climate change.”<sup>5</sup>

In recognition of the climate emergency, President Biden has heralded an “all-of-government” approach to addressing climate change:

It is the policy of my Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.<sup>6</sup>

The Biden Administration has committed to action “to achieve a 50-52 percent reduction from 2005 levels in economy-wide net greenhouse gas pollution in 2030” and, ultimately, a “net

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<sup>2</sup> [Remarks by the IPCC Chair During the Press Conference Presenting the Working Group III Contribution to the Sixth Assessment Report](#) (April 4, 2022) (emphasis added).

<sup>3</sup> IPCC, 2022: [Summary for Policymakers](#), B.1, [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)] (“IPCC AR6 WGII SPM”) Cambridge University Press. In Press.

<sup>4</sup> [IPCC AR6 WGII SPM](#), D.4.2.

<sup>5</sup> [IPCC AR6 WGII SPM](#), C.2.4. “The resilience of species, biological communities and ecosystem processes increases with size of natural area, by restoration of degraded areas and by reducing non-climatic stressors ... To be effective, conservation and restoration actions will increasingly need to be responsive, as appropriate, to ongoing changes at various scales, and plan for future changes in ecosystem structure, community composition and species’ distributions, especially as 1.5°C global warming is approached and even more so if it is exceeded.”

<sup>6</sup> Executive Order 14008, [Tackling the Climate Crisis at Home and Abroad](#), Sec. 201 (Jan. 27, 2021).

zero emissions economy-wide by no later than 2050.”<sup>7</sup> The Administration has also pledged to protect 30% of the nation’s lands and waters by 2030.<sup>8</sup> The “30x30” commitment operates as a stepping-stone toward a larger goal: protection of 50% of the nation’s lands and waters by 2050. The sequence of 30x30 and 50x50 milestones is designed to address the interwoven climate and biodiversity crises. Protected public lands, which provide an array of ecological and community goods and services, can bolster landscape-scale resilience and adaptive capacity in the face of a warming climate, benefiting not only ecological systems, but human communities that depend on thriving, healthy public lands or are impacted by degraded, exploited public lands. Importantly, “political commitment and follow-through across all levels of government” is essential to realizing these benefits.<sup>9</sup>

The rulemaking proposed in this Petition serves not only as a vehicle for the Administration’s commitment to reduce greenhouse gas emissions, avoid other adverse impacts associated with fossil fuel extraction on federal public lands, and to reach the 30x30 and 50x50 milestones, but also to center public lands as the cornerstone of the nation’s efforts to respond to the global climate crisis. Climate action specifically centered on the federal public lands and minerals oil and gas program would leverage the federal government’s constitutional power at its apex. FLPMA provides Interior with the authority and responsibility to serve as both the trustee of federal public lands for the benefit of the American people and the regulator of federal public lands uses. FLPMA requires Interior to:

- Protect public land values including air and atmospheric, water resource, ecological, environmental, and scenic values, and to preserve and protect “certain public lands in their natural condition,” and “food and habitat for fish and wildlife”;<sup>10</sup>
- Account for “the long-term needs of future generations”;<sup>11</sup>
- Prevent “permanent impairment of the productivity of the land and quality of the environment”;<sup>12</sup> and
- “[T]ake any action necessary to prevent unnecessary or undue degradation of the lands.”<sup>13</sup>

These substantive obligations have existed since the passage of FLPMA in 1976. Yet, Interior has never clearly and meaningfully defined how the multiple use mandates apply to land and resource management planning generally or to the federal onshore oil and gas program specifically. While Interior certainly holds discretion in how it implements these conservation-

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<sup>7</sup> White House Fact Sheet, [President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies](#) (April 22, 2021).

<sup>8</sup> Executive Order 14008, [Tackling the Climate Crisis at Home and Abroad](#), Sec. 216.

<sup>9</sup> [IPCC AR6 WGII SPM](#), C.5.1.

<sup>10</sup> 43 U.S.C. § 1701(a)(8).

<sup>11</sup> 43 U.S.C. § 1702(c).

<sup>12</sup> 43 U.S.C. § 1702(c).

<sup>13</sup> 43 U.S.C. § 1732(b).

centered duties, that discretion is not unlimited and FLPMA’s mandates cannot be ignored. The framework proposed in this Petition would set BLM on the path to comply with FLPMA, whether through a managed decline of fossil fuel production on federal lands or action that otherwise aligns oil and gas production with the urgency demanded by the climate crisis and this administration’s own commitments.<sup>14</sup>

## II. A Call for Durable Climate Policy Centered on Public Lands.

Aligning federal public land management to respond to the climate crisis—whether through a managed decline of oil and gas production or otherwise—is not only critical to the United States’ efforts to reduce sources of global warming but is also essential to increasing climate resilience.<sup>15</sup> These are not novel concepts. Under the Obama administration, agencies were directed “to make the Nation’s watersheds, natural resources, and ecosystems, and the communities and economies that depend on them, more resilient in the face of a changing climate.”<sup>16</sup> In response, Interior worked to craft a meaningful framework targeted at improving the resilience of public lands and resources in response to climate change, which resulted in the adoption of a range of non-regulatory handbooks, manuals, and other departmental climate- and mitigation-specific policies.<sup>17</sup>

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<sup>14</sup> [Petition to Reduce the Rate of Oil and Gas Production on Public Lands and Waters to Near Zero By 2035](#), Submitted by 361 Climate, Conservation, Environmental Justice, Public Health, Indigenous, Faith-Based, and Community Organizations (Jan. 19, 2022).

<sup>15</sup> See, [Secretarial Order No. 3226](#), “Evaluating Climate Change Impacts in Management Planning,” (Jan. 19, 2001)(ordering Interior’s bureaus and offices to “consider and analyze potential climate change impacts” in planning, setting priorities for research, and “when making major decisions regarding potential utilization of resources within the Department’s purview”)(amended and replaced by [Secretarial Order No. 3226, Amendment 1](#) (Jan. 16, 2009); reinstated by [Secretarial Order No. 3289](#) (Sept. 14, 2009).

<sup>16</sup> Executive Order 13653, [Preparing the United States for the Impacts of Climate Change](#), 78 Fed. Reg. 66817 (Nov. 6, 2013); see also, [Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment](#), 80 Fed. Reg. 68743 (Nov. 3, 2015).

<sup>17</sup> See [Secretarial Order No. 3226, Amendment No. 1](#), “Climate Change and the Department of Interior,” (Jan. 16, 2009)(“[i]n addition to finding ways to prevent greenhouse gas emissions, the United States has recognized the need to focus on mitigation and adaptation activities”(replaced by Secretarial Order No. 3289 (Sept. 14, 2009); [Secretarial Order No. 3289](#), “Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources,” (Sept. 14, 2009); [Departmental Manual 523 DM 1](#), “Climate Change Policy” (Dec. 20, 2012)(established Interior’s policy to “[p]romote landscape-scale, ecosystem-based management approaches to enhance the resilience and sustainability of linked human and natural systems” and “[a]dvance approaches to managing linked human and natural systems that help mitigate the impacts of climate change”); [Secretarial Order No. 3300](#), “Improving Mitigation Policies and Practices of the Department of Interior (Oct. 31, 2013)(“land and resource managers across the Nation are recognizing the dramatic effects that climate change is having on our Nation’s water, land, plant, animal, and cultural resources, as well as tribal lands and resources. In light of these effects, the Department must change the way it manages the resources for which it is the steward”); [Departmental Manual 600 DM 6](#), “Implementing Mitigation at the Landscape-scale” (Oct 23, 2015)(stating the policy of Interior to “effectively avoid, minimize, and compensate for impacts to Department-managed resources and their values, services, and functions; . . . improve the resilience of our Nation’s resources in the face of climate change; encourage strategic conservation investments in lands and other resources; increase compensatory mitigation effectiveness, durability, transparency, and consistency; and better utilize mitigation measures to help achieve Departmental goals.”); [BLM Mitigation Manual M-1794](#) (Dec. 22, 2016); [BLM Mitigation Handbook H-1794](#) (Dec. 22, 2016).

The Trump administration hastily discarded these science-based policies in favor of its “energy dominance” agenda, which not only ignored climate change altogether but also promoted the unbridled development of fossil fuels on public lands unencumbered by regulatory protections.<sup>18</sup> To be fair, the Obama administration had also boosted oil and gas development but, regardless, rather than building on the efforts of prior administrations to convert rapidly expanding scientific knowledge into proactive climate-centered policies to reduce emissions from public lands, BLM’s land management philosophy under the Trump administration exacerbated climate change and evidenced a clear disdain for climate action, period.

The Biden administration, through executive orders and corresponding agency orders, has attempted to correct course on climate.<sup>19</sup> In November 2021, BLM released its “2020 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends,” an important step in identifying the contribution of the public lands and minerals oil and gas program to greenhouse gas emissions as well as the impacts those emissions have on climate change.<sup>20</sup> Yet an analysis of emissions is only the first step. Action must be taken to eliminate or at least reduce emissions—action that has yet to occur. Put differently, even as the Biden administration has recognized the seriousness of the climate crisis, it has failed thus far to deliver on its climate commitments—commitments that must be observed in reality, not simply in rhetoric.

BLM, for its part, has stated that its “decision space for mitigating climate impacts from fossil fuel development is currently limited by authorization in statutes such as FLPMA and the [Mineral Leasing Act of 1920] . . . [and it has] limited ability to provide for meaningful or measurable mitigation actions in the context of cumulative climate change resulting from global emissions.”<sup>21</sup> This is misleading and little more than a deflection of responsibility. FLPMA provides Interior with expansive power to mitigate impacts caused by public lands activities and to protect public lands and their resources. As Interior’s own Solicitor explained in 2016, “FLPMA provides the BLM with ample authority to require public land users to take steps to minimize the negative effects of their use and, where appropriate, to leave the public lands in better condition than they found them.”<sup>22</sup>

We remind Interior that FLPMA expressly mandates that BLM “prevent permanent impairment of the productivity of the lands and the quality of the environment”<sup>23</sup> and that “the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or

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<sup>18</sup> [Executive Order 13783](#), Promoting Energy Independence and Economic Growth (March 28, 2017); Sec. Order. 3349, “American Energy Independence” (March 29, 2017); [Sec. Or. No. 3360](#), “Rescinding Authorities Inconsistent with Secretary’s Order 3349 ‘American Energy Independence’” (Dec. 22, 2017).

<sup>19</sup> [Executive Order 13990](#), *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7037 (Jan. 25, 2021); [Executive Order 14008](#), *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7619 (Feb. 2, 2021); [Secretarial Order 3399](#), Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process (April 16, 2021).

<sup>20</sup> [2020 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends](#) (Nov. 5, 2021).

<sup>21</sup> *Id.* at 100.

<sup>22</sup> [Solicitor’s Opinion M-37039](#), “The Bureau of Land Management’s Authority to Address Impacts of its Land Use Authorizations Through Mitigation” at 6 (Dec. 21, 2016)(withdrawn by [M-37046](#) (June 30, 2017); reinstated by [M-37075](#) (April 15, 2022)).

<sup>23</sup> 43 U.S.C. § 1702(c).



undue degradation of the lands.”<sup>24</sup> Thus, BLM is far from “limited” in its ability to address the climate crisis. Rather, “[b]y creating such a bold, forward-looking stewardship mandate, Congress granted the BLM broad discretion to chart a course for public lands that accounts for development, conservation, and long-term management,”<sup>25</sup> a mandate that most certainly encompasses the nexus between public lands and the climate crisis.

In this context, we are deeply concerned with the myopic and timid scope of action recommended by Interior’s November 26, 2021 Oil and Gas Report. In section 208 of executive order 14008 (Jan. 27, 2021), which was the impetus for the report, President Biden directed Interior to complete:

[A] comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior’s broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters.

Yet Interior’s report is neither comprehensive nor a reflection of Interior’s expansive authorities and responsibilities. It references “climate” a mere four times: once when it references the title to executive order 14008, once in a footnote referring to Interior’s separate coal program, and twice in substance-free introductory language. The report’s dodging of the climate crisis is even more egregious in the context of the executive order’s prefatory language, which explains that:

The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action. Together, we must listen to science and meet the moment.

Well into the second year of the Biden administration’s “narrow moment to pursue action,” Interior’s report fixates on long-percolating fiscal reforms that, standing alone, are far too little and late. Most critically, the report fails to make more than a passing reference to—let alone to leverage—the agency’s expansive FLPMA authorities and duties. To the degree these fiscal reforms are premised on the notion they can internalize climate costs—e.g., make lessees pay for the climate costs of emissions through higher royalties—economic modeling concludes that “raising royalty rates at the levels commonly proposed [a range from 6.25% to 12.5%]

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<sup>24</sup> 43 U.S.C. § 1732(b).

<sup>25</sup> [Solicitor’s Opinion M-37039](#) at 8.

would have little effect on federal oil and gas production and hence relatively small effects on emissions.”<sup>26</sup>

Interior’s proposed fiscal reforms—which we suspect define and thus limit Interior’s forthcoming rulemaking<sup>27</sup>—also presume new leasing and an expansion of oil and gas production on federal public lands, which runs against the grain of a climate-centered energy transition, as well as in the teeth of overwhelming scientific consensus compelling action to mitigate the most catastrophic impacts of climate change. Interior’s recommended fiscal reforms could thus serve to intensify state dependence on federal oil and gas revenue, skew state-level policy approaches in favor of fossil fuels, and undermine community-led initiatives to protect people, land, and water, transition economies, and deliver on environmental justice, all goals your administration professes to support.

The historic, ongoing, and highly permissive approach to oil and gas development of federal public lands and minerals has been exploited by oil and gas companies, who have acquired oil and gas development rights to 26.6 million acres of federal public lands and operate over 96,000 wells now in production —infrastructure that is an underlying cause of the climate crisis, threatens public lands, and harms communities. Oil and gas companies have also stockpiled 9,000 additional oil and gas drilling permits.

In other words, it is the oil and gas industry’s interests, not the public interest that dominate the federal public lands oil and gas program. We therefore urge Interior to accept this Petition and initiate rulemaking that would empower the federal government to seize opportunities to manage federal public lands and resources as part of our country’s portfolio of climate solutions. Simply put, Interior must not retreat from and break the promises President Biden has made to the American people to protect public lands and address the climate crisis.

### **III. Overview of Proposed Rulemaking.**

The key objective of our recommended rulemaking framework presented in Attachment A is to position FLPMA’s protective mandates at the forefront of BLM’s decision-making space serving, in the process, to harmonize public lands management with our country’s national environmental policy, as embodied in section 101 of the National Environmental Policy Act of 1969 (“NEPA”). Infusing the requirements to prevent permanent impairment, unnecessary degradation, and undue degradation<sup>28</sup> into the overarching planning rules in 43 C.F.R. Part 1600

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<sup>26</sup> Prest, B., [Resources for the Future, Supply-Side Reforms to Oil and Gas Production on Federal Lands: Modeling the Implications for Climate Emissions, Revenues, and Production Shifts](#) at 8 (Sept. 2020).

<sup>27</sup> U.S. Department of the Interior, [Revision of Existing Regulations Pertaining to Fossil Fuel Leases and Leasing Process 43 CFR Parts 3100 and 3400](#) (Fall 2021).

<sup>28</sup> In enacting section 302(b) of FLPMA, Congress clearly intended that Interior’s duty to “take any action necessary to prevent unnecessary or undue degradation of the lands” requires action to prevent both unnecessary degradation and undue degradation. *Mineral Policy Center v. Norton*, 292 F. Supp. 2d 30, 43 (D.D.C. 2003); see also [Solicitor’s](#)



will guide BLM's administration of public lands toward a proactive posture that acknowledges and responds to the realities of a changing climate. Likewise, strategically embedding these FLPMA duties throughout the oil and gas leasing program regulations (43 C.F.R. Parts 3000, 3100, 3110, 3160, 3170, and 3180) will bring symmetry to the disproportionate impact resulting from decades of BLM's adherence to a regulatory regime that puts the interests of the oil and gas industry before the public interest. In our experience, BLM field offices lack guidance on what these duties mean and how these duties must be adhered to. Our recommendations endeavor to solve this problem and provide BLM with the opportunity to fulfill FLPMA's promise.

To achieve this objective and associated outcomes, our recommended framework includes nine newly defined terms, incorporated into both the planning definitions at 43 C.F.R. § 1601.0-5 and the minerals management umbrella definitions at 43 C.F.R. § 3000.0-5. While these terms are the foundation for the substantive rule amendments proposed throughout the Petition, the definitions of "permanent impairment," "unnecessary degradation," and "undue degradation" are the primary drivers that operationalize FLPMA's conservation mandates:

***Permanent impairment*** means the impact of a land use plan, implementation plan, or resource management authorization or action, that violates a resource condition goal, objective, threshold, or standard identified to protect scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values, food and habitat for fish and wildlife and domestic animals, or outdoor recreation and human occupancy and use; fails to ensure the sustained yield of renewable multiple use resources; or is not mitigated within a reasonably foreseeable time period. In the absence of an identified resource goal, objective, threshold, or standard, permanent impairment means a reasonably foreseeable and significant resource impact that is either not mitigated or is not feasible to mitigate.

***Undue degradation*** means the impact of a land use plan, implementation plan, resource management authorization or action that:

- (1) Fails to comply, to the extent consistent with the laws governing the administration of the public lands, with a land use plan, implementation plan, regulation, or standard of other Federal, Tribal, State, or local departments and agencies;
- (2) Causes either permanent impairment or substantial irreparable harm to resources and their values, including but not limited to, scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, or archeological values, food and habitat for fish and wildlife and domestic animals, or outdoor recreation and human occupancy and use; or
- (3) Fails to address or provide for either the periodic adjustment in use of the landscape to conform to changing needs and conditions, the long-term needs of future

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[Opinion M-37039](#), The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations through Mitigation at 18-19 (Dec. 21, 2016). Thus, in order to give each duty meaning in the context of our proposed regulatory framework, we have included proposed definitions for both terms.

*generations for renewable and non-renewable resources, or the relative values of resources.*

**Unnecessary degradation** *means the impact of a land use plan, implementation plan, resource management authorization or action that:*

*(1) Is not reasonably incident to action needed to further the purpose and need of the plan, authorization, or action; or*

*(2) Does not employ the mitigation hierarchy that, in sequence, utilizes a landscape-scale approach to:*

*(A) avoid the impact altogether by not taking a certain action or parts of an action or, if an impact cannot be avoided;*

*(B) minimize the impact by limiting the degree or magnitude of the action and its implementation; or*

*(C) compensate for the remaining impacts, after all appropriate and practicable avoidance and minimization measures have been applied, by replacing or providing substitute resources or environments through the restoration, establishment, enhancement, or preservation of resources and their values, services and functions.*

The definition of “permanent impairment” serves to take a critical, if under-used FLPMA mandate and operationalize it by effectively requiring BLM to identify specific goals, objectives, thresholds, and standards. This deepens the substantive nature of agency planning and decision-making—i.e., infuses it with purpose—while respecting BLM’s expertise to define those specific goals, objectives, thresholds, and standards by applying the best available science relative to landscape-scale conditions and circumstances. Where such goals, objectives, thresholds, and standards are not defined, BLM, to avoid a finding of permanent impairment, would be required to employ the mitigation hierarchy. The proposed definition of “undue degradation” provides a complementary constraint, prohibiting, *inter alia*, both permanent impairment and substantial irreparable harm and directing BLM, to avoid undue degradation, to manage resources to address future circumstances—circumstances that are likely to change, in terms of the health of the land or the need of the public for land and resources, given a changing climate.

Incorporating the mitigation hierarchy into the definition of “unnecessary degradation” is a central element of this proposal. While BLM is currently guided by the recently reinstated Mitigation Manual and associated Handbook,<sup>29</sup> including mitigation principles derived from existing mitigation guidance and policies in rule will provide the necessary underpinning to help ensure the mitigation hierarchy is fully utilized at a landscape-scale as an essential tool to achieving the conservation-centered goals of FLPMA and this administration’s climate goals going forward.

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<sup>29</sup> [BLM Mitigation Manual M-1794](#) (Dec. 22, 2016); [BLM Mitigation Handbook H-1794](#) (Dec. 22, 2016).

Our proposed framework provides specific guidance to BLM for incorporating these principles into its decision-making, ensuring that climate is explicitly considered. For example, new section 43 C.F.R. § 1610.7–3 (Prevention of permanent impairment, unnecessary degradation, and undue degradation) specifically defines how BLM is to comply with these duties in its land use planning process, including, importantly, requiring that BLM’s resource management planning establish resources goals, objectives, and management practices to:

*hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to actively pursue efforts to limit the temperature to 1.5 degrees Celsius, including by establishing, for public lands and resources governed by the plan, revision, or amendment, a carbon budget for net greenhouse gas emissions and each resource sector contributing such emissions and the specific resource condition goals, objectives, thresholds, standards, management practices, allowable uses and related production levels, or other actions within the BLM’s authority to meet that budget.*

A complementary amendment is proposed to 43 C.F.R. § 3120.1-1 (Lands available for competitive leasing), which would require—before lands may be offered for competitive leasing—a written finding by the Secretary that:

*development of the lands, if leased, is aligned with action to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to actively pursue efforts to limit the temperature to 1.5 degrees Celsius, would not otherwise cause permanent impairment, unnecessary degradation, or undue degradation, and there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts requiring further land use planning and analysis.*

This provision is critical to help leverage the Secretary’s responsibility to address otherwise disparate management of public lands and resources across distinct field offices and, by virtue of that fact, serving as a liaison to the rest of the government as it takes an “all-of-government” approach to the climate crisis.

Importantly, we also recommend changes to 43 C.F.R. § 3101.1–2, which defines the extent of a lessee’s development rights. This provision is notoriously opaque and poorly worded. We recommend breaking this provision into its specific elements to improve clarity, removing unnecessary and confusing language, and properly accounting for how BLM’s three-phased oil and gas framework (planning, leasing, drilling) plays out relative to NEPA analysis to conform with associated caselaw.

In total, and if adopted, this recommended framework will harness the constitutional authority held by the administration relative to public lands and resources and help ensure that public lands serve as a cornerstone of ecological and community resilience in the face of a changing climate.

#### IV. Legal Authority.

Interior holds expansive legal authority and duties to prevent adverse impacts associated with public land use through FLPMA's non-discretionary mandates to prevent permanent impairment, unnecessary degradation, and undue degradation.<sup>30</sup> This is particularly so given section 102 of NEPA which provides that, "to the fullest extent possible," FLPMA (and other "policies, regulations, and public laws of the United States") "shall be interpreted and administered in accordance with [section 101 of NEPA]."<sup>31</sup> Section 101(a), in turn, provides that

[I]t is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social economic, and other requirements of present and future generations of Americans.<sup>32</sup>

Section 101(b) then prescribes a set of responsibilities for all agencies, including Interior, to adhere to through use of "all practicable means," namely action to:

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain wherever possible, an environment which supports diversity and variety of individual choice;
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.<sup>33</sup>

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<sup>30</sup> See Jamie Gibbs Pleune, John C. Ruple, and Nada Wolff Culver, [The BLM's Duty to Incorporate Climate Science into Permitting Practices and A Proposal for Implementing A Net-Zero Requirement into Oil and Gas Permitting](#), 32 Colo. Nat. Resources, Energy & Envtl L. Rev. 253, 256 (2021)

<sup>31</sup> 42 U.S.C. § 4332(1).

<sup>32</sup> 42 U.S.C. § 4331(a).

<sup>33</sup> 42 U.S.C. § 4331(b).

The starting point for understanding how NEPA’s policy and associated responsibilities intersect with Interior’s specific FLPMA authority and duties is the U.S. Constitution.<sup>34</sup> The Constitution’s property clause confers upon Congress the “[p]ower to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”<sup>35</sup> This power was exercised through passage of two key laws governing the federal public lands oil and gas program: (1) FLPMA; and the (2) the Mineral Leasing Act of 1920, as amended by the Federal Onshore Oil and Gas Leasing Reform Act Amendments of 1987 (collectively, “MLA”).<sup>36</sup>

Because they are derived from the U.S. Constitution’s property clause, FLPMA and the MLA exemplify the federal government’s constitutional power at its apex. As the Supreme Court of the United States teaches, “while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that ‘[t]he power over the public land thus entrusted to Congress is without limitations.’”<sup>37</sup> Similarly, Interior’s Solicitor explained, in 2016, that “[t]he Supreme Court has long recognized that Congress exercises plenary power over the use of and activities on federal property. The capacious scope of this authority reflects the United States’ dual role as both proprietor and regulator of federal lands.”<sup>38</sup> Such “capacious” and “complete” constitutional power underscores the immense opportunity to center public lands as a cornerstone of climate action.<sup>39</sup>

In this constitutional context, as well as the context afforded by sections 101 and 102 of NEPA, FLPMA directs Interior to manage federal public lands and resources pursuant to a “multiple use” and “sustained yield” approach, which requires a “delicate balancing” of competing uses.<sup>40</sup> Under the broad definition of the term “multiple use,” Interior must manage public lands and resources to “meet the present and future needs of the American people” while “conform[ing] to changing needs and conditions” ... “tak[ing] into account the long-term needs of future generations.”<sup>41</sup> Ultimately, the multiple use mandate encompasses a broad stewardship responsibility that requires Interior to pursue the “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment.”<sup>42</sup> Implementing “sustained yield” requires Interior to take the long

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<sup>34</sup> For an excellent summary of the expansive legal authorities delegated to Interior under FLPMA, as well as BLM’s authority to require mitigation of impacts resulting from its land use authorizations, see recently reinstated [Solicitor’s Opinion M-37039](#), The Bureau of Land Management’s Authority to Address Impacts of its Land Use Authorizations through Mitigation (Dec. 21, 2016).

<sup>35</sup> U.S. Constitution, Art. IV., Sec. 3, Cl. 2.

<sup>36</sup> 30 U.S.C. §§ 181, *et seq.*

<sup>37</sup> *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976).

<sup>38</sup> [Solicitor’s Opinion M-37039](#) at 9.

<sup>39</sup> “MLA is compatible with FLPMA’s multi-faceted balancing of resources and consideration of long-term protection and preservation of the public’s resources. Thus, when the BLM authorizes activities on public lands under a particular statute, such as the MLA, the BLM may also exercise its general authority under FLPMA to apply appropriate mitigation to avoid, minimize, or compensate for impacts.” [Solicitor’s Opinion M-37039](#) at 27.

<sup>40</sup> *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009).

<sup>41</sup> 43 U.S.C § 1702(c),

<sup>42</sup> *Id.* “The principle of ‘multiple use’ therefore requires consideration of both the interests of current and future generations; the definition expressly mentions the future twice and prohibits permanent impairment to the

view, by managing public lands and resources to achieve the multiple use mandate “in perpetuity.”<sup>43</sup> In managing public lands for multiple use and sustained yield, FLPMA expressly requires:

the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.<sup>44</sup>

FLPMA provides Interior with tools to reconcile tensions that may arise between multiple uses, and to further Interior’s dual role as both the trustee of federal public lands for the benefit of the American people and regulator of federal public lands uses. First, FLPMA directs Interior to engage in resource management planning.<sup>45</sup> Through planning, Interior meets the multiple use directive “to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions.”<sup>46</sup> In other words, FLPMA directs Interior to account for the world as it is, empowering it to directly and proactively account for the emergent and intensifying climate crisis. In planning, Interior must, *inter alia*:

- “[U]se and observe the principles of multiple use and sustained yield”;
- “[U]se a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences”;
- “[C]onsider present and potential uses of the public lands”;
- “[C]onsider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values”; and

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productivity of the land and the quality of the environment. It also provides for consideration of development uses (‘range, timber, minerals’), as well as recreational uses and conservation (‘watershed, wildlife and fish, and natural scenic, scientific and historical values’). By creating such a bold, forward-looking stewardship mandate, Congress granted the BLM broad discretion to chart a course for public lands that accounts for development, conservation, and long-term management.” [Solicitor’s Opinion M-37039](#) at 7-8.

<sup>43</sup> 43 U.S.C. § 1702(h)(emphasis added). “The term cautions against managing public lands for the short-term expediencies of the day, and, as the Supreme Court has explained, ‘requires the BLM to control depleting uses over time, so as to ensure a high level of valuable uses in the future.’ [citing *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004).] Because the term ‘sustained yield’ expressly incorporates principles of ‘multiple use,’ its reference to perpetually maintained ‘output’ accounts for impacts to both developable resources, such as timber for harvest, and environmental resources, such as watersheds and wildlife. Principles of sustained yield, like principles of multiple use, do not elevate certain uses over others, but rather, delegate discretion to the BLM to manage public lands in the best interests of the American people today, tomorrow, and into the future. [Solicitor’s Opinion M-37039](#) at 8-9.

<sup>44</sup> 43 U.S.C. § 1701(a)(8).

<sup>45</sup> 43 U.S.C. § 1712.

<sup>46</sup> 43 U.S.C. § 1702(c).



- “[W]eigh long-term benefits to the public against short-term benefits.”<sup>47</sup>

Second, FLPMA directs Interior to, “regulate, through easements, permits, leases, licenses, and published rules, or other instruments, the use, occupancy, and development of public lands.”<sup>48</sup>

Third, while FLPMA provides Interior with considerable discretion to satisfy these directives, it also charges Interior with several non-discretionary duties. Namely, to:

- Prevent “permanent impairment of the productivity of the land and quality of the environment”;<sup>49</sup> and
- “[B]y regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.”<sup>50</sup>

As fundamental as these responsibilities are to Interior’s mission, it has never promulgated rules that implement these overarching FLPMA duties, including to align the interpretation and implementation of those duties relative to sections 101 and 102 of NEPA.<sup>51</sup> Thus, there are no specific FLPMA-based rules governing Interior’s obligations to “protect air and atmospheric” values, prevent “permanent impairment,” or otherwise “prevent unnecessary or undue degradation.”<sup>52</sup> Interior has, however, promulgated extensive and specific oil and gas rules that implement the MLA’s oil and gas leasing and permitting directives.<sup>53</sup> The absence of FLPMA-based rules coupled with the existence of MLA-based rules creates an asymmetry in Interior’s planning and management framework that favors oil and gas at the expense of FLPMA’s other enumerated resources and values. This asymmetry results in a tipping of the scales toward oil and gas development at the expense of other public resource values and prevents Interior from striking the “delicate balance” required by FLPMA’s multiple use-sustained yield mandate to take the long view and protect ecologically significant resource values.<sup>54</sup>

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<sup>47</sup> 43 U.S.C. §§ 1712(c)(1), (2), (5), (6), and (7).

<sup>48</sup> 43 U.S.C. § 1732(b).

<sup>49</sup> 43 U.S.C. § 1702(c).

<sup>50</sup> 43 U.S.C. § 1732(b).

<sup>51</sup> Of note, Interior has promulgated rules to implement its duty to prevent unnecessary or undue degradation in the distinct context of hardrock mining. *See* 43 C.F.R. § 3809.1.

<sup>52</sup> 43 U.S.C. §§ 1701(a)(8), 1702(c), 1732(b).

<sup>53</sup> *See* 43 C.F.R. Subt. B, Ch. II, Subch. C, Part 3100 (general oil and gas leasing rules), Part 3110 (noncompetitive oil and gas leasing rules), Part 3120 (competitive oil and gas leasing rules), Part 3150 (oil and gas geophysical exploration rules), Part 3160 (oil and gas operations rules), and Part 3170 (oil and gas production measurement and waste rules).

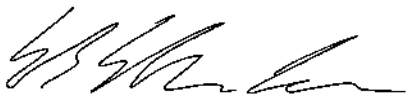
<sup>54</sup> *Richardson*, 565 F.3d at 710 (FLPMA does not require development or other uses to “be accommodated on every piece of land; rather, delicate balancing is required.”)

## V. Conclusion

As we close in on its 50th anniversary, it is time for Interior to fulfill FLPMA’s promise by promulgating a cohesive, tangible, and enforceable regulatory framework that meets the urgency demanded by the climate crisis and opens new doors for public lands to share and contribute to a thriving, resilient future. By establishing a robust, rules-based framework within BLM’s resource management planning and oil and gas program regulations that prevents permanent impairment, unnecessary degradation, and undue degradation associated with the use of public lands, including oil and gas development, Interior will take an important and much-needed step in meeting the Administration’s commitment to address the interwoven climate and biodiversity crises by reducing greenhouse gas emissions and conserving 30 percent of the country’s lands and waters by 2030.

Time is of the essence, as the nation faces a “narrow moment to pursue action” to “avoid the most catastrophic impacts” of the climate crisis, a crisis that demands action to cut greenhouse gas emissions from all sectors and to foster long-term ecological resilience and adaptation as a bulwark to the intensifying and now unavoidable impacts of a warming climate.<sup>55</sup> As BLM recognizes, it must be guided by the “best science to support the Department’s commitment to honor the Nation’s trust responsibilities and conserve and manage the Nation’s natural resources and cultural heritage.”<sup>56</sup> Staying true to those trust responsibilities is essential. BLM must heed the call to respond to the moment and “combat the climate crisis” by taking its place in the “Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; [and] delivers environmental justice.”<sup>57</sup>

Sincerely,



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<sup>55</sup> [E.O. 14008](#), *Tackling the Climate Crisis at Home and Abroad* (Jan. 27, 2021).

<sup>56</sup> [Instruction Memorandum No. 2021-046](#), Reinstating the Bureau of Land Management (BLM) Manual Section (MS-1794) and Handbook (H-1794-1) on Mitigation (Sept. 22, 2021).

<sup>57</sup> [E.O. 14008](#), *Tackling the Climate Crisis at Home and Abroad*, Sec. 201.

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Enclosure: Attachment A – Rulemaking Framework

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# **PETITION FOR RULEMAKING**

## **MODERNIZING PUBLIC LAND AND RESOURCE MANAGEMENT IN RESPONSE TO THE CLIMATE CRISIS:**

### **ESTABLISHING A COHESIVE, TANGIBLE, AND ENFORCEABLE REGULATORY FRAMEWORK TO FULFILL THE PROMISE OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976**

## **ATTACHMENT A**

### **PROPOSED REGULATORY FRAMEWORK**

Provided below are proposed amendments to Title 43, Parts 1600, 3000, 3100, 3110, 3120, 3160, 3170, and 3180. Only sections with proposed amendments are included in full. Those sections for which amendments are not proposed are included by reference. New text is in **bold and underlined**; deleted text is indicated by a ~~striketrough~~. Proposed amendments are also **highlighted**.

# Title 43, Subtitle B, Chapter II, Subchapter A, Part 1600 Planning, Programming, and Budgeting

## Subpart 1601—Planning

§ 1601.0–1 Purpose. (no amendment proposed)

§ 1601.0–2 Objective.

The objective of resource management planning by the Bureau of Land Management is to maximize resource values for the public through a rational, consistently applied set of regulations and procedures which **conform to sections 102, 103(c), 103(h), 201, 202, and 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711–1712) and section 101 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)**, promote the concept of multiple use management **including the duty to prevent permanent impairment, prevent unnecessary or undue degradation of the lands**, and ensure participation by the public, state and local governments, Indian tribes and appropriate Federal agencies. Resource management plans are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.

§ 1601.0–3 Authority.

These regulations are issued under the authority of sections **102, 201, and 202, and 302(b)** of the Federal Land Policy and Management Act of 1976 (43 U.S.C. **1701, 1711–1712, and 1732**); the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901); section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

§ 1601.0–4 Responsibilities. (no amendment proposed)

§ 1601.0–5 Definitions.

As used in this part, the term:

(a) *Areas of Critical Environmental Concern or ACEC* means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.

(b) *Conformity or conformance* means that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.



(c) *Consistent* means that the Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs, subject to the qualifications in § 1615.2 of this title.

(d) *Eligible cooperating agency* means:

(1) A Federal agency other than a lead agency that is qualified to participate in the development of environmental impact statements as provided in 40 CFR 1501.6 and 1508.5 or, as necessary, other environmental documents that BLM prepares, by virtue of its jurisdiction by law as defined in 40 CFR 1508.15, or special expertise as defined in 40 CFR 1508.26; or

(2) A federally recognized Indian tribe, a state agency, or a local government agency with similar qualifications.

(e) *Cooperating agency* means an eligible governmental entity that has entered into a written agreement with the BLM establishing cooperating agency status in the planning and NEPA processes. BLM and the cooperating agency will work together under the terms of the agreement. Cooperating agencies will participate in the various steps of BLM's planning process as feasible, given the constraints of their resources and expertise.

(f) *Field Manager* means a BLM employee with the title "Field Manager" or "District Manager."

(g) *Guidance* means any type of written communication or instruction that transmits objectives, goals, constraints, or any other direction that helps the Field Managers and staff know how to prepare a specific resource management plan.

**(h) *Impacts or effects* means changes to the human environment from a proposed action or alternative that are reasonably foreseeable and as defined by the National Environmental Policy Act (42 U.S.C. 4321 et seq.). Impacts or effects can be direct, indirect, or cumulative. The terms impacts and effects are used interchangeably in these rules.**

**(i) *Landscape* means a geographic area encompassing an interacting mosaic of ecosystems and human systems that is characterized by a set of common management concerns. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context. The term "landscape" may include water-centric scales, such as watersheds, if they represent the appropriate landscape-scale.**

**(j) *Landscape-scale approach* means, in reference to mitigation, an approach that considers baseline conditions, reasonably foreseeable impacts, including impacts that extend beyond the BLM's administrative boundaries, and the application of the mitigation hierarchy in the context of the conditions and trends of resources, at all relevant scales, consistent with applicable law.**

~~(h)~~**(k)** *Local government* means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority.

**(l) *Management practices* means the actions identified and either required or employed to achieve desired multiple use outcomes, including actions to maintain, restore, or improve land health; actions that are required for the mitigation of impacts; and actions that prevent permanent impairment, unnecessary degradation, or undue degradation.**

**(m) *Mitigation or mitigation hierarchy* means the sequence of management practices identified and either required or employed to avoid impacts, minimize impacts that cannot be avoided, and compensate for those impacts that are unavoidable utilizing a landscape-scale approach.**

~~(h)~~**(n)** *Multiple use* means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the lands for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

~~(h)~~**(o)** *Officially approved and adopted resource related plans* means plans, policies, programs and processes prepared and approved pursuant to and in accordance with authorization provided by Federal, State or local constitutions, legislation, or charters which have the force and effect of State law.

**(p) *Permanent impairment* means the adverse impact of a land use plan, implementation plan, or resource management authorization or action, that violates a resource condition goal, objective, threshold, or standard identified to protect scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values, food and habitat for fish and wildlife and domestic animals, or outdoor recreation and human occupancy and use; fails to ensure the sustained yield of renewable multiple use resources; or is not mitigated within a reasonably foreseeable time period. In the absence of an identified resource goal, objective, threshold, or standard, permanent impairment means a reasonably foreseeable and significant resource impact that is either not mitigated or is not feasible to mitigate.**

~~(k)~~**(q)** *Public* means affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups and officials of State, local, and Indian tribal governments.

~~(j)~~**(r)** *Public lands* means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

~~(m)~~**(s)** *Resource area or field office* means a geographic portion of a Bureau of Land Management district. It is the administrative subdivision whose manager has primary responsibility for day-to-day resource management activities and resource use allocations and is, in most instances, the area for which resource management plans are prepared and maintained.

~~(n)~~**(t)** *Resource management plan* means a land use plan as described by the Federal Land Policy and Management Act. The resource management plan generally establishes in a written document:

- (1) Land areas for limited, restricted or exclusive use; designation, including ACEC designation; and transfer from Bureau of Land Management Administration;
- (2) Allowable resource uses (either singly or in combination) and related levels of production or use to be maintained;
- (3) Resource condition goals, ~~and~~ objectives, **thresholds, or standards required to further multiple use management, including management to prevent permanent impairment, unnecessary degradation, or undue degradation,** to be attained **or adhered to consistent with the policies in sections 102, 103(c), 103(h), 201, 202, and 302(b) of the Federal Land Policy and Management Act of 1976 and section 101 of the National Environmental Policy Act of 1969;**
- (4) Program constraints and general management practices needed to achieve the above items;
- (5) Need for an area to be covered by more detailed and specific plans;
- (6) Support actions **s and management practices,** including such measures as resource protection **and mitigation** to **prevent permanent impairment, unnecessary degradation, or undue degradation,** access development, realty action, cadastral survey, etc., as necessary to achieve the above;
- (7) General implementation sequences, **including mitigation,** where carrying out a planned action is dependent upon prior accomplishment of another planned action; and
- (8) Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision, **with the caveat that such intervals and standards do not constitute** ~~It is not~~ a final implementation decision on actions

which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

**(u) *Resources (and their values, services, and/or functions)* means natural, social, or cultural objects or qualities; resource values are the importance, worth, or usefulness of resources; resource services are the benefits people derive from resources; and resource functions are the physical, chemical, and/or biological, and ecological processes that involve resources.**

**(v) *Undue degradation* means the impact of a land use plan, implementation plan, resource management authorization or action that:**

**(1) Fails to comply, to the extent consistent with the laws governing the administration of the public lands, with a land use plan, implementation plan, regulation, or standard of other Federal, Tribal, State, or local departments and agencies;**

**(2) Causes either permanent impairment or substantial irreparable harm to resources and their values, including but not limited to, scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, or archeological values, food and habitat for fish and wildlife and domestic animals, or outdoor recreation and human occupancy and use; or**

**(3) Fails to address or provide for either the periodic adjustment in use of the landscape to conform to changing needs and conditions, the long-term needs of future generations for renewable and non-renewable resources, or the relative values of resources.**

**(w) *Unnecessary degradation* means the impact of a land use plan, implementation plan, resource management authorization or action that:**

**(1) Is not reasonably incident to action needed to further the purpose and need of the plan, authorization, or action; or**

**(2) Does not employ the mitigation hierarchy that, in sequence, utilizes a landscape-scale approach to:**

**(A) avoid the impact altogether by not taking a certain action or parts of an action or, if an impact cannot be avoided;**

**(B) minimize the impact by limiting the degree or magnitude of the action and its implementation; or**

**(C) compensate for the remaining impacts, after all appropriate and practicable avoidance and minimization measures have been applied, by replacing or providing substitute resources or environments through the restoration, establishment, enhancement, or preservation of resources and their values, services and functions.**

§ 1601.0–6 Environmental impact statement policy. (no amendment proposed)

§ 1601.0–7 Scope. (no amendment proposed)

## § 1601.0–8 Principles.

The development, approval, maintenance, amendment and revision of resource management plans will provide for public involvement and shall be consistent with the **policy, principles, and mandates depprescribed** in sections **102, 103(c), 103(h), 201, 202, and 302(b)** of the Federal Land Policy and Management Act of 1976 **and section 101 of the National Environmental Policy Act of 1969**. Additionally, the impact on local economies, **resources, and the environment**, and uses of adjacent or nearby non–Federal lands and on non-public land surface over federally-owned mineral interests shall be considered.

## **Subpart 1610—Resource Management Planning**

§ 1610.1 Resource management planning guidance. (no amendment proposed)

§ 1610.2 Public participation. (no amendment proposed)

§ 1610.3 *Coordination with other Federal agencies, State and local governments, and Indian tribes.*

§ 1610.3–1 Coordination of planning efforts. (no amendment proposed)

§ 1610.3–2 Consistency requirements. (no amendment proposed)

§ 1610.4 *Resource management planning process.*

§ 1610.4–1 Identification of issues. (no amendment proposed)

§ 1610.4–2 Development of planning criteria.

(a) The Field Manager will prepare criteria to guide development of the resource management plan or revision, to ensure:

- (1) It is tailored to the issues previously identified; **and**
- (2) That BLM avoids unnecessary data collection and analyses-; **and**

**(3) Conformance of the land use plan to the policy, principles, and mandates of sections 102, 103(c), 103(h), 201, 202, and 302(b) of the Federal Land Policy and Management Act of 1976 and section 101 of the National Environmental Policy Act of 1969.**

(b) Planning criteria will generally be based upon applicable law, Director and State Director guidance, the results of public participation, and coordination with any cooperating agencies and other Federal agencies, State and local governments, and federally recognized Indian tribes.

(c) BLM will make proposed planning criteria, including any significant changes, available for public comment prior to being approved by the Field Manager for use in the planning process.

(d) BLM may change planning criteria as planning proceeds if we determine that public suggestions or study and assessment findings make such changes desirable.

§ 1610.4–3 Inventory data and information collection. (no amendment proposed)

§ 1610.4–4 Analysis of the management situation.

The Field Manager, in collaboration with any cooperating agencies, will analyze the inventory data and other information available to determine the ability of the resource area to respond to identified issues and opportunities. The analysis of the management situation shall provide, consistent with multiple use principles, the basis for formulating reasonable alternatives, including the types of resources for development or protection, **and the relationship between such development or protection to the BLM’s responsibilities to prevent permanent impairment, unnecessary degradation, and undue degradation and conform, to the fullest extent possible, to the policy contained in section 101 of the National Environmental Policy Act of 1969.** Factors to be considered may include, but are not limited to:

- (a) The types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation;
- (b) Opportunities to meet goals and objectives defined in national and State Director guidance;
- (c) Resource demand forecasts and analyses relevant to the resource area;
- (d) The estimated sustained levels of the various goods, services and uses that may be attained under existing biological and physical conditions and under differing management practices and degrees of management intensity which are economically viable under benefit cost or cost effectiveness standards prescribed in national or State Director guidance;
- (e) Specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes;
- (f) Opportunities to resolve public issues and management concerns;
- (g) Degree of local dependence on resources from public lands;
- (h) The extent of coal lands which may be further considered under provisions of § 3420.2–3(a) of this title; ~~and~~
- (i) **Resource condition goals, objectives, standards, and Critical thresholds levels for resources** which should be considered in the formulation of planned alternatives **to prevent permanent impairment, unnecessary degradation, or undue degradation.**

§ 1610.4–5 Formulation of alternatives.

At the direction of the Field Manager, in collaboration with any cooperating agencies, BLM will consider all reasonable resource management alternatives and develop several complete alternatives for detailed study. Nonetheless, the decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM. The alternatives developed shall reflect the variety of issues and guidance applicable to the resource uses **and**



**further the policy, principles, and mandates of sections 102, 103(c), 103(h), 201, 202, and 302(b) of the Federal Land Policy and Management Act of 1976 and the policy contained in section 101 of the National Environmental Policy Act of 1969.** In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, all reasonable variations shall be treated as sub-alternatives. One alternative shall be for no action, which means continuation of present level or systems of resource use. The plan shall note any alternatives identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination.

#### **§ 1610.4–6 Estimation of effects of alternatives.**

**The Field Manager shall first identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of implementing each alternative considered in detail.** The Field Manager, in collaboration with any cooperating agencies, will **then** estimate and display the **physical-environmental, biological-ecological, economic, and social, and economic** effects of implementing each alternative considered in detail **and rationally connect those effects to a determination of whether they conform to the BLM’s responsibility to prevent permanent impairment, unnecessary degradation, and undue degradation.** The estimation of effects shall be guided by the planning criteria and procedures implementing the National Environmental Policy Act **as well as the policy contained in section 101 of the National Environmental Policy Act of 1969.** The estimate may be stated in terms of probable ranges where effects cannot be precisely determined.

#### **§ 1610.4–7 Selection of preferred alternatives.**

The Field Manager, in collaboration with any cooperating agencies, will evaluate the alternatives, estimate their effects according to the planning criteria, and identify a preferred alternative that best meets **the policy, principles, and mandates of sections 102, 103(c), 103(h), 201, 202, and 302(b) of the Federal Land Policy and Management Act of 1976, the policy contained in section 101 of the National Environmental Policy Act of 1969, and, to the degree consistent with these authorities,** Director and State Director guidance. **Nonetheless, the decision to select a preferred alternative remains the exclusive responsibility of the BLM.** The resulting draft resource management plan and draft environmental impact statement shall be forwarded to the State Director for approval, publication, and filing with the Environmental Protection Agency. This draft plan and environmental impact statement shall be provided for comment to the Governor of the State involved, and to officials of other Federal agencies, State and local governments and Indian tribes that the State Director has reason to believe would be concerned. This action shall constitute compliance with the requirements of § 3420.1–7 of this title.

#### **§ 1610.4–8 Selection of resource management plan. (no amendment proposed)**

#### **§ 1610.4–9 Monitoring and evaluation. (no amendment proposed)**

#### **§ 1610.5 Resource management plan approval, use and modification.**

§ 1610.5–1 Resource management plan approval and administrative review. (no amendment proposed)

§ 1610.5–2 Protest procedures. (no amendment proposed)

§ 1610.5–3 Conformity and implementation. (no amendment proposed)

§ 1610.5–4 Maintenance. (no amendment proposed)

§ 1610.5–5 Amendment. (no amendment proposed)

§ 1610.5–6 Revision. (no amendment proposed)

§ 1610.5–7 Situations where action can be taken based on another agency’s plan, or a land use analysis. (no amendment proposed)

§ 1610.6 Management decision review by Congress. (no amendment proposed)

§ 1610.7 Designation **and Management of areas Lands.**

§ 1610.7–1 Designation of areas unsuitable for surface mining. (no amendment proposed)

§ 1610.7–2 Designation of areas of critical environmental concern. (no amendment proposed)

**§ 1610.7–3 Prevention of permanent impairment, unnecessary degradation, and undue degradation.**

**(a) The resource management plan, revision, or amendment shall prevent permanent impairment, unnecessary degradation, and undue degradation by:**

**(1) Identifying, whether quantitatively or qualitatively, landscape-scale resource condition goals, objectives, standards, or thresholds whose exceedance would trigger a finding of permanent impairment, unnecessary degradation, or undue degradation;**

**(2) Identifying management practices that avoid, minimize, or compensate for impacts to resources and resource values as a mechanism to prevent permanent impairment, unnecessary degradation, and undue degradation;**

**(3) Accounting for changing resource conditions and circumstances, and the limits of the environment to withstand such conditions and circumstances, including from climate change;**

**(4) Conforming multiple use management of resources, to the fullest extent possible, with section 101 of the National Environmental Policy Act of 1969, or explaining any deviation from that policy; and**

**(5) Aligning management of the public lands and resources within the plan, revision, or amendment’s scope consistent with action to hold the increase in the**

**global average temperature to well below 2 degrees Celsius above pre-industrial levels and to actively pursue efforts to limit the temperature to 1.5 degrees Celsius, including by establishing, for public lands and resources governed by the plan, revision, or amendment, a carbon budget for net greenhouse gas emissions and each resource sector contributing such emissions and the specific resource condition goals, objectives, thresholds, standards, management practices, allowable uses and related production levels, or other actions within the BLM's authority to meet that budget.**

**(b) The Field Manager, in the proposed resource management plan, revision, or amendment submitted to the State Director, shall make a written finding that the plan, revision, or amendment conforms to subsection (a). Such a finding shall be rationally connected to facts found in the plan, revision, or amendment, accompanying National Environmental Policy Act analysis, or other supporting documentation so long as such documentation was subject to public review and comment.**

**(c) The State Director shall review the written finding made by the Field Manager in accord with subsection (b) and certify in writing that the resource management plan, revision, or amendment, as proposed, conforms to subsection (a) and, if not, return the plan to the Field Manager in accord with § 1610.5–1(a) of this title. The Field Manager's written finding providing that the resource management plan, revision, or amendment conforms to subsection (a), as well as the State Director's written certification, shall be included in the approved plan in accord with § 1610.5–1(b).**

§ 1610.8 Transition period. (no amendment proposed)

## **Title 43, Subtitle B, Chapter II, Subchapter C, Part 3000 Minerals Management - General**

### **Subpart 3000 – General**

#### **§ 3000.0–5 Definitions.**

As used in Groups 3000 and 3100 of this title, the term:

(a) *Gas* means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions.

(b) *Oil* means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all vein-type solid hydrocarbons).

(c) *Secretary* means the Secretary of the Interior.

(d) *Director* means the Director of the Bureau of Land Management.

(e) *Authorized officer* means any employee of the Bureau of Land Management authorized to perform the duties described in Group 3000 and 3100.

(f) *Proper BLM office* means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Groups 3000 and 3100, except that all oil and gas lease offers, and assignments or transfers for lands in Alaska shall be filed in the Alaska State Office, Anchorage, Alaska.

(See § 1821-2-1 of this title for office location and area of jurisdiction of Bureau of Land Management offices.)

(g) *Public domain lands* means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws and other lands specifically identified by the Congress as part of the public domain.

(h) *Acquired lands* means lands which the United States obtained by deed through purchase or gift, or through condemnation proceedings, including lands previously disposed of under the public land laws including the mining laws.

(i) *Anniversary date* means the same day and month in succeeding years as that on which the lease became effective.

(j) *Act* means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

(k) *Party in interest* means a party who is or will be vested with any interest under the lease as defined in paragraph (l) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest.

(l) *Interest* means ownership in a lease or prospective lease of all or a portion of the record title, working interest, operating rights, overriding royalty, payments out of production, carried interests, net profit share or similar instrument for participation in the benefit derived from a lease. An *interest* may be created by direct or indirect ownership, including options. *Interest* does not mean stock ownership, stockholding or stock control in an application, offer, competitive bid or lease, except for purposes of acreage limitations in § 3101.2 of this title and qualifications of lessees in subpart 3102 of this title.

(m) *Surface managing agency* means any Federal agency outside of the Department of the Interior with jurisdiction over the surface overlying federally-owned minerals.

(n) *Service* means the Minerals Management Service.

(o) *Bureau* means the Bureau of Land Management.

**(p) *Impacts or effects* means changes to the human environment from a proposed action or alternative that are reasonably foreseeable and as defined by the National Environmental**

**Policy Act (42 U.S.C. 4321 et seq.). Impacts or effects can be direct, indirect, or cumulative. The terms impacts and effects are used interchangeably in these rules.**

**(q) *Landscape* means a geographic area encompassing an interacting mosaic of ecosystems and human systems that is characterized by a set of common management concerns. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context. The term “landscape” may include water-centric scales, such as watersheds, if they represent the appropriate landscape-scale.**

**(r) *Landscape-scale approach* means, in reference to mitigation, an approach that considers baseline conditions, reasonably foreseeable impacts, including impacts that extend beyond the BLM’s administrative boundaries, and the application of the mitigation hierarchy in the context of the conditions and trends of resources, at all relevant scales, consistent with applicable law.**

**(s) *Management practices* means the actions identified and either required or employed to achieve desired multiple use outcomes, including actions to maintain, restore, or improve land health; actions that are required for the mitigation of impacts; and actions that prevent permanent impairment, unnecessary degradation, or undue degradation.**

**(t) *Mitigation or mitigation hierarchy* means the sequence of management practices identified and either required or employed to avoid impacts, minimize impacts that cannot be avoided, and compensate for those impacts that are unavoidable utilizing a landscape-scale approach.**

**(u) *Permanent impairment* means the impact of a land use plan, implementation plan, or resource management authorization or action, that violates a resource condition goal, objective, threshold, or standard identified to protect scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values, food and habitat for fish and wildlife and domestic animals, or outdoor recreation and human occupancy and use; fails to ensure the sustained yield of renewable multiple use resources; or is not mitigated within a reasonably foreseeable time period. In the absence of an identified resource goal, objective, threshold, or standard, permanent impairment means a reasonably foreseeable and significant resource impact that is either not mitigated or is not feasible to mitigate.**

**(v) *Resources (and their values, services, and/or functions)* means natural, social, or cultural objects or qualities; resource values are the importance, worth, or usefulness of resources; resource services are the benefits people derive from resources; and resource functions are the physical, chemical, and/or biological, and ecological processes that involve resources.**

**(w) *Undue degradation* means the impact of a land use plan, implementation plan, resource management authorization or action that:**

**(1) Fails to comply, to the extent consistent with the laws governing the administration of the public lands, with a land use plan, implementation plan, regulation, or standard of**

**other Federal, Tribal, State, or local departments and agencies;**

**(2) Causes either permanent impairment or substantial irreparable harm to resources and their values, including but not limited to, significant scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, or archeological values, food and habitat for fish and wildlife and domestic animals, or outdoor recreation and human occupancy and use;**

**(3) Fails to address or provide for either the periodic adjustment in use of the landscape to conform to changing needs and conditions, the long-term needs of future generations for renewable and non-renewable resources, or the relative values of resources.**

**(x) Unnecessary degradation means the impact of a land use plan, implementation plan, resource management authorization or action that:**

**(1) Is not reasonably incident to action needed to further the purpose and need of the plan, authorization, or action; or**

**(2) Does not employ the mitigation hierarchy that, in sequence, utilizes a landscape-scale approach to:**

**(A) avoid the impact altogether by not taking a certain action or parts of an action or, if an impact cannot be avoided;**

**(B) minimize the impact by limiting the degree or magnitude of the action and its implementation; or**

**(C) compensate for the remaining impacts, after all appropriate and practicable avoidance and minimization measures have been applied, by replacing or providing substitute resources or environments through the restoration, establishment, enhancement, or preservation of resources and their values, services and functions.**

§ 3000.1 Nondiscrimination. (no amendment proposed)

§ 3000.2 False statements. (no amendment proposed)

§ 3000.3 Unlawful interests. (no amendment proposed)

§ 3000.4 Appeals. (no amendment proposed)

§ 3000.5 Limitations on time to institute suit to contest a decision of the Secretary.

No action contesting a decision of the Secretary involving any oil or gas lease, offer or application **pursuant to the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.)**, shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

§ 3000.6 Filing of documents. (no amendment proposed)

§ 3000.7 Multiple development.

The granting of a permit or lease for the prospecting, development or production of deposits of any one mineral shall not preclude **the management of public lands for other multiple uses,** the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations or selections of leased lands with a reservation of the mineral deposits to the United States.

**§ 3000.8 Management of Federal minerals from reserved mineral estates.** (no amendment proposed)

**§ 3000.9 Enforcement.** (no amendment proposed)

**§ 3000.10 What do I need to know about fees in general?** (no amendment proposed)

**§ 3000.11 When and how does BLM charge me processing fees on a case-by-case basis?** (no amendment proposed)

**§ 3000.12 What is the fee schedule for fixed fees?** (no amendment proposed)

## **Title 43, Subtitle B, Chapter II, Subchapter C, Part 3100 Oil and Gas Leasing**

### **Subpart 3100 – Onshore Oil and Gas Leasing: General**

**§ 3100.0–3 Authority.**

(a) Public domain.

(1) Oil and gas in public domain lands and lands returned to the public domain under section 2370 of this title are subject to lease under the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), by acts, including, but not limited to, section 1009 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148).

(2) Exceptions.

(i) Units of the National Park System including lands withdrawn by section 206 of the Alaska National Interest Lands Conservation Act, except as provided in paragraph (g)(4) of this section;

(ii) Indian reservations;

(iii) Incorporated cities, towns and villages;

(iv) Naval petroleum and oil shale reserves and the National Petroleum Reserve—Alaska.

(v) Lands north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve—Alaska;

(vi) Arctic National Wildlife Refuge in Alaska.

(vii) Lands recommended for wilderness allocation by the surface managing agency:

- (viii) Lands within Bureau of Land Management wilderness study areas;
- (ix) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;
- (x) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety–Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and
- (xi) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

**(xii) Lands determined to be unavailable for lease to further or conform to sections 102, 103(c), 103(h), 201, 202, and 302(b) of the Federal Land Policy and Management Act of 1976 and section 101 of the National Environmental Policy Act of 1969.**

(b) Acquired lands.

- (1) Oil and gas in acquired lands are subject to lease under the Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351–359).
- (2) Exceptions.
  - (i) Units of the National Park System, except as provided in paragraph (g)(4) of this section;
  - (ii) Incorporated cities, towns and villages;
  - (iii) Naval petroleum and oil shale reserves and the National Petroleum Reserve—Alaska;
  - (iv) Tidelands or submerged coastal lands within the continental shelf adjacent or littoral to lands within the jurisdiction of the United States;
  - (v) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except oil, gas and other minerals subject to leasing under the Act;
  - (vi) Lands reported as excess under the Federal Property and Administrative Services Act of 1949;
  - (vii) Lands acquired by the United States by foreclosure or otherwise for resale.
  - (viii) Lands recommended for wilderness allocation by the surface managing agency;
  - (ix) Lands within Bureau of Land Management wilderness study areas;
  - (x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;



(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety–Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

**(xiii) Lands determined to be unavailable for lease to further or conform to sections 102, 103(c), 103(h), 201, and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711–1712) and section 101 of the National Environmental Policy Act.**

(c) National Petroleum Reserve—Alaska is subject to lease under the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

(d) Where oil or gas is being drained from lands otherwise unavailable for leasing, there is implied authority in the agency having jurisdiction of those lands to grant authority to the Bureau of Land Management to lease such lands (see 43 U.S.C. 1457 43 U.S.C. 1457; also Attorney General’s Opinion of April 2, 1941 (Vol. 40 Op.Atty.Gen. 41) ).

(e) Where lands previously withdrawn or reserved from the public domain are no longer needed by the agency for which the lands were withdrawn or reserved and such lands are retained by the General Services Administration, or where acquired lands are declared as excess to or surplus by the General Services Administration, authority to lease such lands may be transferred to the Department in accordance with the Federal Property and Administrative Services Act of 1949 and the Mineral Leasing Act for Acquired Lands, as amended.

(f) The Act of May 21, 1930 (30 U.S.C. 301–306), authorizes the leasing of oil and gas deposits under certain rights-of-way to the owner of the right-of-way or any assignee.

(g)(1) The Act of May 9, 1942 (56 Stat. 273), as amended by the Act of October 25, 1949 (63 Stat. 886), authorizes leasing on certain lands in Nevada.

(2) The Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026), authorizes leasing on certain lands patented to the State of California.

(3) The Act of June 30, 1950 (16 U.S.C. 508(b) ) authorizes leasing on certain National Forest Service Lands in Minnesota.

(4) Units of the National Park System. The Secretary is authorized to permit mineral leasing in the following units of the National Park System if he/she finds that such disposition would not have significant adverse effects on the administration of the area and if lease operations can be conducted in a manner that will preserve the scenic, scientific and historic features contributing to public enjoyment of the area, pursuant to the following authorities:

(i) Lake Mead National Recreation Area—The Act of October 8, 1964 (16 U.S.C. 460n et seq.)

(ii) Whiskeytown Unit of the Whiskeytown–Shasta–Trinity National Recreation Area—The Act of November 8, 1965 (79 Stat. 1295; 16 U.S.C. 460q et seq.).

(iii) Ross Lake and Lake Chelan National Recreation Areas—The Act of October 2, 1968 (82 Stat. 926; 16 U.S.C. 90 et seq.).

(iv) Glen Canyon National Recreation Area—The Act of October 27, 1972 (86 Stat. 1311; 16 U.S.C. 460dd et seq.).

(5) Shasta and Trinity Units of the Whiskeytown–Shasta–Trinity National Recreation Area. Section 6 of the Act of November 8, 1965 (Pub.L. 89–336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of leasable minerals from lands (or interest in lands) within the recreation area under the jurisdiction of the Secretary of Agriculture in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351–359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

#### **§ 3100.0–5 Definitions.**

As used in this part, the term:

(a) *Operator* means any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(b) *Unit operator* means the person authorized under the agreement approved by the Department of the Interior to conduct operations within the unit.

(c) *Record title* means a lessee’s interest in a lease which includes the obligation to pay rent, and the rights to assign and relinquish the lease. Overriding royalty and operating rights are severable from record title interests.

(d) *Operating right* (working interest) means the interest created out of a lease authorizing the holder of that right to enter upon the leased lands to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the terms of the lease.

(e) *Transfer* means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: Assignment which means a transfer of all or a portion of the lessee’s record title interest in a lease; and sublease which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

(f) *National Wildlife Refuge System Lands* means lands and water, or interests therein, administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife management areas or waterfowl production areas.

(g) *Actual drilling operations* includes not only the physical drilling of a well, but the testing, completing or equipping of such well for production.

(h)(1) *Primary term* of lease subject to section 4(d) of the Act prior to the revision of 1960 (30 U.S.C. 226–1(d)) means all periods of the life of the lease prior to its extension by reason of production of oil and gas in paying quantities; and

(2) *Primary term* of all other leases means the initial term of the lease. For competitive leases, except those within the National Petroleum Reserve—Alaska, this means 5 years and for noncompetitive leases this means 10 years.

(i) Lessee means a person or entity holding record title in a lease issued by the United States.

(j) *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

(k) *Bid* means an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person or entity for a lease parcel in a competitive lease sale.

**(l) *Lands available for leasing* means public lands or minerals known or reasonably believed to contain economically recoverable deposits of oil and gas whose development, as determined by the applicable land use plan, would conform to the policies in sections 102, 103(c), 103(h), 201, 202, and 302(b) of the Federal Land Policy and Management Act of 1976 and section 101 of the National Environmental Policy Act, and, specifically, would not cause permanent impairment, unnecessary degradation, or undue degradation.**

§ 3100.0–9 **Information collection.** (no amendment proposed)

§ 3100.1 **Helium.** (no amendment proposed)

§ 3100.2 ***Drainage.***

§ 3100.2–1 **Compensation for drainage.** (no amendment proposed)

§ 3100.2–2 **Drilling and production or payment of compensatory royalty.** (no amendment proposed)

§ 3100.3 ***Options.***

§ 3100.3–1 **Enforceability.** (no amendment proposed)

§ 3100.3–2 Effect of option on acreage. (no amendment proposed)

§ 3100.3–3 Option statements. (no amendment proposed)

§ 3100.4 Public availability of information. (no amendment proposed)

### Subpart 3101 – Issuance of Leases

§ 3101.1 *Lease terms and conditions.*

§ 3101.1–1 Lease form. (no amendments proposed)

§ 3101.1–2 **Surface use Lease** rights.

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to:

(a) Stipulations attached to the lease;

(b) ~~R~~Restrictions deriving from **specific**, nondiscretionary statutes, **rules, or the applicable land use plan**;

(c) **Restrictions identified through compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to mitigate impacts that were either not addressed or were not reasonably foreseeable at the time of lease issuance or whose evaluation was expressly deferred to the site-specific proposal stage;** and

(d) ~~s~~Such **additional** reasonable measures as may be required by the authorized officer to **minimize mitigate** adverse impacts to other resources values, land uses or users **not addressed in the lease stipulations at the time operations are proposed.** ~~T~~to the extent consistent with lease rights granted, **such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.**

§ 3101.1–3 Stipulations and information notices.

The authorized officer ~~may~~ **shall identify stipulations for each lease reasonably necessary to prevent permanent impairment, unnecessary degradation, and undue degradation and shall** require **such** stipulations **and any additional stipulations deemed necessary** as conditions of lease issuance. Stipulations shall become part of the lease and shall supersede inconsistent provisions of the standard lease form. Any party submitting a bid under subpart 3120 of this title, or an offer under § 3110.1(b) of this title during the period when use of the parcel number is required pursuant to § 3110.5-1 of this title, shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale available from the proper BLM office. A

party filing a noncompetitive offer in accordance with § 3110.1(a) of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, unless the offer is withdrawn in accordance with § 3110.6 of this title. An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.

**§ 3101.1–4 Modification or waiver of lease terms and stipulations.**

A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that **modification or waiver is required to comply with nondiscretionary statutes or rules, the applicable land use plan, or to prevent permanent impairment, unnecessary degradation, or undue degradation that would otherwise be caused by impacts that were either not addressed or not reasonably foreseeable at the time of lease issuance or whose analysis was otherwise expressly deferred to the site-specific proposal stage,** the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified, or if proposed operations would not cause unacceptable impacts. If the authorized officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30–day period. In such cases, the stipulation shall indicate that public review is required before modification or waiver. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for at least a 30–day period.

**§ 3101.2 Acreage limitations.**

**§ 3101.2–1 Public domain lands.** (no amendment proposed)

**§ 3101.2–2 Acquired lands.** (no amendment proposed)

**§ 3101.2–3 Excepted acreage.** (no amendment proposed)

**§ 3101.2–4 Excess acreage.** (no amendment proposed)

**§ 3101.2–5 Computation.** (no amendment proposed)

**§ 3101.2–6 Showing required.** (no amendment proposed)

**§ 3101.3 Leases within unit areas.**

**§ 3101.3–1 Joinder evidence required.** (no amendment proposed)

**§ 3101.3–2 Separate leases to issue.** (no amendment proposed)

**§ 3101.4 Lands covered by application to close lands to mineral leasing.** (no amendment proposed)

**§ 3101.5 *National Wildlife Refuge System lands.***

**§ 3101.5–1 Wildlife refuge lands.** (no amendment proposed)

**§ 3101.5–2 Coordination lands.** (no amendment proposed)

**§ 3101.5–3 Alaska wildlife areas.** (no amendment proposed)

**§ 3101.5–4 Stipulations.** (no amendment proposed)

**§ 3101.6 Recreation and public purposes lands.** (no amendment proposed)

**§ 3101.7 *Federal lands administered by an agency outside of the Department of the Interior.***

**§ 3101.7–1 General requirements.**

(a) Acquired lands shall be leased only with the consent of the surface managing agency **or owner**, which upon receipt of a description of the lands from the authorized officer, shall report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

(b) Public domain lands shall be leased only after the Bureau has consulted with the surface managing agency **or owner** and has provided it with a description of the lands, and the surface managing agency **or owner** has reported its recommendation to lease with stipulations, if any, or not to lease to the authorized officer. If consent or lack of objection of the surface managing agency **or owner** is required by statute to lease public domain lands, the procedure in paragraph (a) of this section shall apply.

(c) National Forest System lands whether acquired or reserved from the public domain shall not be leased over the objection of the Forest Service. The provisions of paragraph (a) of this section shall apply to such National Forest System lands.

**§ 3101.7–2 Action by the Bureau of Land Management.**

(a) Where the surface managing agency **or owner** has consented to leasing with required stipulations, and the Secretary decides to issue a lease, the authorized officer shall incorporate the stipulations into any lease which it may issue. The authorized officer may add additional stipulations.

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency **or owner** objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

(c) The authorized officer shall review all recommendations and shall accept all reasonable recommendations of the surface managing agency **or owner**.

**§ 3101.7–3 Appeals.**

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency **or owner** may be appealed to the Interior Board of Land Appeals under part 4 of this title.

(b) Where, as provided by statute, the surface managing agency **or owner** has required that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency **or owner**.

**§ 3101.8 State’s or charitable organization’s ownership of surface overlying Federally-owned minerals.** (no amendment proposed)

**Subpart 3102 – Qualifications of Lessees** (no amendment proposed)

**Subpart 3103 – Fees, Rentals, and Royalty**

**§ 3103.1 *Payments.***

**§ 3103.1-1 Form of remittance.** (no amendment proposed)

**§ 3103.1-2 Where submitted.** (no amendment proposed)

**§ 3103.2 *Rentals.***

**§ 3103.2-1 Rental requirements.** (no amendment proposed)

**§ 3103.2-2 Annual rental payments.** (no amendment proposed)

**§ 3103.3 *Royalties.***

**§ 3103.3-1 Royalty on production.** (no amendment proposed)

**§ 3103.3-2 Minimum royalties.** (no amendment proposed)

**§ 3103.4 *Production incentives.***

**§ 3103.4-1 Royalty reductions.** (no amendment proposed)

**§ 3103.4-2 Stripper well royalty reductions.** (no amendment proposed)

**§ 3103.4-3 Heavy oil royalty reductions.** (no amendment proposed)

**§ 3103.4-4 Suspension of operations and/or production.**

(a) A suspension of all operations and production may be directed or consented to by the authorized officer **only** in the interest of conservation of natural resources **or to prevent permanent impairment, unnecessary degradation, or undue degradation**. A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or 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. Applications for any

suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.

(b) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of § 3165.1 of this title.

(d) Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of all operations and production becomes effective, or if the suspension of all 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 of the lease month in which the suspension of all operations and production is terminated. 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. Rental and minimum royalty payments shall not be suspended during any period of suspension of operations only or suspension of production only.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any Federal lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

**Subpart 3104 – Bonds** (no amendment proposed)

**Subpart 3105 – Cooperative Conservation Provisions** (no amendment proposed)

**Subpart 3106 – Transfers by Assignment, Sublease or Otherwise** (no amendment proposed)

**Subpart 3107 – Continuation, Extension or Renewal**

**§ 3107.1 Extension by drilling.**

Any lease on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at the end of the primary term or any lease which is part of an approved communitization agreement or cooperative or unit plan of development or operation upon which such drilling takes place, shall be extended for 2 years subject to the rental being timely paid as required by § 3103.2 of this title, and subject to the provisions of § 3105.2–



3 and § 3186.1 of this title, if applicable. **Prior to extending the primary term of any lease, the authorized officer shall make a finding that such extension will not result in permanent impairment, unnecessary degradation, or undue degradation and, where appropriate, shall require such modified stipulations or reasonable measures as conditions of extending the lease's primary term as provided in § 3101.1–2 and § 3101.1–4 of this title.** Actual drilling operations shall be conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts. In drilling a new well on a lease or for the benefit of a lease under the terms of an approved agreement or plan, it shall be taken to a depth sufficient to penetrate at least 1 formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it shall be taken to a depth sufficient to penetrate at least 1 new and deeper formation recognized in the area as potentially productive of oil or gas. The authorized officer may determine that further drilling is unwarranted or impracticable.

#### **§ 3107.2 Production.**

##### **§ 3107.2–1 Continuation by production.**

A lease shall be extended so long as oil or gas is being produced in paying quantities, **subject to a finding by the authorized officer that such extension would not result in permanent impairment, unnecessary degradation, or undue degradation and shall be subject to stipulations as conditions of the lease as provided in § 3101.1-2 and § 3101.1-3 of this title.**

##### **§ 3107.2–2 Cessation of production.**

A lease which is in its extended term because of production in paying quantities shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction, **subject to a finding by the authorized officer that a continued extension would not result in permanent impairment, unnecessary degradation, or undue degradation and, where appropriate, approval of a continued extension subject to modified stipulations or reasonable measures as conditions of the lease as provided in § 3101.1-2 and § 3101.1-4 of this title.** The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

##### **§ 3107.2–3 Leases capable of production.**

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to do so. Such production shall be continued unless and until suspension of production is granted **or directed** by the authorized officer **as provided in § 3103.4–4 of this title.**

#### **§ 3107.3 Extension for terms of cooperative or unit plan.**

§ 3107.3–1 Leases committed to plan. (no amendment proposed)

§ 3107.3–2 Segregation of leases committed in part. (no amendment proposed)

§ 3107.3–3 20-year lease or any renewal thereof. (no amendment proposed)

§ 3107.4 Extension by elimination. (no amendment proposed)

§ 3107.5 *Extension of leases segregated by assignment.*

§ 3107.5–1 Extension after discovery on other segregated portions. (no amendment proposed)

§ 3107.5–2 Undeveloped parts of leases in their extended term. (no amendment proposed)

§ 3107.5–3 Undeveloped parts of producing leases. (no amendment proposed)

§ 3107.6 Extension of reinstated leases. (no amendment proposed)

§ 3107.7 Exchange leases: 20-year term. (no amendment proposed)

§ 3107.8 *Renewal leases.*

§ 3107.8–1 Requirements. (no amendment proposed)

§ 3107.8–2 Application. (no amendment proposed)

§ 3107.8–3 Approval.

(a) Copies of the renewal lease, in triplicate, dated the first day of the month following the month in which the original lease terminated, shall be forwarded to the lessee for execution. Upon receipt of the executed lease forms, which constitutes certification of compliance with § 3102.5 of this title, and any required bond, the authorized officer shall execute the lease and deliver 1 copy to the lessee **and shall make public a written finding that the operations under the lease have been conducted in compliance with all reasonable measures and stipulations incorporated into the lease as provided in § 3101.1–2 and § 3101.1–3 of this title, and all other applicable regulations.**

(b) If overriding royalties and payments out of production or similar interests in excess of 5 percent of gross production constitute a burden to lease operations that will retard, or impair, or cause premature abandonment, the lease application shall be suspended until overriding royalties and payments out of production or similar interests are reduced to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon, a final decision will be rendered by the Department, outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production and an opportunity shall be afforded within a fixed period of time to submit proof that such adjustment

has been effected. Upon failure to submit such proof within the time so fixed, the application for renewal shall be denied.

**§ 3107.9 *Other types.***

**§ 3107.9–1 Payment of compensatory royalty.** (no amendment proposed)

**§ 3107.9–2 Subsurface storage of oil and gas.** (no amendment proposed)

**Subpart 3108 – Relinquishment, Termination, Cancellation**

**§ 3108.1 As a lessee, may I relinquish my lease?** (no amendment proposed)

**§ 3108.2 *Termination by operation of law and reinstatement.***

**§ 3108.2-1 Automatic termination.** (no amendment proposed)

**§ 3108.2-2 Reinstatement at existing rental and royalty rates: Class I reinstatements.** (no amendment proposed)

**§ 3108.2-3 Reinstatement at higher rental and royalty rates: Class II reinstatements.** (no amendment proposed)

**§ 3108.2-4 Conversion of unpatented oil placer mining claims: Class III reinstatements.** (no amendment proposed)

**§ 3108.3 Cancellation.**

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, **including regulations and lease stipulations to prevent permanent impairment, unnecessary degradation, or undue degradation,** the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31(b) of the Act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, **including regulations and lease stipulations to prevent permanent impairment, unnecessary degradation, or undue degradation,** and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by judicial proceedings in the manner provided by section 31(a) of the Act.

(c) If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be

compelled to dispose of the interest, only by judicial proceedings in the manner provided by section 27(h)(1) of the Act.

(d) Leases shall be subject to cancellation if improperly issued.

§ 3108.4 *Bona fide purchasers.* (no amendment proposed)

§ 3108.5 *Waiver or suspension of lease rights.* (no amendment proposed)

## **Title 43, Subtitle B, Chapter II, Subchapter C, Part 3110 Noncompetitive Leases**

### **Subpart 3110 – Noncompetitive Leases**

§ 3110.1 *Lands available for noncompetitive offer and lease.* (no amendment proposed)

§ 3110.2 *Priority.* (no amendment proposed)

§ 3110.3 *Lease terms.*

§ 3110.3–1 *Duration of lease.* (no amendment proposed)

§ 3110.3–2 *Dating of leases.* (no amendment proposed)

§ 3110.3–3 *Lease offer size.* (no amendment proposed)

§ 3110.4 *Requirements for offer.* (no amendment proposed)

§ 3110.5 *Description of lands in offer.*

§ 3110.5–1 *Parcel number description.* (no amendment proposed)

§ 3110.5–2 *Public domain.* (no amendment proposed)

§ 3110.5–3 *Acquired lands.* (no amendment proposed)

§ 3110.5–4 *Accreted lands.* (no amendment proposed)

§ 3110.5–5 *Conflicting descriptions.* (no amendment proposed)

§ 3110.6 *Withdrawal of offer.* (no amendment proposed)

§ 3110.7 *Action on offer.* (no amendment proposed)

(a) No lease shall be issued before final action has been taken on any prior offer to lease the lands or any extension of, or petition for reinstatement of, an existing or former lease on the

lands. If a lease is issued before final action, it shall be canceled, if the prior offeror is qualified to receive a lease or the petitioner is entitled to reinstatement of a former lease.

(b) The authorized officer shall not issue a lease for lands covered by a lease which terminated automatically, until 90 days after the date of termination.

(c) **Subject to a finding by the authorized officer that acceptance of the offer would not result in permanent impairment, unnecessary degradation, or undue degradation,** if the United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by signature of the authorized officer on the current lease form, **which shall include stipulations as conditions of the lease as provided in § 3101.1-2 and § 3101.1-3 of this title.**

A signed copy of the lease shall be delivered to the offeror.

(d) Except as otherwise specifically provided in the regulations of this group, an offer that is not filed in accordance with the regulations in this part shall be rejected.

(e) Filing an offer on a lease form not currently in use, unless such lease form has been declared obsolete by the Director prior to the filing shall be allowed, on the condition that the offeror is bound by the terms and conditions of the lease form currently in use.

§ 3110.8 Amendment to lease. (no amendment proposed)

§ 3110.9 *Future interest offers.*

§ 3110.9–1 Availability. (no amendment proposed)

§ 3110.9–2 Form of offer. (no amendment proposed)

§ 3110.9–3 Fractional present and future interest. (no amendment proposed)

§ 3110.9–4 Future interest terms and conditions. (no amendment proposed)

## Title 43, Subtitle B, Chapter II, Subchapter C, Part 3120 Competitive Leasing

### Subpart 3120 – Competitive Leases

§ 3120.1 *General.*

§ 3120.1–1 Lands available for competitive leasing.

All **The following** lands available for leasing **shall may** be offered for competitive bidding under this subpart **upon a written finding by the Secretary that the lands have not warmed 1.5 Celsius or more, or development of the lands, if leased, is aligned with action to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to actively pursue efforts to limit the temperature to 1.5 degrees**

**Celsius, would not otherwise cause permanent impairment, unnecessary degradation, or undue degradation, and there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts requiring further land use planning and analysis,** including but not limited to:

- (a) Lands in oil and gas leases that have terminated, expired, been cancelled or relinquished.
- (b) Lands for which authority to lease has been delegated from the General Services Administration.
- (c) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the act, an underlying lease, interest or option in the lease is cancelled or forfeited to the United States and there are valid interests therein that are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease, interest, or option shall be sold to the highest responsible qualified bidder by competitive bidding under this subpart, subject to all outstanding valid interests therein and valid options pertaining thereto. If less than the whole interest in the lease, interest, or option is cancelled or forfeited, such partial interest shall likewise be sold by competitive bidding. If no satisfactory bid is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold in accordance with section 27 of the Act by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received. Interest in outstanding leases(s) so sold shall be subject to the terms and conditions of the existing lease(s).
- (d) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing).
- (e) Lands included in any expression of interest or noncompetitive offer, except offers properly filed within the 2-year period provided under § 3110.1(b) of this title, submitted to the authorized officer.
- (f) Lands selected by the authorized officer.

### **§ 3120.1–2 Requirements.**

- (a) Each proper BLM State office shall, **subject to compliance with other applicable laws, such sales otherwise are in conformance with the applicable land use plan, such sales would not result in permanent impairment or unnecessary or undue degradation of other multiple use resources, and upon a finding of the Secretary as required under 3120.1–1 of this title.**
- (b) Lease sales shall be conducted by a competitive oral or internet-based bidding process.
- (c) The national minimum acceptable bid shall be \$2 per acre or fraction thereof payable on the gross acreage, and shall not be prorated for any lands in which the United States owns a fractional interest.

§ 3120.1–3 **Protests and appeals.** (no amendment proposed)

§ 3120.2 *Lease terms.*

§ 3120.2–1 **Duration of lease.** (no amendment proposed)

§ 3120.2–2 **Dating of leases.** (no amendment proposed)

§ 3120.2–3 **Lease size.** (no amendment proposed)

§ 3120.3 *Nomination process.* (no amendment proposed)

§ 3120.3–1 **General.** (no amendment proposed)

§ 3120.3–2 **Filing of a nomination for competitive leasing.** (no amendment proposed)

§ 3120.3–3 **Minimum bid and rental remittance.** (no amendment proposed)

§ 3120.3–4 **Withdrawal of a nomination.** (no amendment proposed)

§ 3120.3–5 **Parcels receiving nominations.**

Parcels which receive nominations **may, subject to the discretion of the authorized officer, shall** be included in a Notice of Competitive Lease Sale. The Notice shall indicate which parcels received multiple nominations in response to a List of Lands Available for Competitive Nominations, or parcels which have been withdrawn by the Bureau.

§ 3120.3–6 **Parcels not receiving nominations.** (no amendment proposed)

§ 3120.3–7 **Refund.** (no amendment proposed)

§ 3120.4 *Notice of competitive lease sale.*

§ 3120.4–1 **General.**

(a) The lands available for competitive lease sale under this subpart shall be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale shall be stated in the Notice.

(c) The notice shall include an identification of, and a copy of, stipulations applicable to each parcel **as well as an express reservation of right, by the authorized officer, to attach additional stipulations to the lease pending the outcome of any protests or appeals.**

§ 3120.4–2 **Posting of notice.**

At least 45 days prior to conducting a competitive auction, lands to be offered for competitive lease sale, as included in a List of Lands Available for Competitive Nominations or in a Notice of Competitive Lease Sale, shall be **publicly** posted **on the internet and** in the proper BLM office having jurisdiction over the lands as specified in § 1821.2–1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

**§ 3120.5 *Competitive sale.***

**§ 3120.5–1 Oral or Internet-based auction.** (no amendment proposed)

**§ 3120.5–2 Payments required.** (no amendment proposed)

**§ 3120.5–3 Award of lease.**

(a) A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee, **subject to the bidder's ability to withdraw the lease bid form and reject a lease in the event the authorized officer attaches additional stipulations after the lease bid form is submitted but prior to lease issuance.** Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with subpart 3102 of this title, shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with § 3120.5–2(b) of this title. Failure to comply with § 3120.5–2(c) of this title shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5–2(b) of this title.

(b) A lease shall be awarded to the highest responsible qualified bidder. A copy of the lease shall be provided to the lessee after signature by the authorized officer.

(c) If a bid is rejected, the land shall be reoffered competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received in an oral or internet-based auction.

(d) Issuance of the lease shall be consistent with § 3110.7 (a) and (b) of this title.

**§ 3120.6 Parcels not bid on at auction.** (no amendment proposed)

**§ 3120.7 *Future interest.***

**§ 3120.7–1 Nomination to make lands available for competitive lease.** (no amendment proposed)

**§ 3120.7–2 Future interest terms and conditions.** (no amendment proposed)

**§ 3120.7–3 Compensatory royalty agreements.** (no amendment proposed)

**Title 43, Subtitle B, Chapter II, Subchapter C, Part 3130 – Oil and Gas Leasing: National Petroleum Reserve, Alaska** (no amendment proposed)

**Title 43, Subtitle B, Chapter II, Subchapter C, Part 3140 – Leasing in Special Tar Sand Areas** (no amendment proposed)

**Title 43, Subtitle B, Chapter II, Subchapter C, Part 3150 – Onshore Oil and Gas Geophysical Exploration** (no amendment proposed)

**Title 43, Subtitle B, Chapter II, Subchapter C, Part 3160  
Onshore Oil and Gas Operations**



## **Subpart 3160 – Onshore Oil and Gas Operations – General**

§ 3160.0–1 Purpose. (no amendment proposed)

§ 3160.0–2 Policy. (no amendment proposed)

§ 3160.0–3 Authority.

The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. § 441 (43 U.S.C. 1457), the Attorney General’s Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (40 U.S.C. 4321 et seq.), **the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)**, the Act of December 12, 1980 (94 Stat. 2964), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102), and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983) under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the responsibility for leasing of restricted Indian lands, to the Bureau of Land Management.

§ 3160.0–4 Objectives.

The objectives of these regulations **are is** to promote the orderly and efficient exploration, development and production of oil and gas and to **conform to sections 102, 103(c), 103(h), and 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), which provide for the management of public lands and its resources without their permanent impairment and through action that prevents unnecessary degradation and undue degradation.**

§ 3160.0–5 Definitions.

As used in this part, the term:

*Authorized representative* means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation or contract.

*Drainage* means the migration of hydrocarbons, inert gases (other than helium), or associated resources caused by production from other wells.

*Federal lands* means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

*Fresh water* means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or aquatic life, unless otherwise specified in applicable notices or orders.

*Knowingly or willfully* means a violation that constitutes the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of the law, regulations, orders, or terms of the lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistakes or mere inadvertency. Conduct that is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

*Lease* means any contract, profit-share arrangement, joint venture or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of or removal of oil or gas.

*Lease site* means any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized under a lease.

*Lessee* means any person holding record title or owning operating rights in a lease issued or approved by the United States.

*Lessor* means the party to a lease who holds legal or beneficial title to the mineral estate in the leased lands.

*Major violation* means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income, **or causes or threatens to cause permanent impairment, unnecessary degradation, or undue degradation.**

*Maximum ultimate economic recovery* means the recovery of oil and gas from leased lands which a prudent operator could be expected to make from that field or reservoir given existing knowledge of reservoir and other pertinent facts and utilizing common industry practices for

primary, secondary or tertiary recovery operations **subject to measures necessary to prevent permanent impairment, unnecessary degradation, or undue degradation.**

*Minor violation* means noncompliance that does not rise to the level of a *major violation*.

*New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act* means the date on which a well commences production, or resumes production after having been off production for more than 90 days, and is to be construed as follows:

- (1) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs; and
- (2) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production.

*Notice to lessees and operators (NTL)* means a written notice issued by the authorized officer. NTL's implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance within a State, District, or Area.

*Onshore oil and gas order* means a formal numbered order issued by the Director that implements and supplements the regulations in this part.

*Operating rights owner* means a person who owns operating rights in a lease. A record title holder may also be an operating rights owner in a lease if it did not transfer all of its operating rights.

*Operator* means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

*Paying well* means a well that is capable of producing oil or gas of sufficient value to exceed direct operating costs and the costs of lease rentals or minimum royalty.

*Person* means any individual, firm, corporation, association, partnership, consortium or joint venture.

*Production in paying quantities* means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

*Protective well* means a well drilled or modified to prevent or offset drainage of oil and gas resources from its Federal or Indian lease.

*Record title holder* means the person(s) to whom BLM or an Indian lessor issued a lease or approved the assignment of record title in a lease.

*Superintendent* means the superintendent of an Indian Agency, or other officer authorized to act in matters of record and law with respect to oil and gas leases on restricted Indian lands.

*Surface use plan of operations* means a plan for surface use, disturbance, and reclamation.

*Waste of oil or gas* means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production and which results in:

- (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or
- (2) avoidable surface loss of oil or gas.

**§ 3160.0–7 Cross references.**

25 CFR parts **221**, 212, 213, and 227

30 CFR Group 200

40 CFR Chapter V

43 CFR parts 2, 4, and 1820 and Groups 3000, 3100 and 3500

**§ 3160.0–9 Information collection.** (no amendment proposed)

**Subpart 3161 – Jurisdiction and Responsibility**

**§ 3161.1 Jurisdiction.**

**§ 3161.2 Responsibility of the authorized officer.**

The authorized officer is authorized and directed to approve unitization, communitization, gas storage and other contractual agreements for Federal lands; to assess compensatory royalty; to approve suspensions of operations or production, or both; to issue NTL's; to approve and monitor other operator proposals for drilling, development or production of oil and gas; to perform administrative reviews; to impose monetary assessments or penalties; to provide technical information and advice relative to oil and gas development and operations on Federal and Indian lands; to enter into cooperative agreements with States, Federal agencies and Indian tribes relative to oil and gas development and operations; to approve, inspect and regulate the operations that are subject to the regulations in this part; to require compliance with lease terms, with the regulations in this title and all other applicable regulations promulgated under the cited laws; and to require that all operations be conducted in a manner which protects other natural

resources and the environmental quality, protects life and property and results in the maximum ultimate recovery of oil and gas with minimum waste and with minimum adverse effect on the ultimate recovery of other mineral resources, **and does not cause permanent impairment, unnecessary degradation, or undue degradation.** The authorized officer may issue written or oral orders to govern specific lease operations. Any such oral orders shall be confirmed in writing by the authorized officer within 10 working days from issuance thereof. Before approving operations on leasehold, the authorized officer shall determine that the lease is in effect, that acceptable bond coverage has been provided and that the proposed plan of operations is sound both from a technical and environmental standpoint.

§ 3161.3 Inspections. (no amendment proposed)

### **Subpart 3162 - Requirements for Operating Rights Owners and Operators**

§ 3162.1 General requirements.

(a) The operating rights owner or operator, as appropriate, shall comply with applicable laws and regulations; **with the applicable land use plan prepared pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);** with the lease terms, Onshore Oil and Gas Orders, NTL's; and with other orders and instructions of the authorized officer. These include, but are not limited to, conducting all operations in a manner which ensures the proper handling, measurement, disposition, and site security of leasehold production; which protects other natural resources and environmental quality; which protects life and property; **and** which results in maximum ultimate economic recovery of oil and gas with minimum waste and with minimum adverse effect on ultimate recovery of other mineral resources; **and which prevents permanent impairment, unnecessary degradation, or undue degradation.**

(b) The operator shall permit properly identified authorized representatives to enter upon, travel across and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice. Inspections normally will be conducted during those hours when responsible persons are expected to be present at the operation being inspected. Such permission shall include access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with the mineral leasing laws, the regulations in this part, and any applicable orders, notices or directives.

(c) For the purpose of making any inspection or investigation, the Secretary or his authorized representative shall have the same right to enter upon or travel across any lease site as the operator has acquired by purchase, condemnation or otherwise.

§ 3162.2 *Drilling, producing, and drainage obligations.*

§ 3162.2-1 *Drilling and producing obligations.*

(a) The operator, ~~at its election~~ **subject to its lease rights and obligations,** may drill and produce other wells in conformity with any system of well spacing or production allotments affecting the field or area in which the leased lands are situated, and which is authorized and sanctioned by applicable law or by the authorized officer.

(b) After notice in writing, the lessee(s) and operating rights owner(s) shall promptly drill and produce such other wells as the authorized officer may reasonably require in order that the lease may be properly and timely developed and produced in accordance with good economic operating practices.

**§ 3162.2–2 What steps may BLM take to avoid uncompensated drainage of Federal or Indian mineral resources?**

If we determine that a well is draining Federal or Indian mineral resources, we may take any of the following actions:

(a) If the mineral resources being drained are in Federal or Indian leases, we may require the lessee to drill and produce all wells that are necessary to protect the lease from drainage, unless the conditions of this part are met. BLM will **comply with** ~~consider~~ applicable Federal, State, or Tribal **laws, rules**, regulations, **the applicable land use plan**, and spacing orders when determining which action to take. Alternatively, we may accept other equivalent protective measures;

(b) If the mineral resources being drained are either unleased (including those which may not be subject to leasing) or in Federal or Indian leases, we may execute agreements with the owners of interests in the producing well under which the United States or the Indian lessor may be compensated for the drainage (with the consent of the Federal or (in consultation with the Indian mineral owner and BIA) Indian lessees, if any);

(c) We may offer for lease any qualifying unleased mineral resources under part 3120 of this chapter or enter into a communitization agreement; or

(d) We may approve a unit or communitization agreement that provides for payment of a royalty on production attributable to unleased mineral resources as provided in § 3181.5.

**(e) We may set the quantity and rate of production to prevent permanent impairment, unnecessary degradation, or undue degradation of public lands and resources.**

**§ 3162.2–3 When am I responsible for protecting my Federal or Indian lease from drainage?** (no amendment proposed)

**§ 3162.2–4 What protective action may BLM require the lessee to take to protect the leases from drainage?** (no amendment proposed)

**§ 3162.2–5 Must I take protective action when a protective well would be uneconomic?**

You are not required to take any of the actions listed in § 3162.2–4 if you can prove to BLM that when you first knew or had constructive notice of drainage you could not produce a sufficient quantity of oil or gas from a protective well on your lease for a reasonable profit above the cost of drilling, completing, and operating the protective well **or protective action would violate Federal, State, or Tribal laws, rules, the applicable land use plan, or orders.**

**§ 3162.2–6 When will I have constructive notice that drainage may be occurring?** (no amendment proposed)

**§ 3162.2–7 Who is liable for drainage if more than one person holds undivided interests in the record title or operating rights for the same lease?** (no amendment proposed)

**§ 3162.2–8 Does my responsibility for drainage protection end when I assign or transfer my lease interest?** (no amendment proposed)

**§ 3162.2–9 What is my duty to inquire about the potential for drainage and inform BLM of my findings?** (no amendment proposed)

**§ 3162.2–10 Will BLM notify me when it determines that drainage is occurring?** (no amendment proposed)

**§ 3162.2–11 How soon after I know of the likelihood of drainage must I take protective action?** (no amendment proposed)

**§ 3162.2–12 If I hold an interest in a lease, for what period will the Department assess compensatory royalty against me?** (no amendment proposed)

**§ 3162.2–13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?** (no amendment proposed)

**§ 3162.2–14 May I appeal BLM’s decision to require drainage protective measures?** (no amendment proposed)

**§ 3162.2–15 Who has the burden of proof if I appeal BLM’s drainage determination?** (no amendment proposed)

**§ 3162.3 *Conduct of operations.***

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with § 3106.6 and subpart 3104 of this title.

(b) A contractor on a leasehold shall be considered the agent of the operator for such operations with full responsibility for acting on behalf of the operator for purposes of complying with applicable laws, regulations, **land use plan**, the lease terms, NTL’s, Onshore Oil and Gas Orders, and other orders and instructions of the authorized officer.

**§ 3162.3–1 *Drilling applications and plans.***

(a) Each well shall be drilled in conformity with **the applicable land use plan and** an acceptable well-spacing program at a surveyed well location approved or prescribed by the authorized officer after appropriate environmental and technical reviews (see § 3162.5–1 of this title). An acceptable well-spacing program may be either (1) one which conforms with a spacing order or field rule issued by a State Commission or Board and accepted by the authorized officer, or (2) one which is located on a lease committed to a communitized or unitized tract at a location approved by the authorized officer, or (3) any other program established by the authorized officer.

(b) Any well drilled on restricted Indian land shall be subject to the location restrictions specified



in the lease and/or Title 25 of the CFR.

(c) The operator shall submit to the authorized officer for approval an Application for Permit to Drill for each well. No drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer's approval of the permit.

(d) The Application for Permit to Drill process shall be initiated at least 30 days before commencement of operations is desired. Prior to approval, the application shall be administratively and technically complete. A complete application consists of Form 3160-3 and the following attachments:

- (1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices.
- (2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices.
- (3) Evidence of bond coverage as required by the Department of the Interior regulations, and
- (4) Such other information as may be required by applicable orders and notices.

(e) Each drilling plan shall contain the information specified in **the applicable land use plan and** applicable notices or orders, including a description of the drilling program, the surface and projected completion zone location, pertinent geologic data, expected hazards, and proposed mitigation measures to address such hazards. A drilling plan may be submitted for a single well or for several wells proposed to be drilled to the same zone within a field or area of geological and environmental similarity. A drilling plan may be modified from time to time as circumstances may warrant, with the approval of the authorized officer.

(f) The surface use plan of operations shall contain information specified in **the applicable land use plan and** applicable orders or notices, including the road and drillpad location, details of pad construction, methods for containment and disposal of waste material, plans for reclamation of the surface, **measures to protect other resources and environmental quality and to prevent permanent impairment, unnecessary degradation, and undue degradation,** and other pertinent data as the authorized officer may require. A surface use plan of operations may be submitted for a single well or for several wells proposed to be drilled in an area of environmental similarity.

(g) For Federal lands, upon receipt of the Application for Permit to Drill or Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: the company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased and of all leases already issued in the general area; **relevant lease number; proposed measures to protect other resources and environmental quality and to prevent permanent impairment, unnecessary degradation, and undue degradation; data and maps on local warming;** and any substantial modifications



to the lease terms. Where the inclusion of maps in such posting is not practicable, maps of the affected lands shall be made available to the public for review. This information also shall be provided promptly by the authorized officer to the appropriate office of the Federal surface management agency, for lands the surface of which is not under Bureau jurisdiction, requesting such agency to post the proposed action for public inspection for at least 30 days. The posting shall be in the office of the authorized officer and in the appropriate surface managing agency if other than the Bureau. The posting of an Application for Permit to Drill is for information purposes only and is not an appealable decision.

(h) Upon initiation of the Application for Permit to Drill process, the authorized officer shall consult with the appropriate Federal surface management agency **or owner** and with other interested parties as appropriate and shall take one of the following actions as soon as practical, but in no event later than 5 working days after the conclusion of the 30-day notice period for Federal lands, or within 30 days from receipt of the application for Indian lands:

- (1) Approve the application as submitted or with appropriate modifications or conditions;
- (2) Return the application and advise the applicant of the reasons for disapproval; or
- (3) Advise the applicant, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action can be expected.

The surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. Appeals from the denial of approval of such surface use plan of operations shall be submitted to the Secretary of Agriculture.

(i) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

(j) [Reserved by 83 FR 49211]

### **§ 3162.3–2 Subsequent well operations.**

(a) A proposal for further well operations shall be submitted by the operator on Form 3160–5 for approval by the authorized officer prior to commencing operations to redrill, deepen, perform casing repairs, plug-back, alter casing, recomplete in a different interval, perform water shut off, commingling production between intervals and/or conversion to injection. If there is additional surface disturbance **or a change in the foreseeable quantity, rate, and duration of production from subsequent well operations**, the proposal shall include a surface use plan of operations **and information sufficient for the authorized officer to assess additional impacts to resource values, including air and atmospheric values, and to take action necessary to prevent permanent impairment, unnecessary degradation, and undue degradation to the same**. A subsequent report on these operations also will be filed on Form 3160–5. The

authorized officer may prescribe that each proposal contain all or a portion of the information set forth in § 3162.3–1 of this title.

(b) Unless additional surface disturbance **or a change in the foreseeable quantity, rate, and duration of production** is involved and if the operations conform to the standard of prudent operating practice, prior approval is not required for routine fracturing or acidizing jobs, or recompletion in the same interval; however, a subsequent report on these operations must be filed on Form 3160–5.

(c) No prior approval or a subsequent report is required for well cleanout work, routine well maintenance, or bottom hole pressure surveys.

(d) For details on how to apply for approval of a facility measurement point; approval for surface or subsurface commingling from different leases, unit participating areas and communitized areas; or approval for off-lease measurement, see 43 CFR 3173.12, 3173.15, and 3173.23, respectively.

### **§ 3162.3–3 Other lease operations.**

Prior to commencing any operation on the leasehold which will result in additional surface disturbance **or impacts to resources or resource values**, other than those authorized under § 3162.3–1 or § 3162.3–2, the operator shall submit a proposal on Form 3160–5 to the authorized officer for approval. The proposal shall include a surface use plan of operations.

### **§ 3162.3–4 Well abandonment.** (no amendment proposed)

### **§ 3162.4–1 Well records and reports.**

(a) The operator must keep accurate and complete records with respect to:

(1) All lease operations, including, but not limited to, drilling, producing, redrilling, repairing, plugging back, **resource protection and mitigation measures**, and abandonment operations;

(2) Production facilities and equipment (including schematic diagrams as required by applicable orders and notices); and

(3) Determining and verifying the quantity, quality, and disposition of production from or allocable to Federal or Indian leases (including source records).

(b) Standard forms for providing basic data are listed in Note 1 at the beginning of this title. As noted on Form 3160–4, two copies of all electric and other logs run on the well must be submitted to the authorized officer. Upon request, the operator shall transmit to the authorized officer copies of such other records maintained in compliance with paragraph (a) of this section.

(c) Not later than the 5th business day after any well begins production on which royalty is due anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off production for more than 90 days, the operator shall notify the authorized officer by letter or sundry notice, Form 3160–5, or orally to be followed by a letter or sundry notice, of the date on which such production has begun or resumed.

(d) All records and reports required by this section must be maintained for the following time periods:

(1) For Federal leases and units or communitized areas that include Federal leases, but do not include Indian leases:

(i) Seven years after the records are generated; unless,

(ii) A judicial proceeding or demand involving such records is timely commenced, in which case the record holder must maintain such records until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary or the applicable delegated State authorizes in writing an earlier release of the requirement to maintain such records.

(2) For Indian leases, and units or communitized areas that include Indian leases, but do not include Federal leases:

(i) Six years after the records are generated; unless,

(ii) The Secretary or his/her designee notifies the record holder that the Department has initiated or is participating in an audit or investigation involving such records, in which case the record holder must maintain such records until the Secretary or his/her designee releases the record holder from the obligation to maintain the records.

(3) For units and communitized areas that include both Federal and Indian leases, 6 years after the records are generated, unless the Secretary or his/her designee has notified the record holder within those 6 years that an audit or investigation involving such records has been initiated, then:

(i) If a judicial proceeding or demand is commenced within 7 years after the records are generated, the record holder must retain all records regarding production from the lease, unit or communitization agreement until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary or his/her designee authorizes in writing a release of the requirement to maintain such records before a final nonappealable decision is made or rendered;

(ii) If a judicial proceeding or demand is not commenced within 7 years after the records are generated, the record holder must retain all records regarding production from the unit or communitized area until the Secretary or his/her designee releases the record holder from the obligation to maintain the records.

(e) Record holders include lessees, operators, purchasers, transporters, and any other person directly involved in producing, transporting, purchasing, or selling, including measuring, oil or gas through the point of royalty measurement or the point of first sale, whichever is later. Record holders must maintain records generated during or for the period for which the lessee or operator has an interest in or conducted operations on the lease, or in which a person is involved in transporting, purchasing, or selling production from the lease, for the period of time required in paragraph (d) of this section.

§ 3162.4–2 **Samples, tests, and surveys.** (no amendment proposed)

§ 3162.5 ***Environment and safety.***

§ 3162.5–1 **Environmental obligations.**

(a) The operator shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality. In that respect, the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, **land use plan,** lease terms and conditions, and the approved drilling plan or subsequent operations plan. Before approving any Application for Permit to Drill submitted pursuant to § 3162.3–1 of this title, or other plan requiring environmental review, the authorized officer shall prepare an environmental record of review or an environmental assessment, as appropriate, **and provide a written finding that the approval complies with authorized officer’s responsibilities set forth in § 3161.2.** These environmental documents will be used in determining whether or not an environmental impact statement is required and in determining any appropriate terms and conditions of approval of the submitted plan.

(b) The operator shall exercise due care and diligence to assure that leasehold operations **conform to the applicable land use plan and** do not result in **permanent impairment, or unnecessary degradation, and** undue **damage degradation** to surface or subsurface resources or surface improvements. All produced water must be disposed of by injection into the subsurface, by approved pits, or by other methods which have been approved by the authorized officer. Upon the conclusion of operations, the operator shall reclaim the disturbed surface in a manner approved or reasonably prescribed by the authorized officer.

(c) All spills or leakages of oil, gas, produced water, toxic liquids, or waste materials, blowouts, fires, personal injuries, and fatalities shall be reported by the operator in accordance with these regulations and as prescribed in applicable order or notices. The operator shall exercise due diligence in taking necessary measures, subject to approval by the authorized officer, to control and remove pollutants and to extinguish fires. An operator’s compliance with the requirements of the regulations in this part shall not relieve the operator of the obligation to comply with other applicable laws and regulations.

(d) When reasonably required by the authorized officer, a contingency plan shall be submitted describing procedures to be implemented to protect life, property, and the environment.

(e) The operator’s liability for damages to third parties shall be governed by applicable law.

§ 3162.5–2 **Control of wells.** (no amendment proposed)

§ 3162.5–3 **Safety precautions.** (no amendment proposed)

§ 3162.6 **Well and facility identification.** (no amendment proposed)

§ 3162.7 ***Measurement, disposition, and protection of production.***

§ 3162.7–1 **Disposition of production.** (no amendment proposed)

§ 3162.7–2 Measurement of oil. (no amendment proposed)

§ 3162.7–3 Measurement of gas. (no amendment proposed)

§ 3162.7–4 Royalty rates on oil; sliding and step-scale leases (public land only). (no amendment proposed)

**Subpart 3163 – Noncompliance, Assessments, and Penalties** (no amendment proposed)

**Subpart 3164 – Special Provisions** (no amendment proposed)

**Subpart 3165 – Relief, Conflicts, and Appeals** (no amendment proposed)

## **Title 43, Subtitle B, Chapter II, Subchapter C, Part 3170 Onshore Oil and Gas Production**

### **Subpart 3170 – Onshore Oil and Gas Production: General**

§ 3170.1 Authority. (no amendment proposed)

§ 3170.2 Scope. (no amendment proposed)

§ 3170.3 Definitions and acronyms.

(a) As used in this part, the term:

*Allocated or allocation* means a method or process by which production is measured at a central point and apportioned to the individual lease, or unit Participating Area (PA), or CA from which the production originated.

*API (followed by a number)* means the American Petroleum Institute Manual of Petroleum Measurement Standards, with the number referring to the Chapter and Section in that manual.

*Audit trail* means all source records necessary to verify and recalculate the volume and quality of oil or gas production measured at a facility measurement point (FMP) and reported to the Office of Natural Resources Revenue (ONRR).

*Authorized officer (AO)* has the same meaning as defined in 43 CFR 3000.0-5.

*Averaging period* means the previous 12 months or the life of the meter, whichever is shorter. For FMPs that measure production from a newly drilled well, the averaging period excludes production from that well that occurred in or before the first full month of production. (For example, if an oil FMP and a gas FMP were installed to measure only the production from a new well that first produced on April 10, the averaging period for this FMP would not include the production that occurred in April (partial month) and May (full month) of that year.)

*Bias* means a shift in the mean value of a set of measurements away from the true value of what is being measured.

*By-pass* means any piping or other arrangement around or avoiding a meter or other measuring device or method (or component thereof) at an FMP that allows oil or gas to flow without

measurement. Equipment that permits the changing of the orifice plate of a gas meter without bleeding the pressure off the gas meter run (*e.g.*, senior fitting) is not considered to be a by-pass.

*Commingling*, for production accounting and reporting purposes, means combining, before the point of royalty measurement, production from more than one lease, unit PA, or CA, or production from one or more leases, unit PAs, or CAs with production from State, local governmental, or private properties that are outside the boundaries of those leases, unit PAs, or CAs. Combining production from multiple wells within a single lease, unit PA, or CA, or combining production downhole from different geologic formations within the same lease, unit PA, or CA, is not considered commingling for production accounting purposes.

*Communitized area* means the area committed to a BLM approved communitization agreement.

*Communitization agreement (CA)* means an agreement to combine a lease or a portion of a lease that cannot otherwise be independently developed and operated in conformity with an established well spacing or well development program, with other tracts for purposes of cooperative development and operations.

*Condition of Approval (COA)* means a site-specific requirement included in the approval of an application that may limit or modify the specific actions covered by the application **to mitigate adverse impacts to other resources, land uses, or users and to prevent permanent impairment, unnecessary degradation, and undue degradation. Conditions of approval may minimize, mitigate, or prevent impacts to public lands or resources.**

*Days* means consecutive calendar days, unless otherwise indicated.

*Facility* means:

- (i) A site and associated equipment used to process, treat, store, or measure production from or allocated to a Federal or Indian lease, unit PA, or CA that is located upstream of or at (and including) the approved point of royalty measurement; and
- (ii) A site and associated equipment used to store, measure, or dispose of produced water that is located on a lease, unit, or communitized area.

*Facility measurement point (FMP)* means a BLM-approved point where oil or gas produced from a Federal or Indian lease, unit PA, or CA is measured and the measurement affects the calculation of the volume or quality of production on which royalty is owed. FMP includes, but is not limited to, the approved point of royalty measurement and measurement points relevant to determining the allocation of production to Federal or Indian leases, unit PAs, or CAs. However, allocation facilities that are part of a commingling and allocation approval under § 3173.15 or that are part of a commingling and allocation approval approved after July 9, 2013, are not FMPs. An FMP also includes a meter or measurement facility used in the determination of the volume or quality of royalty-bearing oil or gas produced before BLM approval of an FMP under § 3173.12. An FMP must be located on the lease, unit, or communitized area unless the BLM approves measurement off the lease, unit, or CA. The BLM will not approve a gas processing plant tailgate meter located off the lease, unit, or CA, as an FMP.

*Gas* means any fluid, either combustible or noncombustible, hydrocarbon or non-hydrocarbon, that has neither independent shape nor volume, but tends to expand indefinitely and exists in a gaseous state under metered temperature and pressure conditions.

*Incident of Noncompliance (INC)* means documentation that the BLM issues that identifies violations and notifies the recipient of the notice of required corrective actions.

*Lease* has the same meaning as defined in 43 CFR 3160.0-5.

*Lessee* has the same meaning as defined in 43 CFR 3160.0-5.

*NIST traceable* means an unbroken and documented chain of comparisons relating measurements from field or laboratory instruments to a known standard maintained by the National Institute of Standards and Technology (NIST).

*Notice to lessees and operators (NTL)* has the same meaning as defined in 43 CFR 3160.0-5.

*Off-lease measurement* means measurement at an FMP that is not located on the lease, unit, or communitized area from which the production came.

*Oil* means a mixture of hydrocarbons that exists in the liquid phase at the temperature and pressure at which it is measured. Condensate is considered to be oil for purposes of this part. Gas liquids extracted from a gas stream upstream of the approved point of royalty measurement are considered to be oil for purposes of this part.

(i) *Clean oil or Pipeline oil* means oil that is of such quality that it is acceptable to normal purchasers.

(ii) *Slop oil* means oil that is of such quality that it is not acceptable to normal purchasers and is usually sold to oil reclaimers. Oil that can be made acceptable to normal purchasers through special treatment that can be economically provided at existing or modified facilities or using portable equipment at or upstream of the FMP is not slop oil.

(iii) *Waste oil* means oil that has been determined by the AO or authorized representative to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment, cannot be sold to reclaimers, and has been determined by the AO to have no economic value.

*Operator* has the same meaning as defined in 43 CFR 3160.0-5.

*Participating area (PA)* has the same meaning as defined in 43 CFR 3180.0-5.

*Point of royalty measurement* means a BLM-approved FMP at which the volume and quality of oil or gas which is subject to royalty is measured. The point of royalty measurement is to be distinguished from meters that determine only the allocation of production to particular leases, unit PAs, CAs, or non-Federal and non-Indian properties. The point of royalty measurement is also known as the point of royalty settlement.

*Production* means oil or gas removed from a well bore and any products derived therefrom.

*Production Measurement Team (PMT)* means a panel of members from the BLM (which may include BLM-contracted experts) that reviews changes in industry measurement technology, methods, and standards to determine whether regulations should be updated, and provides guidance on measurement technologies and methods not addressed in current regulation. The purpose of the PMT is to act as a central advisory body to ensure that oil and gas produced from Federal and Indian leases is accurately measured and properly reported.

*Purchaser* means any person or entity who legally takes ownership of oil or gas in exchange for financial or other consideration.

*Source record* means any unedited and original record, document, or data that is used to determine volume and quality of production, regardless of format or how it was created or stored (e.g., paper or electronic). It includes, but is not limited to, raw and unprocessed data (e.g., instantaneous and continuous information used by flow computers to calculate volumes); gas charts; measurement tickets; calibration, verification, prover, and configuration reports; pumper and gauger field logs; volume statements; event logs; seal records; and gas analyses.

*Statistically significant* describes a difference between two data sets that exceeds the threshold of significance.

*Tampering* means any deliberate adjustment or alteration to a meter or measurement device, appropriate valve, or measurement process that could introduce bias into the measurement or affect the BLM's ability to independently verify volumes or qualities reported.

*Threshold of significance* means the maximum difference between two data sets (a and b) that can be attributed to uncertainty effects. The threshold of significance is determined as follows:

$$T_s = \sqrt{U_a^2 + U_b^2}$$

Where:

$T_s$  = Threshold of significance, in percent

$U_a$  = Uncertainty (95 percent confidence) of data set a, in percent

$U_b$  = Uncertainty (95 percent confidence) of data set b, in percent

*Total observed volume (TOV)* means the total measured volume of all oil, sludges, sediment and water, and free water at the measured or observed temperature and pressure.

*Transporter* means any person or entity who legally moves or transports oil or gas from an FMP.

*Uncertainty* means the statistical range of error that can be expected between a measured value and the true value of what is being measured. Uncertainty is determined at a 95 percent confidence level for the purposes of this part.

*Unit* means the land within a unit area as defined in 43 CFR 3180.0-5.



*Unit PA* means the unit participating area, if one is in effect, the exploratory unit if there is no associated participating area, or an enhanced recovery unit.

*Variance* means an approved alternative to a provision or standard of a regulation, Onshore Oil and Gas Order, or NTL.

(b) As used in this part, the following additional acronyms apply:

*API* means American Petroleum Institute.

*BLM* means the Bureau of Land Management.

*Btu* means British thermal unit.

*CMS* means Coriolis Measurement System.

*LACT* means lease automatic custody transfer.

*OGOR* means Oil and Gas Operations Report (Form ONRR-4054 or any successor report).

*ONRR* means the Office of Natural Resources Revenue, U.S. Department of the Interior, and includes any successor agency.

*S&W* means sediment and water.

*WIS* means Well Information System or any successor electronic filing system.

**§ 3170.4 Prohibitions against by-pass and tampering.** (no amendment proposed)

**§ 3170.6 Variances.**

(a) Any party subject to a requirement of a regulation in this part may request a variance from that requirement.

(1) A request for a variance must include the following:

(i) Identification of the specific requirement from which the variance is requested;

(ii) Identification of the length of time for which the variance is requested, if applicable;

(iii) An explanation of the need for the variance;

(iv) A detailed description of the proposed alternative means of compliance;

(v) A showing that the proposed alternative means of compliance will produce a result that meets or exceeds the objectives of the applicable requirement for which the variance is requested; and

(vi) The FMP number(s) for which the variance is requested, if applicable.

(2) A request for a variance must be submitted as a separate document from any plans or applications. A request for a variance that is submitted as part of a master development plan, application for permit to drill, right-of-way application, or application for approval of other types of operations, rather than submitted separately, will not be considered. Approval of a plan or

application that contains a request for a variance does not constitute approval of the variance. A separate request for a variance may be submitted simultaneously with a plan or application. For plans or applications that are contingent upon the approval of the variance request, the BLM encourages the simultaneous submission of the variance request and the plan or application.

(3) The party requesting the variance must file the request and any supporting documents using WIS. If electronic filing is not possible or practical, the operator may submit a request for variance on the Form 3160-5, Sundry Notices and Reports on Wells (Sundry Notice) to the BLM Field Office having jurisdiction over the lands described in the application.

(4) The AO, after considering all relevant factors, may approve the variance, or approve it with COAs, only if the AO determines that:

(i) The proposed alternative means of compliance meets or exceeds the objectives of the applicable requirement(s) of the regulation;

(ii) Approving the variance will not adversely affect royalty income and production accountability; **and**

(iii) Issuing the variance is consistent with maximum ultimate economic recovery, as defined in 43 CFR 3160.0-5; **and**

**(iv) Approving the variance will not result in unmitigated adverse impact to resource values or cause permanent impairment, unnecessary degradation, or undue degradation.**

(5) The decision whether to grant or deny the variance request is entirely within the BLM's discretion.

(6) A variance from the requirements of a regulation in this part does not constitute a variance from provisions of other regulations, including Onshore Oil and Gas Orders.

(b) The BLM reserves the right to rescind a variance or modify any COA of a variance due to changes in Federal law, technology, regulation, BLM policy, field operations, noncompliance, or other reasons. The BLM will provide a written justification if it rescinds a variance or modifies a COA.

**§ 3170.7 Required recordkeeping, records retention, and records submission.** (no amendment proposed)

**§ 3170.8 Appeal procedures.** (no amendment proposed)

**§ 3170.9 Enforcement.** (no amendment proposed)

**Title 43, Subtitle B, Chapter II, Subchapter C, Part 3180  
Onshore Oil and Gas Unit Agreements: Unproven Areas  
Subpart 3180 – Onshore Oil and Gas Unit Agreements – General**

**§ 3180.0–1 Purpose.**

The regulations in this part prescribe the procedures to be followed and the requirements to be met by the owners of any right, title or interest in Federal oil and gas leases (see § 3160.0–5 of this title) and their representatives who wish to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan for the development of any oil or gas pool, field or like area, or any part thereof. All unit agreements on Federal leases are subject to the **applicable land use plan and** regulations contained in part 3160 of this title, Onshore Oil and Gas Operations. All unit operations on non-Federal lands included within Federal unit plans are subject to the reporting requirements of part 3160 of this title.

**§ 3180.0–2 Policy.** (no amendment proposed)

**§ 3180.0–3 Authority.**

The **Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)**, Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181, 189, 226(e) and 226(j) ), and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983), under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the responsibility for leasing of restricted Indian lands, to the Bureau of Land Management.

**§ 3180.0–5 Definitions.** (no amendment proposed)

**Subpart 3181 – Application for Unit Agreement** (no amendment proposed)

**Subpart 3182 – Qualifications of Unit Operator** (no amendment proposed)

### **Subpart 3183 – Filing and Approval of Documents**

**§ 3183.1 Where to file papers.** (no amendment proposed)

**§ 3183.2 Designation of area.** (no amendment proposed)

**§ 3183.3 Executed agreements.** (no amendment proposed)

**§ 3183.4 Approval of executed agreement.**

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest, **including by ensuring that operations carried out pursuant to the unit agreement prevent permanent impairment, unnecessary degradation, and undue degradation**, and is for the purpose of more properly conserving natural resources. **The authorized officer may approve a unit agreement conditioned on the parties' acceptance of additional terms necessary to protect the public interest. Once approved or, in the case of the authorized officer's conditional approval, once additional terms are accepted by the parties, s**Such approval shall be incorporated in a Certification–Determination document appended to the agreement (see § 3186.1 of this part for an example), and the unit agreement shall not be deemed effective until the authorized officer has executed the Certification–Determination document. No such agreement shall be approved

unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

(b) The public interest requirement of an approved unit agreement for unproven areas shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement. If an application is received for voluntary termination of a unit agreement for an unproven area during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer and lease segregations and extensions under § 3107.3–2 of this title shall be invalid, and no Federal lease shall be eligible for extensions under § 3107.4 of this title.

(c) Any modification of an approved agreement shall require the prior approval of the authorized officer.

**§ 3183.5 Participating area.** (no amendment proposed)

**§ 3183.6 Plan of development.** (no amendment proposed)

**§ 3183.7 Return of approved documents.** (no amendment proposed)

**Subpart 3185 - Appeals** (no amendment proposed)

**Subpart 3186 – Model Forms**

**§ 3186.1 Model onshore unit agreement for unproven areas.**

1 Enabling Act and Regulations.

2 Unit Area.

3 Unitized Land and Unitized Substances.

4 Unit Operator.

5 Resignation or Removal of Unit Operator.

6 Successor Unit Operator.

7 Accounting Provisions and Unit Operating Agreement.

8 Rights and Obligations of Unit Operator.

9 Drilling to Discovery.

10 Plan of Further Development and Operation.

11 Participation After Discovery.

12 Allocation of Production.

13 Development or Operation of Nonparticipating Land or Formations.

14 Royalty Settlement.

- 15 Rental Settlement.
- 16 Conservation.
- 17 Drainage.
- 18 Leases and Contracts Conformed and Extended.
- 19 Covenants Run with Land.
- 20 Effective Date and Term.
- 21 Rate of Prospecting, Development, and Production.
- 22 Appearances.
- 23 Notices.
- 24 No Waiver of Certain Rights.
- 25 Unavoidable Delay.
- 26 Nondiscrimination.
- 27 Loss of Title.
- 28 Nonjoinder and Subsequent Joinder.
- 29 Counterparts.
- 30 Surrender.<sup>1</sup>
- 31 Taxes.<sup>1</sup>
- 32 No Partnership.<sup>1</sup>

Concluding Section IN WITNESS WHEREOF.

General Guidelines.

Certification—Determination.

UNIT AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE

Unit area \_\_\_\_\_

County of \_\_\_\_\_

State of \_\_\_\_\_

No. \_\_\_\_\_

This agreement, entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, **1920** by and between the parties subscribing, ratifying, or consenting hereto, and herein referred to as the “parties hereto,”

WITNESSETH:

WHEREAS, the parties hereto are the owners of working, royalty, or other oil and gas interests in the unit area subject to this agreement; and

WHEREAS, the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sec. 181 et seq., authorizes Federal lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan of development or operations of any oil and gas pool, field, or like area, or any part thereof for the purpose of more properly conserving the natural resources thereof whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; and

WHEREAS, the parties hereto hold sufficient interests in the \_\_\_\_\_ Unit Area covering the land hereinafter described to give reasonably effective control of operations therein; and

WHEREAS, it is the purpose of the parties hereto to conserve natural resources, **prevent permanent impairment, unnecessary degradation, and undue degradation,** prevent waste, and secure other benefits obtainable through development and operation of the area subject to this agreement under the terms, conditions, and limitations herein set forth;

NOW, THEREFORE, in consideration of the premises and the promises herein contained, the parties hereto commit to this agreement their respective interests in the below-defined unit area, and agree severally among themselves as follows:

1. ENABLING ACT AND REGULATIONS. The Mineral Leasing Act of February 25, 1920, as amended, supra, and all valid pertinent regulations including operating and unit plan regulations, heretofore issued thereunder or valid, pertinent, and reasonable regulations hereafter issued thereunder are accepted and made a part of this agreement as to Federal lands, provided such regulations are not inconsistent with the terms of this agreement; and as to non-Federal lands, the oil and gas operating regulations in effect as of the effective date hereof governing drilling and producing operations, not inconsistent with the terms hereof or the laws of the State in which the non-Federal land is located, are hereby accepted and made a part of this agreement.

2. UNIT AREA. The area specified on the map attached hereto marked Exhibit A is hereby designated and recognized as constituting the unit area, containing \_\_\_\_\_ acres, more or less.

Exhibit A shows, in addition to the boundary of the unit area, the boundaries and identity of tracts and leases in said area to the extent known to the Unit Operator. Exhibit B attached hereto is a schedule showing to the extent known to the Unit Operator, the acreage, percentage, and kind of ownership of oil and gas interests in all lands in the unit area. However, nothing herein or in Exhibits A or B shall be construed as a representation by any party hereto as to the ownership of any interest other than such interest or interests as are shown in the Exhibits as owned by such party. Exhibits A and B shall be revised by the Unit Operator whenever changes in the unit area or in the ownership interests in the individual tracts render such revision necessary, or when requested by the Authorized Officer, hereinafter referred to as AO and not less than four copies of the revised Exhibits shall be filed with the proper BLM office.

The above-described unit area shall when practicable be expanded to include therein any additional lands or shall be contracted to exclude lands whenever such expansion or contraction

is deemed to be necessary or advisable to conform with the purposes of this agreement. Such expansion or contraction shall be effected in the following manner:

(a) Unit Operator, on its own motion (after preliminary concurrence by the AO), or on demand of the AO, shall prepare a notice of proposed expansion or contraction describing the contemplated changes in the boundaries of the unit area, the reasons therefor, any plans for additional drilling, and the proposed effective date of the expansion or contraction, preferably the first day of a month subsequent to the date of notice.

(b) Said notice shall be delivered to the proper BLM office, and copies thereof mailed to the last known address of each working interest owner, lessee and lessor whose interests are affected, advising that 30 days will be allowed for submission to the Unit Operator of any objections.

(c) Upon expiration of the 30-day period provided in the preceding item (b) hereof, Unit Operator shall file with the AO evidence of mailing of the notice of expansion or contraction and a copy of any objections thereto which have been filed with Unit Operator, together with an application in triplicate, for approval of such expansion or contraction and with appropriate joinders.

(d) After due consideration of all pertinent information, the expansion or contraction shall, upon approval by the AO, become effective as of the date prescribed in the notice thereof or such other appropriate date.

(e) All legal subdivisions of lands (i.e., 40 acres by Government survey or its nearest lot or tract equivalent; in instances of irregular surveys, unusually large lots or tracts shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof), no parts of which are in or entitled to be in a participating area on or before the fifth anniversary of the effective date of the first initial participating area established under this unit agreement, shall be eliminated automatically from this agreement, effective as of said fifth anniversary, and such lands shall no longer be a part of the unit area and shall no longer be subject to this agreement, unless diligent drilling operations are in progress on unitized lands not entitled to participation on said fifth anniversary, in which event all such lands shall remain subject hereto for so long as such drilling operations are continued diligently, with not more than 90-days time elapsing between the completion of one such well and the commencement of the next such well. All legal subdivisions of lands not entitled to be in a participating area within 10 years after the effective date of the first initial participating area approved under this agreement shall be automatically eliminated from this agreement as of said tenth anniversary. The Unit Operator shall, within 90 days after the effective date of any elimination hereunder, describe the area so eliminated to the satisfaction of the AO and promptly notify all parties in interest. All lands reasonably proved productive of unitized substances in paying quantities by diligent drilling operations after the aforesaid 5-year period shall become participating in the same manner as during said first 5-year period. However, when such diligent drilling operations cease, all nonparticipating lands not then entitled to be in a participating area shall be automatically eliminated effective as the 91st day thereafter.

Any expansion of the unit area pursuant to this section which embraces lands theretofore eliminated pursuant to this subsection 2(e) shall not be considered automatic commitment or recommitment of such lands. If conditions warrant extension of the 10-year period specified in this subsection, a single extension of not to exceed 2 years may be accomplished by consent of the owners of 90 percent of the working interest in the current nonparticipating unitized lands and the owners of 60 percent of the basic royalty interests (exclusive of the basic royalty interests of the United States) in nonparticipating unitized lands with approval of the AO, provided such extension application is submitted not later than 60 days prior to the expiration of said 10-year period.

3. UNITIZED LAND AND UNITIZED SUBSTANCES. All land now or hereafter committed to this agreement shall constitute land referred to herein as “unitized land” or “land subject to this agreement.” All oil and gas in any and all formations of the unitized land are unitized under the terms of this agreement and herein are called “unitized substances.”

4. UNIT OPERATOR. \_\_\_\_\_ is hereby designated as Unit Operator and by signature hereto as Unit Operator agrees and consents to accept the duties and obligations of Unit Operator for the discovery, development, and production of unitized substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interest in unitized substances, and the term “working interest owner” when used herein shall include or refer to Unit Operator as the owner of a working interest only when such an interest is owned by it.

5. RESIGNATION OR REMOVAL OF UNIT OPERATOR. Unit Operator shall have the right to resign at any time prior to the establishment of a participating area or areas hereunder, but such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator and terminate Unit Operator’s rights as such for a period of 6 months after notice of intention to resign has been served by Unit Operator on all working interest owners and the AO and until all wells then drilled hereunder are placed in a satisfactory condition for suspension or abandonment, whichever is required by the AO, unless a new Unit Operator shall have been selected and approved and shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

Unit Operator shall have the right to resign in like manner and subject to like limitations as above provided at any time after a participating area established hereunder is in existence, but in all instances of resignation or removal, until a successor Unit Operator is selected and approved as hereinafter provided, the working interest owners shall be jointly responsible for performance of the duties of Unit Operator, and shall not later than 30 days before such resignation or removal becomes effective appoint a common agent to represent them in any action to be taken hereunder.

The resignation of Unit Operator shall not release Unit Operator from any liability for any default by it hereunder occurring prior to the effective date of its resignation.

The Unit Operator may, upon default or failure in the performance of its duties or obligations hereunder, be subject to removal by the same percentage vote of the owners of working interests



as herein provided for the selection of a new Unit Operator. Such removal shall be effective upon notice thereof to the AO.

The resignation or removal of Unit Operator under this agreement shall not terminate its right, title, or interest as the owner of working interest or other interest in unitized substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, materials, and appurtenances used in conducting the unit operations to the new duly qualified successor Unit Operator or to the common agent, if no such new Unit Operator is selected, to be used for the purpose of conducting unit operations hereunder. Nothing herein shall be construed as authorizing removal of any material, equipment, or appurtenances needed for the preservation of any wells.

6. SUCCESSOR UNIT OPERATOR. Whenever the Unit Operator shall tender his or its resignation as Unit Operator or shall be removed as hereinabove provided, or a change of Unit Operator is negotiated by the working interest owners, the owners of the working interests according to their respective acreage interests in all unitized land shall, pursuant to the Approval of the Parties requirements of the unit operating agreement, select a successor Unit Operator. Such selection shall not become effective until:

(a) a Unit Operator so selected shall accept in writing the duties and responsibilities of Unit Operator, and

(b) the selection shall have been approved by the AO.

If no successor Unit Operator is selected and qualified as herein provided, the AO at his election may declare this unit agreement terminated.

7. ACCOUNTING PROVISIONS AND UNIT OPERATING AGREEMENT. If the Unit Operator is not the sole owner of working interests, costs and expenses incurred by Unit Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of working interests, all in accordance with the agreement or agreements entered into by and between the Unit Operator and the owners of working interests, whether one or more, separately or collectively. Any agreement or agreements entered into between the working interest owners and the Unit Operator as provided in this section, whether one or more, are herein referred to as the "unit operating agreement." Such unit operating agreement shall also provide the manner in which the working interest owners shall be entitled to receive their respective proportionate and allocated share of the benefits accruing hereto in conformity with their underlying operating agreements, leases, or other independent contracts, and such other rights and obligations as between Unit Operator and the working interest owners as may be agreed upon by Unit Operator and the working interest owners; however, no such unit operating agreement shall be deemed either to modify any of the terms and conditions of this unit agreement or to relieve the Unit Operator of any right or obligation established under this unit agreement, and in case of any inconsistency or conflict between this agreement and the unit operating agreement, this agreement shall govern. Two copies of any unit operating agreement executed pursuant to this section shall be filed in the proper BLM office prior to approval of this unit agreement.

8. RIGHTS AND OBLIGATIONS OF UNIT OPERATOR. Except as otherwise specifically provided herein, the exclusive right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting for, producing, storing, allocating, and distributing the unitized substances are hereby delegated to and shall be exercised by the Unit Operator as herein provided. Acceptable evidence of title to said rights shall be deposited with Unit Operator and, together with this agreement, shall constitute and define the rights, privileges, and obligations of Unit Operator. Nothing herein, however, shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that under this agreement the Unit Operator, in its capacity as Unit Operator, shall exercise the rights of possession and use vested in the parties hereto only for the purposes herein specified.

9. DRILLING TO DISCOVERY. Within 6 months after the effective date hereof, the Unit Operator shall commence to drill an adequate test well at a location approved by the AO, unless on such effective date a well is being drilled in conformity with the terms hereof, and thereafter continue such drilling diligently until the \_\_\_\_\_ formation has been tested or until at a lesser depth unitized substances shall be discovered which can be produced in paying quantities (to wit: quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the AO that further drilling of said well would be unwarranted or impracticable, provided, however, that Unit Operator shall not in any event be required to drill said well to a depth in excess of \_\_\_\_\_ feet. Until the discovery of unitized substances capable of being produced in paying quantities, the Unit Operator shall continue drilling one well at a time, allowing not more than 6 months between the completion of one well and the commencement of drilling operations for the next well, until a well capable of producing unitized substances in paying quantities is completed to the satisfaction of the AO or until it is reasonably proved that the unitized land is incapable of producing unitized substances in paying quantities in the formations drilled hereunder. Nothing in this section shall be deemed to limit the right of the Unit Operator to resign as provided in Section 5, hereof, or as requiring Unit Operator to commence or continue any drilling during the period pending such resignation becoming effective in order to comply with the requirements of this section.

The AO may modify any of the drilling requirements of this section by granting reasonable extensions of time when, in his opinion, such action is warranted.

<sup>2</sup>9a. Multiple well requirements. Notwithstanding anything in this unit agreement to the contrary, except Section 25, UNAVOIDABLE DELAY, \_\_\_\_\_ wells shall be drilled with not more than 6–months time elapsing between the completion of the first well and commencement of drilling operations for the second well and with not more than 6–months time elapsing between completion of the second well and the commencement of drilling operations for the third well,... regardless of whether a discovery has been made in any well drilled under this provision. Both the initial well and the second well must be drilled in compliance with the above specified formation or depth requirements in order to meet the dictates of this section; and the second well must be located a minimum of \_\_\_\_\_ miles from the initial well in order to be accepted by the AO as the second unit test well, within the meaning of this section. The third test well shall be

diligently drilled, at a location approved by the AO, to test the \_\_\_\_\_ formation or to a depth of \_\_\_\_\_ feet, whichever is the lesser, and must be located a minimum of \_\_\_\_\_ miles from both the initial and the second test wells. Nevertheless, in the event of the discovery of unitized substances in paying quantities by any well, this unit agreement shall not terminate for failure to complete the \_\_\_\_\_ well program, but the unit area shall be contracted automatically, effective the first day of the month following the default, to eliminate by subdivisions (as defined in Section 2(e) hereof) all lands not then entitled to be in a participating area.<sup>2</sup>

Until the establishment of a participating area, the failure to commence a well subsequent to the drilling of the initial obligation well, or in the case of multiple well requirements, if specified, subsequent to the drilling of those multiple wells, as provided for in this (these) section(s), within the time allowed including any extension of time granted by the AO, shall cause this agreement to terminate automatically. Upon failure to continue drilling diligently any well other than the obligation well(s) commenced hereunder, the AO may, after 15 days notice to the Unit Operator, declare this unit agreement terminated. Failure to commence drilling the initial obligation well, or the first of multiple obligation wells, on time and to drill it diligently shall result in the unit agreement approval being declared invalid ab initio by the AO. In the case of multiple well requirements, failure to commence drilling the required multiple wells beyond the first well, and to drill them diligently, may result in the unit agreement approval being declared invalid ab initio by the AO;

10. PLAN OF FURTHER DEVELOPMENT AND OPERATION. Within 6 months after completion of a well capable of producing unitized substances in paying quantities, the Unit Operator shall submit for the approval of the AO an acceptable plan of development and operation for the unitized land which, when approved by the authorized officer, shall constitute the further drilling and development obligations of the Unit Operator under this agreement for the period specified therein. Thereafter, from time to time before the expiration of any existing plan, the Unit Operator shall submit for the approval of the AO a plan for an additional specified period for the development and operation of the unitized land. Subsequent plans should normally be filed on a calendar year basis not later than March 1 each year. Any proposed modification or addition to the existing plan should be filed as a supplement to the plan.

Any plan submitted pursuant to this section shall provide for the timely exploration of the unitized area, and for the diligent drilling necessary for determination of the area or areas capable of producing unitized substances in paying quantities in each and every productive formation, **subject to measures either the Unit Operator may employ or the AO may require, to conform to the land use plan or to prevent permanent impairment, unnecessary degradation, and undue degradation.** This plan shall be as complete and adequate as the AO may determine to be necessary for timely development and proper conservation of the oil and gas resources in the unitized area and shall:

- (a) Specify the number and locations of any wells to be drilled and the proposed order and time for such drilling; and
- (b) Provide a summary of operations and production for the previous year.

Plans shall be modified or supplemented when necessary to meet changed conditions or to protect the interests of all parties to this agreement. Reasonable diligence shall be exercised in complying with the obligations of the approved plan of development and operation. The AO is authorized to grant a reasonable extension of the 6-month period herein prescribed for submission of an initial plan of development and operation where such action is justified because of unusual conditions or circumstances.

After completion of a well capable of producing unitized substances in paying quantities, no further wells, except such as may be necessary to afford protection against operations not under this agreement and such as may be specifically approved by the AO, shall be drilled except in accordance with an approved plan of development and operation.

11. PARTICIPATION AFTER DISCOVERY. Upon completion of a well capable of producing unitized substances in paying quantities, or as soon thereafter as required by the AO, the Unit Operator shall submit for approval by the AO, a schedule, based on subdivisions of the public-land survey or aliquot parts thereof, of all land then regarded as reasonably proved to be productive of unitized substances in paying quantities. These lands shall constitute a participating area on approval of the AO, effective as of the date of completion of such well or the effective date of this unit agreement, whichever is later. The acreages of both Federal and non-Federal lands shall be based upon appropriate computations from the courses and distances shown on the last approved public-land survey as of the effective date of each initial participating area. The schedule shall also set forth the percentage of unitized substances to be allocated, as provided in Section 12, to each committed tract in the participating area so established, and shall govern the allocation of production commencing with the effective date of the participating area. A different participating area shall be established for each separate pool or deposit of unitized substances or for any group thereof which is produced as a single pool or zone, and any two or more participating areas so established may be combined into one, on approval of the AO. When production from two or more participating areas is subsequently found to be from a common pool or deposit, the participating areas shall be combined into one, effective as of such appropriate date as may be approved or prescribed by the AO. The participating area or areas so established shall be revised from time to time, subject to the approval of the AO, to include additional lands then regarded as reasonably proved to be productive of unitized substances in paying quantities or which are necessary for unit operations, or to exclude lands then regarded as reasonably proved not to be productive of unitized substances in paying quantities, and the schedule of allocation percentages shall be revised accordingly. The effective date of any revision shall be the first of the month in which the knowledge or information is obtained on which such revision is predicated; provided, however, that a more appropriate effective date may be used if justified by Unit Operator and approved by the AO. No land shall be excluded from a participating area on account of depletion of its unitized substances, except that any participating area established under the provisions of this unit agreement shall terminate automatically whenever all completions in the formation on which the participating area is based are abandoned.

It is the intent of this section that a participating area shall represent the area known or reasonably proved to be productive of unitized substances in paying quantities or which are necessary for unit operations; but, regardless of any revision of the participating area, nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of the participating area.

In the absence of agreement at any time between the Unit Operator and the AO as to the proper definition or redefinition of a participating area, or until a participating area has, or areas have, been established, the portion of all payments affected thereby shall, except royalty due the United States, be impounded in a manner mutually acceptable to the owners of committed working interests. Royalties due the United States shall be determined by the AO and the amount thereof shall be deposited, as directed by the AO, until a participating area is finally approved and then adjusted in accordance with a determination of the sum due as Federal royalty on the basis of such approved participating area.

Whenever it is determined, subject to the approval of the AO, that a well drilled under this agreement is not capable of production of unitized substances in paying quantities and inclusion in a participating area of the land on which it is situated is unwarranted, production from such well shall, for the purposes of settlement among all parties other than working interest owners, be allocated to the land on which the well is located, unless such land is already within the participating area established for the pool or deposit from which such production is obtained. Settlement for working interest benefits from such a nonpaying unit well shall be made as provided in the unit operating agreement.

12. ALLOCATION OF PRODUCTION. All unitized substances produced from a participating area established under this agreement, except any part thereof used in conformity with good operating practices within the unitized area for drilling, operating, and other production or development purposes, or for repressuring or recycling in accordance with a plan of development and operations that has been approved by the AO, or unavoidably lost, shall be deemed to be produced equally on an acreage basis from the several tracts of unitized land and unleased Federal land, if any, included in the participating area established for such production. Each such tract shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land and unleased Federal land, if any, included in said participating area. There shall be allocated to the working interest owner(s) of each tract of unitized land in said participating area, in addition, such percentage of the production attributable to the unleased Federal land within the participating area as the number of acres of such unitized tract included in said participating area bears to the total acres of unitized land in said participating area, for the payment of the compensatory royalty specified in section 17 of this agreement. Allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners, including compensatory royalty obligations under section 17, shall be prescribed as set forth in the unit operating agreement or as otherwise mutually agreed by the affected parties. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein,

regardless or whether any wells are drilled on any particular part or tract of the participating area. If any gas produced from one participating area is used for repressuring or recycling purposes in another participating area, the first gas withdrawn from the latter participating area for sale during the life of this agreement shall be considered to be the gas so transferred, until an amount equal to that transferred shall be so produced for sale and such gas shall be allocated to the participating area from which initially produced as such area was defined at the time that such transferred gas was finally produced and sold.

13. DEVELOPMENT OR OPERATION OF NONPARTICIPATING LAND OR FORMATIONS. Any operator may with the approval of the AO, at such party's sole risk, costs, and expense, drill a well on the utilized land to test any formation provided the well is outside any participating area established for that formation, unless within 90 days of receipt of notice from said party of his intention to drill the well, the Unit Operator elects and commences to drill the well in a like manner as other wells are drilled by the Unit Operator under this agreement.

If any well drilled under this section by a non-unit operator results in production of unitized substances in paying quantities such that the land upon which it is situated may properly be included in a participating area, such participating area shall be established or enlarged as provided in this agreement and the well shall thereafter be operated by the Unit Operator in accordance with the terms of this agreement and the unit operating agreement.

If any well drilled under this section by a non-unit operator that obtains production in quantities insufficient to justify the inclusion of the land upon which such well is situated in a participating area, such well may be operated and produced by the party drilling the same, subject to the conservation requirements of this agreement. The royalties in amount or value of production from any such well shall be paid as specified in the underlying lease and agreements affected.

14. ROYALTY SETTLEMENT. The United States and any State and any royalty owner who is entitled to take in kind a share of the substances now unitized hereunder shall be hereafter be entitled to the right to take in kind its share of the unitized substances, and Unit Operator, or the non-unit operator in the case of the operation of a well by a non-unit operator as herein provided for in special cases, shall make deliveries of such royalty share taken in kind in conformity with the applicable contracts, laws, and regulations. Settlement for royalty interest not taken in kind shall be made by an operator responsible therefor under existing contracts, laws and regulations, or by the Unit Operator on or before the last day of each month for unitized substances produced during the preceding calendar month; provided, however, that nothing in this section shall operate to relieve the responsible parties of any land from their respective lease obligations for the payment of any royalties due under their leases.

If gas obtained from lands not subject to this agreement is introduced into any participating area hereunder, for use in repressuring, stimulation of production, or increasing ultimate recovery, in conformity with a plan of development and operation approved by the AO, a like amount of gas, after settlement as herein provided for any gas transferred from any other participating area and with appropriate deduction for loss from any cause, may be withdrawn from the formation into which the gas is introduced, royalty free as to dry gas, but not as to any products which may be

extracted therefrom; provided that such withdrawal shall be at such time as may be provided in the approved plan of development and operation or as may otherwise be consented to by the AO as conforming to good petroleum engineering practice; and provided further, that such right of withdrawal shall terminate on the termination of this unit agreement.

Royalty due the United States shall be computed as provided in 30 CFR Group 200 and paid in value or delivered in kind as to all unitized substances on the basis of the amounts thereof allocated to unitized Federal land as provided in Section 12 at the rates specified in the respective Federal leases, or at such other rate or rates as may be authorized by law or regulation and approved by the AO; provided, that for leases on which the royalty rate depends on the daily average production per well, said average production shall be determined in accordance with the operating regulations as though each participating area were a single consolidated lease.

15. RENTAL SETTLEMENT. Rental or minimum royalties due on leases committed hereto shall be paid by the appropriate parties under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the responsible parties of the land from their respective obligations for the payment of any rental or minimum royalty due under their leases. Rental or minimum royalty for lands of the United States subject to this agreement shall be paid at the rate specified in the respective leases from the United States unless such rental or minimum royalty is waived, suspended, or reduced by law or by approval of the Secretary or his duly authorized representative.

With respect to any lease on non-Federal land containing provisions which would terminate such lease unless drilling operations are commenced upon the land covered thereby within the time therein specified or rentals are paid for the privilege of deferring such drilling operations, the rentals required thereby shall, notwithstanding any other provision of this agreement, be deemed to accrue and become payable during the term thereof as extended by this agreement and until the required drilling operations are commenced upon the land covered thereby, or until some portion of such land is included within a participating area.

16. CONSERVATION. Operations hereunder and production of unitized substances shall be conducted to provide for the most economical and efficient recovery of said substances without waste, as defined by or pursuant to State or Federal law or regulation, **and without permanent impairment, unnecessary degradation, and undue degradation.**

17. DRAINAGE.

(a) The Unit Operator shall take such measures as the AO deems appropriate and adequate to prevent drainage of unitized substances from unitized land by wells on land not subject to this agreement, which shall include the drilling of protective wells and which may include the payment of a fair and reasonable compensatory royalty, as determined by the AO.

(b) Whenever a participating area approved under section 11 of this agreement contains unleased Federal lands, the value of 12 ½ percent of the production that would be allocated to such Federal lands under section 12 of this agreement, if such lands were leased, committed, and entitled to participation, shall be payable as compensatory royalties to the Federal Government.

Parties to this agreement holding working interests in committed leases within the applicable participating area shall be responsible for such compensatory royalty payment on the volume of production reallocated from the unleased Federal lands to their unitized tracts under section 12. The value of such production subject to the payment of said royalties shall be determined pursuant to 30 CFR part 206. Payment of compensatory royalties on the production reallocated from unleased Federal land to the committed tracts within the participating area shall fulfill the Federal royalty obligation for such production, and said production shall be subject to no further royalty assessment under section 14 of this agreement. Payment of compensatory royalties as provided herein shall accrue from the date the committed tracts in the participating area that includes unleased Federal lands receive a production allocation, and shall be due and payable monthly by the last day of the calendar month next following the calendar month of actual production. If leased Federal lands receiving a production allocation from the participating area become unleased, compensatory royalties shall accrue from the date the Federal lands become unleased. Payment due under this provision shall end when the unleased Federal tract is leased or when production of unitized substances ceases within the participating area and the participating area is terminated, whichever occurs first.

18. LEASES AND CONTRACTS CONFORMED AND EXTENDED. The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development or operation for oil or gas on lands committed to this agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof, but otherwise to remain in full force and effect; and the parties hereto hereby consent that the Secretary shall and by his approval hereof, or by the approval hereof by his duly authorized representative, does hereby establish, alter, change, or revoke the drilling, producing, rental, minimum royalty, and royalty requirements of Federal leases committed hereto and the regulations in respect thereto to conform said requirements to the provisions of this agreement, and, without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following: (a) The development and operation of lands subject to this agreement under the terms hereof shall be deemed full performance of all obligations for development and operation with respect to each and every separately owned tract subject to this agreement, regardless of whether there is any development of any particular tract of this unit area.

(b) Drilling and producing operations performed hereunder upon any tract of unitized lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of unitized land, and no lease shall be deemed to expire by reason of failure to drill or produce wells situated on the land therein embraced.

(c) Suspension of drilling or producing operations on all unitized lands pursuant to direction or consent of the AO shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of unitized land. A suspension of drilling or producing operations limited to specified lands shall be applicable only to such lands.

(d) Each lease, sublease, or contract relating to the exploration, drilling, development, or operation for oil or gas of lands other than those of the United States committed to this



agreement which, by its terms might expire prior to the termination of this agreement, is hereby extended beyond any such term so provided therein so that it shall be continued in full force and effect for and during the term of this agreement.

(e) Any Federal lease committed hereto shall continue in force beyond the term so provided therein or by law as to the land committed so long as such lease remains subject hereto, provided that production of unitized substances in paying quantities is established under this unit agreement prior to the expiration date of the term of such lease, or in the event actual drilling operations are commenced on unitized land, in accordance with provisions of this agreement, prior to the end of the primary term of such lease and are being diligently prosecuted at that time, such lease shall be extended for 2 years, and so long thereafter as oil or gas is produced in paying quantities in accordance with the provisions of the Mineral Leasing Act, as amended.

(f) Each sublease or contract relating to the operation and development of unitized substances from lands of the United States committed to this agreement, which by its terms would expire prior to the time at which the underlying lease, as extended by the immediately preceding paragraph, will expire is hereby extended beyond any such term so provided therein so that it shall be continued in full force and effect for and during the term of the underlying lease as such term is herein extended.

(g) The segregation of any Federal lease committed to this agreement is governed by the following provision in the fourth paragraph of sec. 17(m) of the Mineral Leasing Act, as amended by the Act of September 2, 1960 (74 Stat. 781–784) (30 U.S.C. 226(m)):

“Any [Federal] lease heretofore or hereafter committed to any such [unit] plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: *Provided, however,* That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities.”

If the public interest requirement is not satisfied, the segregation of a lease and/or extension of a lease pursuant to 43 CFR 3107.3–2 and 43 CFR 3107.4, respectively, shall not be effective. <sup>3</sup>(h) Any lease, other than a Federal lease, having only a portion of its lands committed hereto shall be segregated as to the portion committed and the portion not committed, and the provisions of such lease shall apply separately to such segregated portions commencing as of the effective date hereof. In the event any such lease provides for a lump-sum rental payment, such payment shall be prorated between the portions so segregated in proportion to the acreage of the respective tracts.

19. COVENANTS RUN WITH LAND. The covenants herein shall be construed to be covenants running with the land with respect to the interests of the parties hereto and their successors in interest until this agreement terminates, and any grant, transfer or conveyance of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest. No assignment or transfer of any working interest, royalty, or other interest subject hereto shall be

binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

20. EFFECTIVE DATE AND TERM. This agreement shall become effective upon approval by the AO and shall automatically terminate 5 years from said effective date unless:

(a) Upon application by the Unit Operator such date of expiration is extended by the AO, or

(b) It is reasonably determined prior to the expiration of the fixed term or any extension thereof that the unitized land is incapable of production of unitized substances in paying quantities in the formations tested hereunder, and after notice of intention to terminate this agreement on such ground is given by the Unit Operator to all parties in interest at their last known addresses, this agreement is terminated with the approval of the AO, or

(c) A valuable discovery of unitized substances in paying quantities has been made or accepted on unitized land during said initial term or any extension thereof, in which event this agreement shall remain in effect for such term and so long thereafter as unitized substances can be produced in quantities sufficient to pay for the cost of producing same from wells on unitized land within any participating area established hereunder. Should production cease and diligent drilling or reworking operations to restore production or new production are not in progress within 60 days and production is not restored or should new production not be obtained in paying quantities on committed lands within this unit area, this agreement will automatically terminate effective the last day of the month in which the last unitized production occurred, or

(d) It is voluntarily terminated as provided in this agreement. Except as noted herein, this agreement may be terminated at any time prior to the discovery of unitized substances which can be produced in paying quantities by not less than 75 per centum, on an acreage basis, of the working interest owners signatory hereto, with the approval of the AO. The Unit Operator shall give notice of any such approval to all parties hereto. If the public interest requirement is not satisfied, the approval of this unit by the AO shall be invalid.

21. RATE OF PROSPECTING, DEVELOPMENT, AND PRODUCTION. The AO is hereby vested with authority to alter or modify from time to time, in his discretion, the quantity and rate of production under this agreement when such quantity and rate are not fixed pursuant to Federal or State law, or do not conform to any Statewide voluntary conservation or allocation program which is established, recognized, and generally adhered to by the majority of operators in such State. The above authority is hereby limited to alteration or modifications which are in the public interest, **including to prevent permanent impairment, unnecessary degradation, and undue degradation.** The public interest to be served and the purpose thereof, must be stated in the order of alteration or modification. Without regard to the foregoing, the AO is also hereby vested with authority to alter or modify from time to time, in his discretion, the rate of prospecting and development and the quantity and rate of production under this agreement when such alteration or modification is in the interest of attaining the conservation objectives stated in this agreement and is not in violation of any applicable Federal or State law. Powers in the section vested in the AO shall only be exercised after notice to Unit Operator and opportunity for hearing to be held not less than 15 days from notice.

22. APPEARANCES. The Unit Operator shall, after notice to other parties affected, have the right to appear for and on behalf of any and all interests affected hereby before the Department of the Interior and to appeal from orders issued under the regulations of said Department, or to apply for relief from any of said regulations, or in any proceedings relative to operations before the Department, or any other legally constituted authority; provided, however, that any other interested party shall also have the right at its own expense to be heard in any such proceeding.

23. NOTICES. All notices, demands, or statements required hereunder to be given or rendered to the parties hereto shall be in writing and shall be personally delivered to the party or parties, or sent by postpaid registered or certified mail, to the last-known address of the party or parties.

24. NO WAIVER OF CERTAIN RIGHTS. Nothing contained in this agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense as to the validity or invalidity of any law of the State where the unitized lands are located, or of the United States, or regulations issued thereunder in any way affecting such party, or as a waiver by any such party of any right beyond his or its authority to waive.

25. UNAVOIDABLE DELAY. All obligations under this agreement requiring the Unit Operator to commence or continue drilling, or to operate on, or produce unitized substances from any of the lands covered by this agreement, shall be suspended while the Unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, acts of God, Federal, State, or municipal law or agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials or equipment in the open market, or other matters beyond the reasonable control of the Unit Operator, whether similar to matters herein enumerated or not.

26. NONDISCRIMINATION. In connection with the performance of work under this agreement, the Unit Operator agrees to comply with all the provisions of section 202(1) to (7) inclusive, of Executive Order 11246 (30 FR 12319), as amended, which are hereby incorporated by reference in this agreement.

27. LOSS OF TITLE. In the event title to any tract of unitized land shall fail and the true owner cannot be induced to join in this unit agreement, such tract shall be automatically regarded as not committed hereto, and there shall be such readjustment of future costs and benefits as may be required on account of the loss of such title. In the event of a dispute as to title to any royalty, working interest, or other interests subject thereto, payment or delivery on account thereof may be withheld without liability for interest until the dispute is finally settled; provided, that, as to Federal lands or leases, no payments of funds due the United States shall be withheld, but such funds shall be deposited as directed by the AO, to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

Unit Operator as such is relieved from any responsibility for any defect or failure of any title hereunder.

28. NONJOINER AND SUBSEQUENT JOINER. If the owner of any substantial interest in a tract within the unit area fails or refuses to subscribe or consent to this agreement, the owner of the working interest in that tract may withdraw the tract from this agreement by written notice delivered to the proper BLM office and the Unit Operator prior to the approval of this agreement by the AO. Any oil or gas interests in lands within the unit area not committed hereto prior to final approval may thereafter be committed hereto by the owner or owners thereof subscribing or consenting to this agreement, and, if the interest is a working interest, by the owner of such interest also subscribing to the unit operating agreement. After operations are commenced hereunder, the right of subsequent joinder, as provided in this section, by a working interest owner is subject to such requirements or approval(s), if any, pertaining to such joinder, as may be provided for in the unit operating agreement. After final approval hereof, joinder by a nonworking interest owner must be consented to in writing by the working interest owner committed hereto and responsible for the payment of any benefits that may accrue hereunder in behalf of such nonworking interest. A nonworking interest may not be committed to this unit agreement unless the corresponding working interest is committed hereto. Joinder to the unit agreement by a working interest owner, at any time, must be accompanied by appropriate joinder to the unit operating agreement, in order for the interest to be regarded as committed to this agreement. Except as may otherwise herein be provided, subsequent joinders to this agreement shall be effective as of the date of the filing with the AO of duly executed counterparts of all or any papers necessary to establish effective commitment of any interest and/or tract to this agreement.

29. COUNTERPARTS. This agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties, or may be ratified or consented to by separate instrument in writing specifically referring hereto and shall be binding upon all those parties who have executed such a counterpart, ratification, or consent hereto with the same force and effect as if all such parties had signed the same document, and regardless of whether or not it is executed by all other parties owning or claiming an interest in the lands within the above-described unit area.

430. SURRENDER. Nothing in this agreement shall prohibit the exercise by any working interest owner of the right to surrender vested in such party by any lease, sublease, or operating agreement as to all or any part of the lands covered thereby, provided that each party who will or might acquire such working interest by such surrender or by forfeiture as hereafter set forth, is bound by the terms of this agreement.

If as a result of any such surrender, the working interest rights as to such lands become vested in any party other than the fee owner of the unitized substances, said party may forfeit such rights and further benefits from operations hereunder as to said land to the party next in the chain of title who shall be and become the owner of such working interest.

If as the result of any such surrender or forfeiture working interest rights become vested in the fee owner of the unitized substances, such owner may:

- (a) Accept those working interest rights subject to this agreement and the unit operating agreement; or
- (b) Lease the portion of such land as is included in a participating area established hereunder subject to this agreement and the unit operating agreement; or
- (c) Provide for the independent operation of any part of such land that is not then included within a participating area established hereunder.

If the fee owner of the unitized substances does not accept the working interest rights subject to this agreement and the unit operating agreement or lease such lands as above provided within 6 months after the surrendered or forfeited, working interest rights become vested in the fee owner; the benefits and obligations of operations accruing to such lands under this agreement and the unit operating agreement shall be shared by the remaining owners of unitized working interests in accordance with their respective working interest ownerships, and such owners of working interests shall compensate the fee owner of unitized substances in such lands by paying sums equal to the rentals, minimum royalties, and royalties applicable to such lands under the lease in effect when the lands were unitized.

An appropriate accounting and settlement shall be made for all benefits accruing to or payments and expenditures made or incurred on behalf of such surrendered or forfeited working interests subsequent to the date of surrender or forfeiture, and payment of any moneys found to be owing by such an accounting shall be made as between the parties within 30 days.

The exercise of any right vested in a working interest owner to reassign such working interest to the party from whom obtained shall be subject to the same conditions as set forth in this section in regard to the exercise of a right to surrender.

<sup>431</sup>. TAXES. The working interest owners shall render and pay for their account and the account of the royalty owners all valid taxes on or measured by the unitized substances in and under or that may be produced, gathered and sold from the land covered by this agreement after its effective date, or upon the proceeds derived therefrom. The working interest owners on each tract shall and may charge the proper proportion of said taxes to royalty owners having interests in said-tract, and may currently retain and deduct a sufficient amount of the unitized substances or derivative products, or net proceeds thereof, from the allocated share of each royalty owner to secure reimbursement for the taxes so paid. No such taxes shall be charged to the United States or the State of \_\_\_\_ or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

<sup>432</sup>. NO PARTNERSHIP. It is expressly agreed that the relation of the parties hereto is that of independent contractors and nothing contained in this agreement, expressed or implied, nor any operations conducted hereunder, shall create or be deemed to have created a partnership or association between the parties hereto or any of them.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed and have set opposite their respective names the date of execution.

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Unit Operator

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Working Interest Owners

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Other Interest Owners

#### General Guidelines

1. Executed agreement to be legally complete.
2. Agreement submitted for approval must contain Exhibit A and B in accordance with models shown in §§ 3186.1–1 and 3186.1–2 of this title.
3. Consents should be identified (in pencil) by tract numbers as listed in Exhibit B and assembled in that order as far as practical. Unit agreements submitted for approval shall include a list of the overriding royalty interest owners who have executed ratifications of the unit agreement. Subsequent joinders by overriding royalty interest owners shall be submitted in the same manner, except each must include or be accompanied by a statement that the corresponding working interest owner has consented in writing to such joinder. Original ratifications of overriding royalty owners will be kept on file by the Unit Operator or his designated agent.
4. All leases held by option should be noted on Exhibit B with an explanation as to the type of option, i.e., whether for operating rights only, for full leasehold record title, or for certain interests to be earned by performance. In all instances, optionee committing such interests is expected to exercise option promptly.
5. All owners of oil and gas interests must be invited to join the unit agreement, and statement to that effect must accompany executed agreement, together with summary of results of such invitations. A written reason for all interest owners who have not joined shall be furnished by the unit operator.
6. In the event fish and wildlife lands are included, add the following as a separate section:  
“Wildlife Stipulation. Nothing in this unit agreement shall modify the special Federal lease stipulations applicable to lands under the jurisdiction of the United States Fish and Wildlife Service.”

7. In the event National Forest System lands are included within the unit area, add the following as a separate section:

“Forest Land Stipulation. Notwithstanding any other terms and conditions contained in this agreement, all of the stipulations and conditions of the individual leases between the United States and its lessees or their successors or assigns embracing lands within the unit area included for the protection of lands or functions under the jurisdiction of the Secretary of Agriculture shall remain in full force and effect the same as though this agreement had not been entered into, and no modification thereof is authorized except with the prior consent in writing of the Regional Forester, United States Forest Service, \_\_\_\_\_, \_\_\_\_\_.”

8. In the event National Forest System lands within the Jackson Hole Area of Wyoming are included within the unit area, additional “special” stipulations may be required to be included in the unit agreement by the U.S. Forest Service, including the Jackson Hole Special Stipulation.

9. In the event reclamation lands are included, add the following as a new separate section:

“Reclamation Lands. Nothing in this agreement shall modify the special, Federal lease stipulations applicable to lands under the jurisdiction of the Bureau of Reclamation.”

10. In the event a powersite is embraced in the proposed unit area, the following section should be added:

“Powersite. Nothing in this agreement shall modify the special, Federal lease stipulations applicable to lands under the jurisdiction of the Federal Energy Regulatory Commission.”

11. In the event special surface stipulations have been attached to any of the Federal oil and gas leases to be included, add the following as a separate section:

“Special surface stipulations. Nothing in this agreement shall modify the special Federal lease stipulations attached to the individual Federal oil leases.”

12. In the event State lands are included in the proposed unit area, add the appropriate State Lands Section as separate section. (See § 3181.4(a) of this title).

13. In the event restricted Indian lands are involved, consult the AO regarding appropriate requirements under § 3181.4(b) of this title.

#### Certification—Determination

Pursuant to the authority vested in the Secretary of the Interior, under the Act approved February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. sec. 181, et seq., and delegated to (the appropriate Name and Title of the authorized officer, BLM) under the authority of 43 CFR part 3180, I do hereby:

A. Approve the attached agreement for the development and operation of the \_\_\_\_\_, Unit Area, State of \_\_\_\_\_. This approval shall be invalid ab initio if the public interest requirement under § 3183.4(b) of this title is not met.

B. Certify and determine that the unit plan of development and operation contemplated in the attached agreement is necessary and advisable in the public interest for the purpose of more properly conserving the natural resources.

C. Certify and determine that the drilling, producing, rental, minimum royalty, and royalty requirements of all Federal leases committed to said agreement are hereby established altered, changed, or revoked to conform with the terms and conditions of this agreement.

Dated \_\_\_\_\_.

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(Name and Title of authorized officer of the Bureau of Land Management)

[1] Optional sections (in addition the penultimate paragraph of Section 9 is to be included only when more than one obligation well is required and paragraph (h) of section 18 is to be used only when applicable).

[2] Provisions to be included only when a multiple well obligation is required.

[3] Optional paragraph to be used only when applicable.

[4] Optional sections and subsection. (Agreements submitted for final approval should not identify section or provision as “optional.”)

§ 3186.1-1 Model Exhibit “A.” (no proposed amendment)

§ 3186.1-2 Model Exhibit “B.” (no proposed amendment)

§ 3186.2 Model collective bond. (no proposed amendment)

§ 3186.3 Model for designation of successor unit operator by working interest owners. (no proposed amendment)

§ 3186.4 Model for change in unit operator by assignment. (no proposed amendment)

#### **SEVERABILITY CLAUSE**

**If a court holds any provisions of the regulations or amendments thereto adopted in this rulemaking or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected. It is the intent of the agency that the adopted amendments to 43 C.F.R. Parts 3000, 3100, 3110, 3120, 3160, 3170, or 3180 are not dependent on the adopted amendments to 43 C.F.R. Part 1600. Neither are the adopted amendments to 43 C.F.R. Part 1600 dependent on the adopted amendments to 43 C.F.R. Parts 3000, 3100, 3110, 3120, 3160, 3170, or 3180. The planning rule amendments and oil and gas leasing amendments are independently operational.**

- End -