



U.S. Department of the Interior  
Bureau of Land Management

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# Tribal Consultations for Oil and Gas Leasing Handbook

Colorado State Office

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September 2020  
(revised May 2022)



**Cover photo by BLM, Bob Wick**

# **Tribal Consultations for Oil and Gas Leasing Handbook**

**U.S. Department of the Interior  
Bureau of Land Management  
Colorado State Office**

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# Acronyms and Abbreviations

<b>ACHP</b>	<b>Advisory Council on Historic Preservation</b>
<b>AHPA</b>	<b>Archeological and Historic Preservation Act of 1974</b>
<b>AIRFA</b>	<b>American Indian Religious Freedom Act</b>
<b>APD</b>	<b>Application for Permit to Drill</b>
<b>APE</b>	<b>Area of potential effects</b>
<b>ARPA</b>	<b>Archeological Resources Protection Act</b>
<b>BIA</b>	<b>Bureau of Indian Affairs</b>
<b>BLM</b>	<b>Bureau of Land Management</b>
<b>CFR</b>	<b>Code of Federal Regulations</b>
<b>CO</b>	<b>Colorado</b>
<b>COA</b>	<b>Condition of approval</b>
<b>COGCC</b>	<b>Colorado Oil and Gas Conservation Commission</b>
<b>COSO</b>	<b>BLM Colorado State Office</b>
<b>CPW</b>	<b>Colorado Parks and Wildlife</b>
<b>CRS</b>	<b>Colorado Revised Statute</b>
<b>CSU</b>	<b>Controlled surface use</b>
<b>CX</b>	<b>Categorical exclusion</b>
<b>DM</b>	<b>Departmental manual</b>
<b>DO</b>	<b>District Office</b>
<b>DOI</b>	<b>U.S. Department of the Interior</b>
<b>DPO</b>	<b>Deputy Preservation Officer</b>
<b>DR</b>	<b>Decision record</b>
<b>EA</b>	<b>Environmental assessment</b>
<b>EIS</b>	<b>Environmental impact statement</b>
<b>ELIPS</b>	<b>Electronic Library of the Interior Policies</b>

<b>EO</b>	<b>Executive order</b>
<b>EOI</b>	<b>Expression of Interest</b>
<b>ESA</b>	<b>Endangered Species Act</b>
<b>FACA</b>	<b>Federal Advisory Committee Act</b>
<b>FLPMA</b>	<b>Federal Land Policy and Management Act of 1976</b>
<b>FM</b>	<b>Field Manager</b>
<b>FO</b>	<b>Field Office</b>
<b>FOA</b>	<b>Field office archaeologist</b>
<b>FOIA</b>	<b>1966 Freedom of Information Act</b>
<b>FPGP</b>	<b>Favorable petroleum geological province</b>
<b>FPO</b>	<b>Federal Preservation Officer</b>
<b>FS</b>	<b>U.S. Forest Service</b>
<b>IBLA</b>	<b>Interior Board of Land Appeals</b>
<b>IM</b>	<b>Instruction memorandum</b>
<b>KFO</b>	<b>Kremmling Field Office</b>
<b>KGS</b>	<b>Known geological structure</b>
<b>LSFO</b>	<b>Little Snake Field Office</b>
<b>LUPA</b>	<b>Land use plan amendment</b>
<b>MOA</b>	<b>Memorandum of agreement</b>
<b>MOU</b>	<b>Memorandum of understanding</b>
<b>MPD</b>	<b>Master development plan</b>
<b>NAGPRA</b>	<b>Native American Graves Protection and Repatriation Act (1990)</b>
<b>NCLS</b>	<b>Notices of competitive lease sale</b>
<b>NCSHPO</b>	<b>National Conference of State Historic Preservation Officers</b>
<b>NEPA</b>	<b>National Environmental Policy Act</b>
<b>NFLSS</b>	<b>National Fluids Lease Sale System</b>

<b>NHPA</b>	<b>National Historic Preservation Act</b>
<b>NOS</b>	<b>Notice of staking</b>
<b>NRHP</b>	<b>National Register of Historic Places</b>
<b>NRS</b>	<b>Natural resource specialist</b>
<b>NSO</b>	<b>No surface occupancy</b>
<b>NTC</b>	<b>National Training Center</b>
<b>OHV</b>	<b>Off-highway vehicle</b>
<b>PA</b>	<b>Programmatic agreement</b>
<b>RMP</b>	<b>Resource Management Plan</b>
<b>SHPO</b>	<b>State Historic Preservation Office/r</b>
<b>SMA</b>	<b>Surface management agency</b>
<b>SOP</b>	<b>Standard operating procedure</b>
<b>SUPO</b>	<b>Surface use plan of operations</b>
<b>TCP</b>	<b>Traditional Cultural Property</b>
<b>TGO</b>	<b>Tribal Governance Officer</b>
<b>THPO</b>	<b>Tribal Historic Preservation Office (or Officer)</b>
<b>TL</b>	<b>Timing limitation</b>
<b>TLO</b>	<b>Tribal Liaison Officer</b>
<b>USFS</b>	<b>U.S. Forest Service</b>
<b>WA</b>	<b>Wilderness areas</b>
<b>WRFO</b>	<b>White River Field Office</b>

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*A true definition of Indian spirituality and religion and ceremony is “a way of life.”*

*—Clifford Duncan, Ute Elder, Deseret News,  
11/24/2004*

*The Ute Tribes culture, traditions, language, values and world-views are born from their homelands. The water and the lands it flows through created an innate identity for the Ute people that it is essential to conserving their cultural patrimony. This in turn produces an intimate and insightful connection between Ute people and the cultural landscape they lived in and live on. The landscapes are a complex of interrelated and essential places of religious and cultural significances. All the lands and elements of the environment within the Ute Tribe’s milieu are aligned.*

*—Betsy Chapoose, 2019*

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# Introduction

**T**rust and respect are the foundation of a successful relationship. The Ute Tribes, including the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and the Ute Indian Tribe of the Uintah and Ouray Reservation, have worked with the Colorado Bureau of Land Management (BLM) field offices over many years to create a dynamic partnership that has fostered greater understanding of each parties' culture. The Ute Tribes and BLM understand the complexity of building and maintaining this relationship and recognize that collaboration is key to meaningful consultation.

Government-to-government consultation is a large component of an interactive and evolving process between the Ute Tribes and Colorado BLM to identify, evaluate, assess, and resolve effects on cultural properties during federal undertakings. All parties must develop effective approaches to protect or otherwise account for impacts on all aspects of historic and cultural properties throughout the Section 106 process. Consultation is defined in federal regulations as "required and meaningful," but in order for it to be "meaningful," a relationship between the agency and the tribes must succeed. This document, *Tribal Consultations for Oil and Gas Leasing Handbook*, and the accompanying *Tribal Consultations for Oil and Gas Leasing Pocket Guide* stem from the relationship developed between the Ute Tribes and Colorado BLM over more than 20 years. Both documents can be found online at the BLM's Public Lands Information Center website: <https://www.blm.gov/media/public-room/colorado>.

This handbook and the accompanying pocket guide are tools for the Ute Tribes and Colorado BLM staff to use during the BLM oil and gas lease sale process, but they are not to be used in place of consultation, which is still required. They can assist consultation by providing insight when implementing protective measures in specific areas that the Ute Tribes may want protected from oil and gas development.

Colorado BLM needs to recognize that requests for closure or deferment are supported by a strong tribal position and are of high priority. Tribes must critically review requests for closures of lands to oil and gas leasing. Overusing closure requests could render the option ineffective.

For the purposes of this handbook, cultural resources are defined by the BLM as follows:

**Cultural landscape:** A cultural landscape can be both a geographic area and an aesthetic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with an historic event, activity, or person, or exhibiting other cultural or aesthetic values.

**Cultural resource or cultural property:** a definite location of human activity, occupation, or use, normally greater than 50 years of age, identifiable through field inventory, historical documentation, or oral evidence. The term includes archaeological, historical, or architectural sites, structures, places, or sites or places with important public and scientific uses and may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups (cf. “traditional cultural property”). Cultural resources are concrete, material places and things that are located, classified, ranked, and managed through the system of identifying, protecting, and utilizing for public benefit described in laws, regulations, and the BLM Manuals.

The BLM is required by law and regulation to ensure that Bureau-initiated or Bureau-authorized actions do not inadvertently harm or destroy cultural resource values. Because most cultural resources are unidentified, irreplaceable, and highly sensitive to ground disturbance, it is necessary that the resources are properly identified, evaluated, and reported prior to any proposed action that may affect their integrity or condition.

The Ute Tribes define cultural resources comprehensively. Cultural resources include, among other things, cultural sites, plants, animals, minerals, viewsheds, aesthetics, water, land formations, and night skies. When evaluating impacts, the imperceptible as well as the tangible aspects of these elements should be incorporated.

# Purpose

This handbook has been developed by the BLM and the Ute Indian Tribes of the Uintah & Ouray Reservation, the Southern Ute Tribe, and the Ute Mountain Ute Tribe, after holding a two-day meeting on February 4 and 5, 2020. The meeting was convened to improve coordination and clarity between these entities in response to the accelerated quarterly lease sale process, first implemented in January 2018 (BLM Instruction Memorandum (IM) 2018-034, issued on January 31, 2018). The purpose of this handbook is to build awareness between the Ute Tribes and BLM staff members to identify when consultations are needed and where opportunities exist for tribes to provide input to land management decisions specific to oil and gas leasing. This handbook also establishes processes and procedures for effectively completing tribal consultations in a consistent manner throughout BLM Colorado. All authorizations for land and resource use need to comply with Section 106 of the National Historic Preservation Act (NHPA), and this handbook has been developed to try and concisely identify the steps within that process.

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# 1. Land Use Planning

## 1.1. Resource Management Plans

In the developmental stage, resource management plans (RMPs), also known as land use plans (LUPs), are a key tool for federally recognized tribes (tribes) to participate in decision-making regarding oil and gas development on public lands. RMPs are intended to ensure that public lands are managed for oil and gas leasing in accordance with the intent of Congress as stated in the [Federal Land Policy and Management Act of 1976 \(FLPMA\) \(43 U.S.C. 1701 et seq.\)](#), under the principles of multiple use and sustained yield (Sec. 102 (a)(7)).

Congress tasked the BLM with a mandate of managing public lands for a variety of uses, such as energy development, livestock grazing, recreation, and timber harvesting, while ensuring natural, cultural, and historic resources are maintained for present and future use. Where there are competing resource uses and values in the same area, [Section 103\(c\) of FLPMA \(43 U.S.C. 1702\(c\)\)](#) requires that the BLM manage the public lands and their various resource values so that they are utilized in the combination that will best meet multiple use and sustained yield mandates.

Decisions in RMPs guide future land management actions and subsequent site-specific implementation decisions. These land use plan decisions establish goals and objectives for resource management (desired outcomes) and the measures needed to achieve these goals and objectives (management actions and allowable uses/allocations).

### Types of Land Use Plan Decisions

#### Goals

Goals are broad statements of desired outcomes (e.g., maintain ecosystem health and productivity, promote community stability, ensure sustainable development) that usually are not quantifiable.

## *Objectives*

Objectives identify specific desired outcomes for resources. Objectives are usually quantifiable and measurable and may have established timeframes for achievement (as appropriate).

## *Allowable Uses (Allocations)*

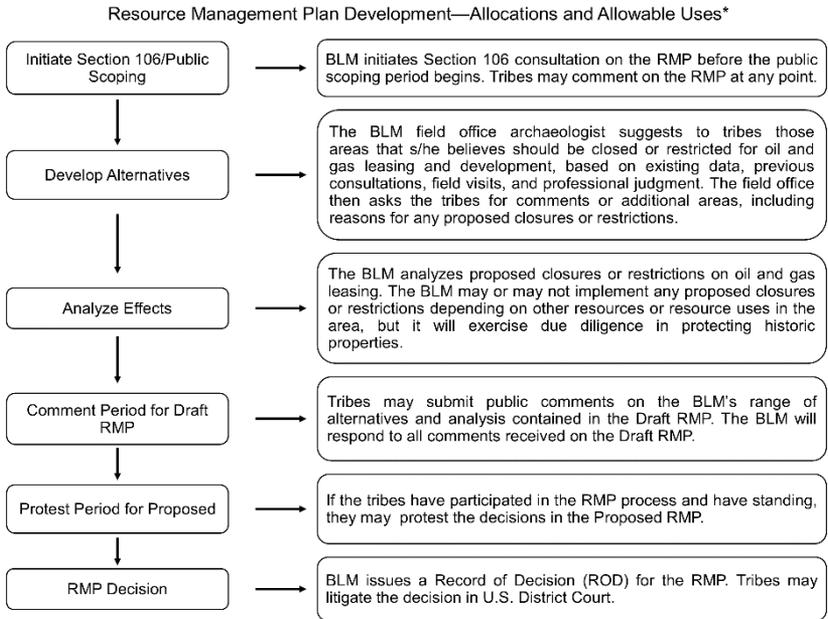
RMPs must identify uses, or allocations, that are allowable, restricted, or prohibited on the public lands and mineral estate. These allocations identify surface lands and/or subsurface mineral interests where uses are allowed, including any restrictions that may be needed to meet goals and objectives; i.e., stipulations such as no surface occupancy (NSO), controlled surface use (CSU), timing limitations (TLs) or lease notices (LNs). Refer to section 2.6 for stipulation definitions.

Land use plans also identify lands where specific uses are excluded to protect resource values. Certain lands may be open or closed to specific uses based on legislative, regulatory, or policy requirements or criteria to protect sensitive resource values, such as wilderness areas (WA), wilderness study areas (WSAs), or areas of critical environmental concern (ACECs). If land use plan decisions close areas of 100,000 acres or greater to a principal or major use for two years or more, Congress must be notified of the closure upon its implementation, as prescribed in [43 CFR 1610.6](#).

## **1.2. Tribal Consultation on Oil and Gas Allocations in RMPs**

In accordance with federal law, the BLM provides tribes with opportunities to comment and participate in the development of RMPs during public scoping, public comment, and protest periods, and other times (see Figure 1.1). Tribes may also participate in RMP development as cooperating agencies (see [section I.E.2. of BLM Handbook H-1601-1—Land Use Planning Handbook](#)). Cooperating agency status affords the cooperator early involvement in the planning process and the opportunity to participate directly in identifying issues, collecting and analyzing data, developing alternatives, and evaluating effects.

**Figure 1.1. Oil and Gas Leasing Process with Opportunities for Tribal Input**



\*Tribes may also sign on as cooperating agencies for the RMP. See section 1.2.

**Should the tribes elect to participate as cooperating agencies on the RMP, the BLM and the tribe would enter into a memorandum of understanding (MOU) to outline the roles and responsibilities of each party.**

**The RMP development process gives tribes a critical opportunity to propose closures or restrictions regarding oil and gas operations. The BLM will evaluate such proposals in relation to other land uses and resources and include them in at least one of the alternatives in the RMP. The BLM may or may not implement proposed closures or restrictions, but it will exercise due diligence in protecting cultural resources.**

### **1.3. Cultural Resources used to Support RMP Decision**

**An appropriate level of cultural resource identification for land use planning includes (1) a compilation and analysis of reasonably available cultural resource data and literature and (2) a management-oriented synthesis of**

the resulting information that includes priorities and a strategy for accomplishing needed inventory (see Manual Section 8110). Land use decisions are more specific in terms of impacts and may require a more detailed level of identification of the scope and nature of cultural resources during land use planning. RMPs will include at least the following two goals:

1. Identify, preserve, and protect significant cultural resources and ensure that they are available for appropriate uses by present and future generations (FLPMA, Section 103 (c), 201(a) and (c); National Historic Preservation Act (NHPA), Section 110(a); Archaeological Resources Protection Act (ARPA), Section 14(a)).
2. Seek to reduce imminent threats and resolve potential conflicts from natural or human-caused deterioration, or potential conflict with other resource uses (FLPMA Sec. 103(c), NHPA 106, 110 (a) (2)) by ensuring that all authorizations for land use and resource use will comply with the NHPA under Section 106.

All authorizations for land and resource use will comply with Section 106 of the National Historic Preservation Act (NHPA), consistent with and subject to the objectives established in the RMP for the proactive use of cultural properties in the public interest (NHPA Sec. 106, 101(d)(6), 110(a)(2)(E); national BLM-Advisory Council and Historic Preservation-The National Conference of State Historic Preservation Officers Programmatic Agreement of 2012). Because the programmatic agreement does not include the tribes, the BLMs cultural resource responsibilities are managed under the NHPA regulations.

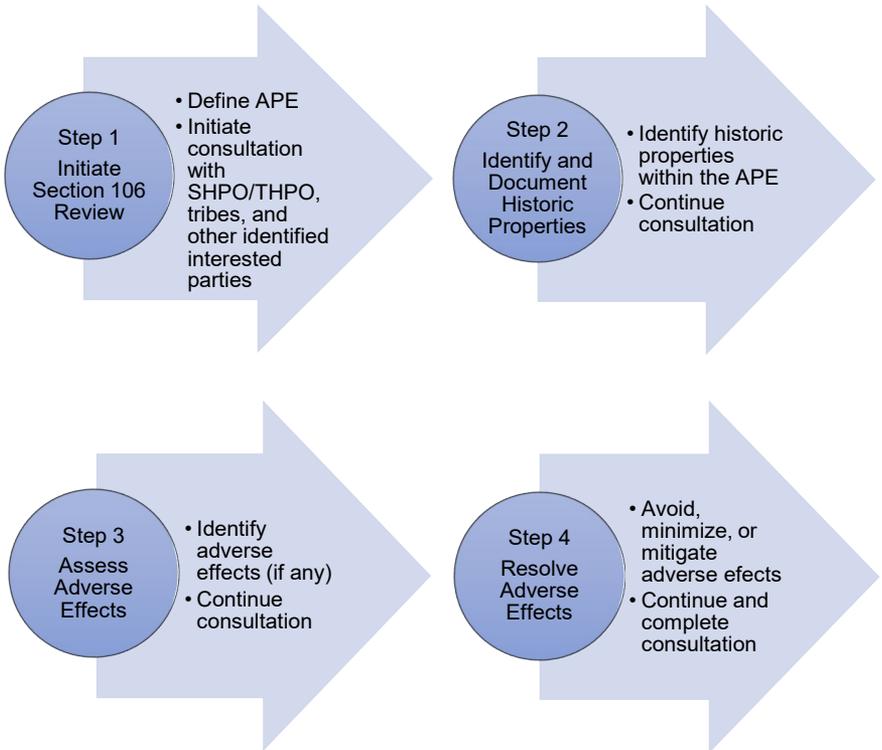
Section 106 of the NHPA requires that the lead federal agency with jurisdiction over a federal undertaking (i.e., a project, activity, or program that is funded by a federal agency or that requires a federal permit, license, or approval) consider effects on cultural resources before that undertaking occurs. In addition, federal agencies must consult with the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officers (SHPOs), federally recognized Indian tribes, Tribal Historic Preservation Officers (THPOs), applicants for federal assistance, local governments, and any other interested parties regarding the proposed undertaking and its potential effects on cultural resources. The goal of consultation is to identify cultural resources potentially affected by an undertaking, assess the

undertaking's effects, and seek ways to avoid, minimize and/or mitigate any adverse effects on historic properties.

**Area of Potential Effects**

The area of potential effects (APE), is defined as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of cultural resources, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking. For an RMP, this would be identified as all the lands under the jurisdiction of the Field Office undertaking the RMP. For an oil and gas lease sale, the APE would be limited to the area of proposed leasing. Refer to sections 2.4 and 3.1 for more about how to define the APE.

*Figure 1.2. The Section 106 Process*



## **1.4. RMP Amendments**

New information, updated analyses, or new resource use or protection proposals may require amending or revising LUPs and updating implementation decisions. The determination whether to amend or revise an RMP based on new proposals, circumstances, or information depends on (1) the nature of new proposals, (2) the significance of the new information or circumstances, (3) specific wording of the existing land use plan decisions, including any provisions for flexibility, and (4) the level and detail of the NEPA analysis.

## **1.5. When a Plan Amendment Should be Considered for Cultural Resource Concerns**

- A land use plan amendment (LUPA) is a change to an RMP allocation decision that could be completed through an environmental assessment (EA) or an environmental impact statement (EIS).
- A tribe or the BLM may suggest or recommend initiating a plan amendment under the following circumstances:
- A new significant cultural resource or historic property is discovered within an area included in the RMP and the tribe or the BLM can provide rationale for why it is not adequately protected under the current RMP.
- A known significant cultural resource or historic property is not adequately protected and the tribe or the BLM can provide rationale for why it is not adequately protected under the current RMP.
- Sensitivity of an existing resources is such that an amendment is required to adequately protect it from disturbance. An example could be a burial site.
- If the field manager (FM) determines that the request for an amendment is warranted, the field office will initiate a plan amendment. If an amendment is warranted, but the agency is not able to initiate it due to lack of staff or funding, the agency will

recommend that the parcels be deferred (see section 2.4). If the request is not warranted, the FM submits a recommendation to forego the plan amendment to the BLM Colorado State Director, along with supporting documentation. Denial of a request to amend the RMP is a planning-level decision made by the State Director, and a protest can be made to the BLM Colorado State Director under 43 CFR 1610.5-2(a) (Carrasco, 90 IBLA 39 (1985)).

## **1.6. Information Needed from Tribes to Support Requests for an Amendment**

In order to evaluate whether a plan amendment is warranted, the BLM requires a reason why and, at a minimum, the following documented information:

- Approximate location of the cultural resources/historic properties, consistent with federal guidance and policy
- Description of the current management of the area under the current RMP
- What is affecting the cultural resources/historic properties
- What additional protection for the cultural resources/historic properties is being requested
- Reasons why additional protection for the cultural resources/historic properties is required and why an RMP amendment is warranted
- cursory information on what the impacts of the additional protection might be
- Any additional information that would be helpful for the FM to review

These documents should be compiled and sent to the appropriate FM and field office archaeologist (FOA) for review. During their review, the FM and FOA may request additional information from the tribe(s) and may request a field visit with the tribe(s) in order to help understand the impacts to the cultural resources/historic properties. The FM and the FOA consider the

following criteria when reviewing proposed closures to protect cultural resources:

- Importance of the cultural resource to the tribe(s)
- Size or area of the impacted cultural resources
- Uniqueness of the impacted cultural resources
- Level of threat from other land uses to the affected cultural resource

Other guidance provided for the identification, evaluation, treatment and management of cultural resources on BLM lands can be found in the [programmatic agreement \(PA\) between the Bureau of Land Management, the ACHP, and the NCSHPO](#).

Additionally, when an adverse effect (as defined per the NHPA) cannot be avoided, an agreement document as defined under NHPA (36 CFR 800.6) is developed to resolve any and all adverse effects on historic properties.

Implementation decisions identify site-specific information needs, affected resources, protection measures, and opportunities to use cultural properties for scientific, educational, recreational, and traditional purposes, and would be implemented at the application for permit to drill (APD) stage but should be identified at the leasing stage. BLM staff should evaluate whether intended uses would result in changes to cultural properties' significance or preservation value, and if so, how the resource condition should be monitored, measured, and maintained at an acceptable level. Geographic areas should be categorized as high/medium/low priority for future inventory of cultural properties.

# 2. Oil and Gas Leasing Process

## 2.1. Streamlined Notification Process

The BLM will continue to consolidate tribal notification letters to the extent practicable. At this point in the process, letters will be sent from the lead offices or lead consolidated office (Table 2.1). See also the map in section 12.3.

*Table 2.1. BLM Oil and Gas Offices*

Lead Office	Consolidated Field Offices Include
Tres Rios	Western portion of Uncompahgre
White River	Kremmling; Little Snake
Colorado River Valley	Grand Junction; eastern portion of Uncompahgre (i.e., portion not covered by Tres Rios)
Royal Gorge	San Luis Valley

## 2.2. BLM Quarterly Leasing Process

IM 2018-034, issued on January 31, 2018, changed the lease sale process from a year-long rotating office schedule to a quarterly process that takes six months (Figure 2.1). Sales can now begin and end in any field office in the months of March, June, September, and December (see the leasing flow chart below). State/field offices are required by statute (Mineral Leasing Act of 1920, 30 U.S.C. § 226(b) (1) (A)) and implementing regulation (43 CFR 3120.1-2(a)) to hold quarterly lease sales, when eligible lands are available for lease.

The time frame for parcel review for a specific lease sale is to be no longer than six months. This process includes adjudicating and creating the preliminary parcel list from all timely received expressions of interest (EOIs) and the other lands identified for leasing consideration in the National Fluids Lease Sale System (NFLSS), recognizing there will be exceptions due

to unforeseen circumstances, including delays associated with surface management agency (SMA) consent. Refer to the flowchart on page 20.

### **2.3. Expressions of Interest**

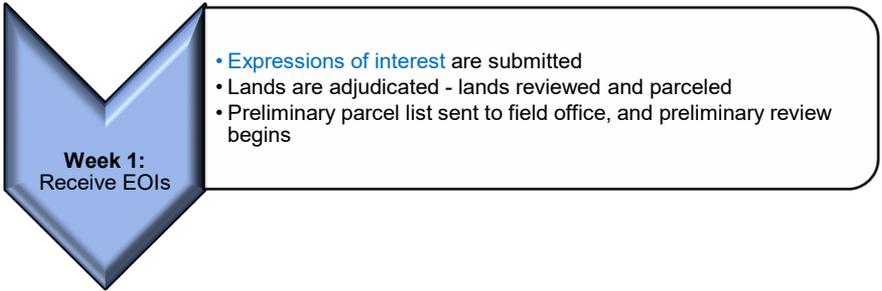
The BLM accepts EOIs for potential leasing through the NFLSS. Interested parties submit EOIs electronically to the BLM using NFLSS. Once submitted, the public can view all EOIs submitted to the BLM and track the status. NFLSS can display the dates when the EOI was submitted, accepted, and its status, such as pending review by the state office, field office, or other surface management agency.

The deadline for submission is six months prior to the lease sale month. This information is posted on the state office website. Information about BLM Colorado Leasing can be accessed online here:

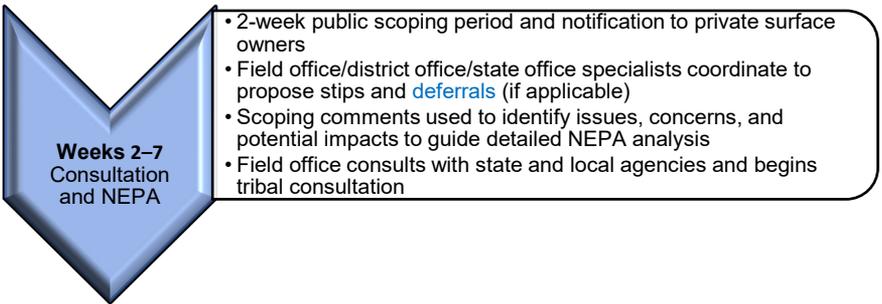
<https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado>

Figure 2.1. The Six-month Leasing Process

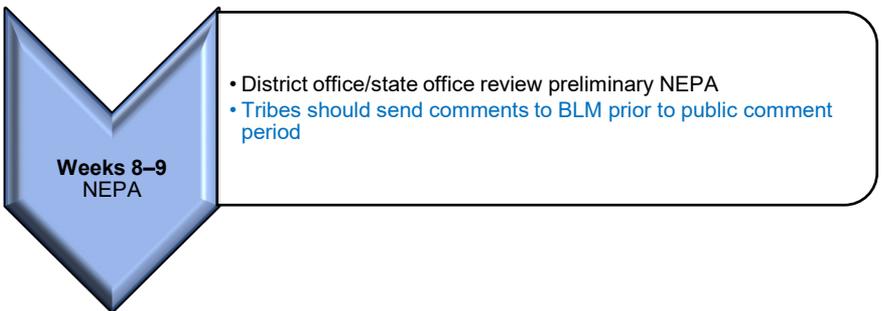
**Week 1**



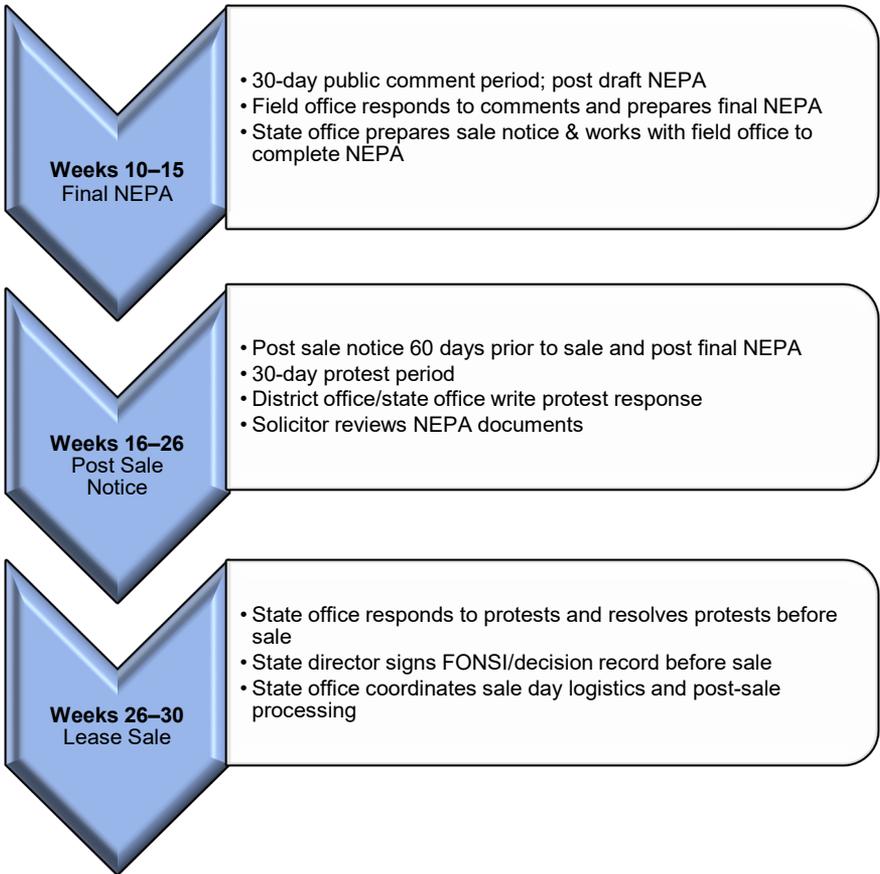
**Weeks 2-7**



**Weeks 8-9**



## Weeks 10–30



## 2.4. Tribal Consultation

Consultation should address tribal concerns about areas proposed for mineral leasing or development. This can include areas of traditional use, access to sacred sites, and other locations of cultural sensitivity. In addition, reserved treaty rights on public lands involved in mineral development should also be considered, such as treaty-based fishing, hunting, gathering, and similar rights of access and resource use on public lands while considering the leasing and/or sale of Federal mineral resources. BLM is a cooperator in the right of access for tribal members as

they exercise treaty-based rights on lands managed by BLM. State and field offices will meet all requirements related to the NHPA, as well as fulfill all tribal consultation requirements. Refer to manuals 8110 and 8120 for further information (links located in section 7.1).

Section 106 regulations require federal agencies to make a “reasonable and good faith effort” to identify historic properties that may be affected by their undertakings. The regulations set out several factors that need to be considered in making the effort both reasonable in terms of intensity and scale and carried out in good faith through its development and execution. The ACHP’s online archaeology guidance provides further detailed discussion on how these factors can be applied to archaeological sites to ensure Section 106 identification plans are adequate and appropriate to a given situation ([https://www.achp.gov/protecting-historic-properties/Section\\_106\\_Archaeology\\_Guidance](https://www.achp.gov/protecting-historic-properties/Section_106_Archaeology_Guidance)).

The regulations require that a reasonable and good faith effort to identify historic properties include, at a minimum, a review of existing information on historic properties that are located or may be located within the APE (36 CFR § 800.4(a)(2)). Such an effort may consist of one or more methodologies and should be designed so that the federal agency can ensure that it produces enough information, in enough detail, to determine what the undertaking’s effects will likely be on historic properties.

If the ACHP is asked for its advisory opinion (pursuant to 36 CFR § 800.2(b)(2)) on the adequacy of a specific identification effort, the ACHP will evaluate the agency’s efforts considering if the identification effort was reasonable, if it was logically designed to identify eligible properties that may be affected by the undertaking, without being excessive or inadequate. There are circumstances where it is necessary to identify all historic properties in the APE, but the regulations do not require identification of all properties.

BLM will attach the standard Endangered Species Act (ESA) and NHPA lease stipulations or appropriate stipulations consistent with RMPs to any lease that is offered. No additional coordination is required unless deemed necessary by the authorized officer, for example, to ensure that information is adequate to support the decision about whether to lease.

### **2.4.1. Environmental Justice under Tribal Consultation**

Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, states “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations...” (EO 12898).

EO 12898 is explicit that provisions within the EO apply to federally recognized Indian tribes. The DOI Environmental Justice Implementation Policy, Departmental Manual 525 (DOI 2017), emphasizes that during NEPA evaluation that DOI agencies “provide opportunities for low-income, minority, and tribal populations, including through tribal consultation responsibilities under EO 13175, to provide input early and throughout the NEPA process...” (p. 7).

Discussing environmental justice during tribal consultation allows for the identification of tribal concerns and issues that may be broader than physical cultural sites and/or treaty rights. Under environmental justice, environmental effects encompass potential ecological, cultural, human health, economic, or social effects when those effects are interrelated to impacts on the natural and physical environment. Information provided through tribal consultation will assist the BLM in identifying and determining whether there may be disproportionately adverse health or environmental effects to tribal populations.

## **2.5. Split Estate Issues**

Split estate lands are those where the owner of the mineral rights and the surface owner are not the same party in interest. BLM will not process any EOI for split estate lands that is missing the name and address of the surface owner(s). Whenever the BLM includes a split estate parcel in an oil and gas notice of competitive lease sale, the BLM sends a courtesy letter to the surface owners(s). The most common split-estate is federal ownership of mineral rights (subsurface) and other interest ownership of the surface. Where such a condition occurs, the Federal Government can lease the oil and gas rights without surface owner consent.

BLM has developed a brochure, *Split Estate: Rights, Responsibilities, and Opportunities*, that outlines the roles and responsibilities of the BLM, the lessee or operator, and the surface owner regarding proposed oil and gas operations in split estate situations. The brochure and other information about oil and gas leasing and development and split estate lands can be found here: <https://www.blm.gov/documents/national-office/public-room-blm-library/brochure/split-estate-rights-responsibilities-and>.

The BLM is also involved in the leasing of federal minerals in split estate situations where they lie under Indian trust lands. Onshore Oil and Gas Order Number 1 describes the requirements for approval of these leases. The order was amended in 2007 by the oil and gas Gold Book; refer to section 7.1 for a list of onshore orders and links.

### **2.5.1. Consultation on Split Estate**

Prior to approval of an APD on split estate lands, BLM must determine if the development is going to affect cultural resources located on the surface. Because the approval of an APD is considered a federal undertaking, BLM must still consult under Section 106 of the NHPA, on split estate lands. Any actions that intentionally, significantly, and potentially adversely affect cultural or historic properties, with the intent to avoid the requirements of NHPA Section 106, are in violation of NHPA Section 110(k) and require the BLM to deny the APD. Further guidance is provided in BLM manual 8140 and IM-2009-078 (refer to section 7.1) and the BLM's split estate cultural resource brochure:

<https://www.blm.gov/documents/national-office/blm-library/brochure/split-estate-cultural-resource-requirements-private>.

## **2.6. Common Stipulations Applied to Lease Parcels**

Each RMP identifies stipulations that should be placed on parcels in a field office. Stipulations are added to parcels as part of the NEPA process. Common stipulations include TLs, CSU and NSO. Stipulations can be applied to all or a portion of the parcel that has the resource concern. Lease notices (LNs), although not a stipulation, may also be applied during the leasing process.

TL stipulations limit the times that surface disturbing activities can occur. Nesting season, big game winter range, or big game calving are just a few examples of when surface disturbing activities would limit development for a specific period of time.

CSU stipulations restrict uses on the surface of a parcel for a variety of reasons. Surface use restrictions are used if such conditions as steep slopes, historic properties, fragile soils, paleontological resources or sensitive plant species are present. If during the NEPA process, at the leasing stage, it is determined that these resources may be present, a CSU stipulation would be applied. This will alert the lessee that if these resources are found to be present during the APD stage, measures must be taken to protect them.

NSO stipulations prohibit surface occupation on a site for exploration or development of oil and gas resources but allow the subsurface resources to be legally available. In situations of split estate, a lease with an NSO stipulation that includes all lands within the parcel does not allow any surface activity pertaining to oil and gas development.

LN's are attached to parcels to alert lessees that additional coordination might be necessary because of concerns with certain resources.

## **2.7. Deferral of Parcels**

A parcel may be deferred from a lease sale for various reasons. During the initial NEPA process, the parcels in a sale are analyzed, and a determination is made whether it is necessary to defer a parcel(s) or portion of a parcel from a sale due to resource concerns unaddressed by the RMP.

Deferring a parcel allows time to address concerns or specific issues. Deferred parcels could possibly appear in a future sale once the issue or concern has been addressed. The BLM CO deferral process is as follows:

- Field office notifies the BLM Colorado State Office (COSO) that it is recommending deferral of a parcel or parcels and includes the rationale

- COSO reviews deferral recommendation and completes the Washington Office deferral request memo
- The deferral request memo is signed by the BLM Colorado State Director and forwarded to the Washington Office for approval
- Washington Office Deputy Director for Policy and Programs signs and approves request
- COSO removes the parcel(s) from the sale

If the tribes identify a lease with insufficient protections for a cultural resource, the tribes should identify the cultural resource, document the needed protections, and send that information to the FM and FOA. The BLM uses the least restrictive protections possible that meet the needs of the tribe. When submitting this information, the tribes need to identify two items: (1) which parcels the BLM should review and (2) what protections are needed for the parcels. Based on this information, BLM and the tribes can coordinate in more depth on the parcels and potentially defer them if they determine that more analysis or an RMP amendment is needed.

## 2.8. Closure of Lands to Leasing

Lands may become closed to leasing for many reasons (refer to 43 C.F.R. § 3100.0-3):

- National parks/monuments/wildlife refuge
- Indian reservations
- Incorporated cities, towns and villages

Areas closed to leasing are sometimes designated through RMPs or LUPA. If areas are identified during the leasing process that need to be closed to leasing, the parcels would be deferred until the BLM can complete an amendment in order to disclose the impacts that a closure may cause. Most of the lands closed to leasing are areas with special designations or areas with unique and environmentally sensitive resources, such as habitat for special status species and traditional cultural properties identified through the process of consultation. Once a lease is issued, it allows the lease holder the “right” to use the surface of that lease so long as it is

within the bounds of the lease stipulations. In order to avoid multiple consultations on the same areas, areas should be identified as closed to leasing, which would then remove them from future EOIs and any future consultations, at least for oil and gas developments.

The tribes are encouraged to work with field offices during the RMP process to identify and propose lands to be closed to leasing.

## **2.9. Removal of Lands from a Lease Sale**

A parcel may be removed from a sale if it is determined that the lands are closed or not available for leasing thru the RMP process. When a parcel is removed from a sale it will not be offered in a future sale, unless there are new factors that weigh into the decision-making process.

If a tribe identifies a special site on an oil and gas parcel with insufficient proposed protections, then the tribe should bring BLM's attention to that parcel and the needed protections. Closing an area to oil and gas leasing should be the last option considered. If the tribes consider the area significant enough for closure, that should be specified in the tribal notice to the BLM with the rationale for closing the area to leasing.

## **3. Oil & Gas Development**

Lease sales do not authorize any new construction or surface disturbance, nor do they obligate the BLM to approve any particular well pad design or location, associated facilities, or associated infrastructure. Approving the lease sale does, however, obligate the BLM to approve access to leased minerals somewhere within the lease area under reasonable conditions of approval. Once a lease has been issued, it is valid for 10 years if not “held by production” (i.e., the lease is not economically producing a minimum amount of oil or gas and is therefore not eligible for extension for that reason).

When the BLM receives a proposal to develop within a lease, the BLM evaluates the proposal for conformance with the governing RMP and consistency with past decisions, in accordance with National Environmental Policy Act (NEPA) requirements. The BLM also works with the operator to procure any additional, site-specific information needed to analyze the proposal’s potential impacts. This can help fulfill NEPA requirements for analyzing the impacts of subsequent APDs.

### **3.1. Onsite Reports and Tribal Consultation**

The purpose of tribal consultations is to identify Section 106 and 110 projects as they relate to the NHPA and that may have the potential to affect cultural resources within or adjacent to BLM-administered lands. These ongoing discussions give the tribes and the BLM the ability to identify areas of traditional, spiritual, and cultural land use. For example, BLM Colorado consults biannually with official tribal representatives from the three Ute Tribes, in addition to other consultations. This model has proved successful and could be used for consultations with other tribes as well.

At the APD stage (Figure 3.1), the APE is further defined at a scale smaller than an RMP or lease sale; however, it may still be landscape-driven and larger than the area of proposed disturbance. Inventories are generally completed according to the guidelines below with sufficient lead time to ensure that the cultural resources report is included in the APD package.



- A Class III inventory must include a minimum 10- or 40-acre square, centered on the drill hole, depending on the size of the well pad.
- If there will be several well sites, block survey coverage should be considered.
- Access roads and other associated ROWs require a minimum corridor of 200 feet, unless otherwise determined.
- Tribes may request copies of survey reports.

Visual or audible effects (e.g., visual intrusions, vibrations, dust, noise from short-term construction activities or long-term infrastructure use, etc.) and other impacts such as odor may also exist and contribute to the APE. Additional inventories, perhaps a Class II (probabilistic survey), may be required to identify potential visual, audible, or atmospheric effects on historic properties. The FOA will determine and document the appropriate APE for those types of effects.

### **3.2. BLM’s Role in Coordinating with Oil and Gas Operators**

No drilling operations or related surface disturbing activities may be initiated without an APD approved by an authorized officer of the BLM, in consultation with the surface management agency. BLM-administered federal minerals sometimes occur under surface administered by the U.S. Forest Service. The Forest Service must approve the surface use plan of operations (SUPO) portion of the APD before the BLM can approve the APD.

Operators are strongly encouraged to consult with the appropriate SMA as early as possible before filing an APD to identify local requirements and potential concerns. To help ensure timely processing, the APD should be complete and include all necessary supporting information, such as information on the well and associated rights-of-way, roads, pipelines, and production facilities. Onshore Order No. 1, Section III, D (refer to Appendix 6.2), describes specific information requirements for filing a complete APD, including the drilling plan and SUPO. For operations proposed on National Forest Service lands, also refer to Subpart E of 36 CFR 228.

An operator has two procedural options for securing approval to drill: the notice of staking (NOS) option and the APD option. By filing a NOS with BLM, the operator is formally requesting an onsite inspection prior to filing an APD. During or within seven days of the onsite inspection, all parties will jointly develop and provide a list of resource concerns for the operator to address in the APD. This will help the operator in filing a complete APD. If an APD is not filed with the BLM within 60 days of the onsite inspection, the NOS will be returned to the operator. When the lands involved are managed by a federal agency other than the BLM, the BLM will provide a copy of the NOS to that agency. Posting a NOS in the local BLM and FS offices also initiates the mandatory BLM/FS 30-day public notification requirement.

If an onsite inspection was conducted under the NOS option, then no additional onsite inspection is typically needed after the filing of the APD. Once the onsite inspection is performed, the APD package is considered complete. In any case, the onsite inspection must be held before the APD package can be considered complete. Within 10 days of receiving an APD, the BLM (in consultation with the FS if the application is on National Forest Service lands) will notify the operator whether or not the application is complete. The APD package consists of Form 3160-3 (*Application for Permit to Drill or Reenter*), SUPO, drilling plan, a well plat certified by a registered surveyor, evidence of bond coverage, operator certification, original or electronic signature, and other information required by order, notice, or regulation.

To facilitate processing multiple APDs, plan for orderly development, and better analyze cumulative effects and appropriate mitigation, an operator may elect or be asked to submit a master development plan (MPD) for all or a portion of the wells proposed in a developing field. All wells within an MPD share a common drilling plan, SUPO, and plans for future development and production.

Approved APDs are valid for two years from the date of approval, as long as the lease does not expire during that time. An APD may be extended for up to two years at the discretion of the BLM and the surface management agency, if a written request is filed before the two-year expiration date. The terms of an APD may require the operator to contact the BLM and SMA before beginning construction activities (see [Chapter 3 of Surface Operating standards and Guidelines for Oil and Gas Exploration and Development](#)).

Prior to submitting an APD, a Class III inventory must be conducted according to the guidelines in section 3.1. The operator may choose to do more than this amount to ensure adequate coverage.

The inventory should be conducted with sufficient lead time to ensure that the cultural resources report is included in the APD package. When the APD package is submitted to the BLM, the APE must also be determined. For example, a new drill site may have an initial 4-acre pad disturbance along with associated appurtenances and new roads as part of the calculated total disturbances. However, the disturbance may also be larger, on a landscape level, based on tribal concerns. There may also be differences among field offices, and the FOA will determine the cultural resource inventory needs for proposed projects.

### **3.3. BLM Colorado Oil and Gas APD Processes and Tribal Consultation**

The field offices in Colorado that process APDs follow the same basic principles for consultation; however, the process may vary slightly from office to office. This section answers some questions about incorporating tribal consultation during BLM's consideration of proposed oil and gas leasing and development in Colorado.

*When during the oil and gas planning process can the tribes participate?*

The most critical time for tribes to participate is during RMP development, when the BLM makes decisions about which areas are leasable (see also section 1.2). Tribes can give input at any point, from RMP development through leasing, exploration, and drilling. If tribes have site-specific concerns, it is best to share them during the APD development stage, i.e., *after* RMP and leasing decisions have already been made.

*Are tribes invited to participate in the onsite process, and can they request a separate onsite if needed?*

Based on tribal input received from previous consultations, the tribes have not routinely been invited to participate in onsite inspections. Although it could be beneficial for tribal representatives to participate during onsite inspections, the tribes typically choose to wait until more information about

the proposal is known before participating or providing comments. This includes waiting for the results of any required cultural surveys, unless a given proposal overlaps with previous, adequate, cultural inventories. When a new survey is required, this will routinely occur after the onsite.

Onsite inspection timelines also typically preclude the tribes' ability to participate. Onsites are generally performed in accordance with Onshore Order #1 (refer to section 7.1), which requires that the BLM contact the operator to schedule an onsite within 10 days of receipt of the NOS/APD. Within this 10-day period, the BLM also must contact the private property owner to schedule the onsite if the NOS/APD is on split estate. Tribal representatives, however, typically need 3 months minimum advance notification prior to the date of a requested field visit in order to be able to schedule any in-person meetings.

Because of the timelines required by this process, it is beneficial for the tribes to identify the geographic areas about which they would like to be notified for potential upcoming onsites. This better informs the BLM when it attempts to schedule onsites or other in-person meetings with the tribes. The BLM may invite representatives from the Colorado Oil and Gas Conservation Commission (COGCC) and Colorado Parks and Wildlife (CPW) to each onsite, so it is highly feasible to invite tribal members as well.

*At what point are notification letters sent to the tribes, and how should tribes respond? How is tribal input incorporated?*

The BLM sends letters to the tribes as soon as potentially adverse effects are identified during the NEPA team review, as a result of a given NOS or APD proposal, and at least 30 days before a given NEPA decision is scheduled. Letters are sent to the tribal chairpersons, and either letters or email copies (depending on the tribe's request during consultation) are sent to the tribal cultural person, Native American Graves Protection and Repatriation Act (NAGPRA) representative, or THPO (see section 2.4).

Letters will include a summary of previous inventories and known sites in the area, potential cultural concerns, and the BLM's proposed mitigation or conditions of approval (COAs) to resolve or address those concerns. Letters might also reference any previous government-to-government consultation that already occurred in that area. When the BLM identifies a need for a

cultural survey for a given proposal (i.e., when the proposal doesn't already overlap with a previous adequate inventory), these initial consultation letters will also include the results of the recent Class III inventory.

BLM routinely requests that the tribes respond or provide comments within 30 days following receipt of BLM's letter. However, the BLM will try to allow as much time as possible for the tribes to comment on a given proposal and will strive to send letters out as soon as practicable following receipt of the NOS or APD. Comments received in a timely manner are more effectively analyzed and incorporated into the environmental analysis.

When the BLM receives a response from the tribes, the tribal representative may request additional information, additional time to respond, or may request a field visit. Tribes might also respond with comments or concerns in an official letter, more informally over the phone or via email, or respond to say that they have no concern with the project. If the BLM does not hear back from the tribes within 30 days, the FOA will follow up by telephone and/or email to ensure that the tribes have no comments or concerns with a given proposal. The FOA will document whether any tribe has a project concern or requests a field visit and work with the authorized officer and the tribal representative(s) to ensure that all tribal concerns are addressed before a decision is signed.

*Is BLM tracking the most important areas of known or potential tribal concern? Is BLM using this information to reduce the number of letters to tribes?*

The FOA keeps records of the government-to-government consultation between the FO and the Tribe(s). Any known sites or areas of concern shared by the tribes during in-person consultation or via phone or email are documented (with the tribe's permission) and saved with the associated formal consultation letters in restricted folders. See Section 5 below for how sensitive information is otherwise protected and maintained.

This information can then be taken into account in future project-specific undertakings or land use planning decisions, as deemed appropriate through ongoing tribal consultation. NEPA coordinators for the lease sale will also keep a file of all consultation letters sent and received between the BLM and the tribes as part of the administrative record. These records

are marked sensitive to distinguish this material from other files available to the public if the information is requested under the 1966 Freedom of Information Act (FOIA; 5 U.S.C. 552).

*Proposals in known areas of tribal concern:*

If a proposed project is known to be in a highly controversial or sensitive area, BLM generally recommends that its specialists be notified prior to submission under either option, so that operators do not complete unnecessary survey and staking work when a less sensitive area may be acceptable to all participants.

BLM's standard cultural program procedure is to avoid all sites. If sites that are potentially eligible for National Register of Historic Places (NRHP or National Register) listing are located during cultural surveys, well pads and associated roads and pipelines, etc., may be moved or redesigned to avoid these sites by at least 100 meters. Any development that produces vibrations will typically be restricted to within 200 meters of rock art and standing architecture sites. If these minimum avoidance thresholds are met for a given APD, tribal concerns are typically avoided.

*Does BLM work with private landowners to gain permission for tribes to attend onsite on split estate projects?*

If BLM is conducting the onsite with the oil and gas operator, tribal representatives can participate and accompany the group (i.e., COGCC, CPW, BLM, operator, and private landowner) to the well location and any additional developments associated with that proposal. If the tribes requested that BLM conduct a field visit as part of the consultation after the onsite, the BLM would work with the private landowner and the oil and gas operator to gain legal access to the site.

*What is BLM's "trigger" to know when proposed mitigation is acceptable to the tribes and BLM can proceed with consulting the State Historic Preservation Office (SHPO)? Would BLM consider offering an onsite (if not already conducted) to help resolve any issues?*

The BLM can facilitate tribal onsites/field visits of the proposed project area. Privately owned surface land would require the landowner's permission.

For mitigation alternative(s) identified during the cultural analysis and consultation process, the BLM seeks agreement on resolution of adverse effects concurrently from the tribes and the SHPO, and such resolutions may be accounted for in an agreement document. The FOA would present any developed mitigation as a mitigation measure in the cultural resources analysis section of the associated NEPA Document. The BLM project lead would then carry forward any mitigation measures identified by resource specialists into the draft decision record (DR). If the cultural resources mitigation identified during consultation is accepted by the decision-maker (i.e., the authorized officer), the consultation process will formally conclude for that given proposal.

In reviewing the mitigation measure(s) brought forth by the FOA, the project lead will ensure that the proposed mitigation is (1) justified through the associated site-specific NEPA analysis and (2) enforceable. Mitigation can be enforced as a COA for the APD/surface-use activity. It can also be enforced or as a term and condition for ROWs or oil and gas geophysical exploration operations being reviewed for issuance/approval, if the mitigation isn't already required as a stipulation to the lease (e.g., NSO or CSU stipulations taken from the FO RMP).

The mitigation language may be reworded by the project lead to ensure that the mitigation measure is specific and enforceable. If changes are needed to the mitigation itself (e.g., the proposed COA interferes with existing lease rights), the FOA will be notified, and the FO will reinstate consultation with the tribes and SHPO to reach a compromise. This could result in an onsite with the tribe(s) (if one hadn't already occurred) to identify additional mitigation alternatives.

## 4. Meeting Etiquette and Tribal Correspondence

BLM should try to have regularly scheduled meetings with the tribes and determine tribal preferences for information sharing and consultation. Regularly scheduled meetings should be face-to-face, as these are usually the most effective way to achieve the consultation objectives of both parties. Other meetings may take place as needed throughout the year. The BLM should strive to make meeting locations convenient for tribal members and especially for tribal elders; many have difficulty traveling long distances.

BLM can identify and explain the actions that are planned for the upcoming year, and the tribes can identify the lands that they wish to focus on. The tribe can use regular meetings as an opportunity to identify to BLM the key people within the tribe that are acknowledged as traditional leaders or religious practitioners. The tribe can also identify specific proposed actions, kinds of actions, or geographical areas about which these individuals should be consulted. For each tribe, BLM offices should develop and maintain current lists of the following:

- Tribal officials (e.g., chairperson, president, council members, etc.)
- Appropriate staff contacts for specific programs and issues (e.g., energy development, natural resources, lands, cadastral survey, economic development, THPO, etc.)
- Traditional cultural or religious leaders
- Dates of holidays or of cultural importance to the tribes (tribal calendars)

## 4.1. Meeting Etiquette

At face-to-face meetings between BLM and the tribes, BLM managers and staff should follow these guidelines:

- Always ask tribal representatives about their preferred way of doing business and any specific tribal protocols for meetings. Be aware that the cultural norms of tribal citizens may be different from yours, and that each of the more than 560 Indian tribes has a unique culture and heritage.
- Develop points of contact through the tribal government. Perform research ahead of time to determine who you will be consulting with and their tribal positions, then make the effort to get to know tribal representatives. Tribal governments may consist of elected leadership (tribal leader, tribal council, tribal courts), traditional leaders (treaty councils, tribal elders, spiritual leaders), and tribal administration (program managers, administrators, and staff).
- Be mindful of appropriate behaviors—be sure to demonstrate respect to tribal leaders just as you would to a leader of a foreign nation. Always show deference toward tribal elders and allow them plenty of time to speak first. Do not interrupt or raise your voice. Learn by observation and by talking to others. Again, when in doubt, ask respectfully.
- Timing is critical. Be cognizant of the tribal calendar and major events. Plan meetings accordingly.
- Prepare and distribute meeting information for tribes in advance of the meeting.
- BLM should work with tribes to prepare agendas that address both tribal and agency concerns.
- Ask tribal leadership if they wish to have appropriate tribal staff open and close the meeting. Be respectful of the fact that meetings will often open and close with a prayer.
- Be patient, especially if the meeting with a tribal council includes additional agenda items or follows no fixed schedule.

- If the BLM is hosting, allow a time at the beginning of the meeting to introduce participants and their roles. Provide a brief overview of the venue to allow for participation comfort.
- Gifts and food may be important parts of cultural exchanges. Be aware of and sensitive to local customs. Respectfully accept any offerings and provide food to the extent allowable by BLM ethics guidance.
- Respect local cultural practices. Details and arrangements for the government-to-government meetings should be carefully managed in advance by the staff and managers to ensure that managers are informed of local protocols.
- Be clear about what BLM is doing and why, including which laws and regulations govern the BLM's actions. Set realistic expectations for what the BLM can and cannot do.
- Be respectful, professional, and polite by (1) using titles, not first names, especially in formal meetings; (2) turning off cell phones and never using smart phones during meetings even if tribal members may be doing so; (3) never interrupting a tribal speaker; and (4) framing questions tactfully in a manner that does not question an elder's knowledge but that seeks clarification or more information.
- Listen actively. When information is presented through anecdotes or stories, make sure to understand the point being made. Ask questions.
- Request permission to take photographs.
- Silence is okay, and quiet moments for contemplation are often acceptable if not expected.
- Identify that notes are being taken and by what method. Provide an opportunity for meeting participants to review the notes shortly afterward to make sure their views are accurately represented.

## 4.2. Tribal Correspondence

In addition to meetings, BLM personnel should also correspond with the tribes via regular mail or electronically if acceptable to both parties. Correspondence is a necessary part of successful consultation. Letters sent to the tribes to initiate consultation should be directed to the appropriate designated tribal representative and include the following:

- The purpose and details of proposed action
- A detailed map of the proposal at an appropriate scale
- A concise summary of applicable laws and policies governing the BLM's consultation process and decision-making
- A clear explanation of the extent of BLM discretionary decision-making under the applicable statutes
- A clear explanation of all opportunities for tribal input into BLM decision points. Ask the tribes to specify how they would like to be engaged in this decision-making process, describe the kind of input needed from the tribes (such as identification of traditional use areas, access needs, or sacred sites), and request the names and addresses of other tribal persons who should be notified or consulted.
- A provision to schedule a face-to-face meeting
- An explanation of the role of any delegated authority and BLM staff responsibility with regard to tribal consultation, the identity of the BLM contact person who can provide further information about the project, and how to reach him/her.
- A specific date by which the BLM would like the tribe to respond.

The BLM should request the following information from the tribes:

- Concerns they may have about the proposed action and how to resolve any issues that might affect tribes
- How to potentially resolve identified adverse effects on traditional resources, use areas, trails, and natural or heritage resources identified in reviews of existing data for the area

- **Locations of areas that have traditional religious or cultural importance that might exist but have not been identified in background data reviews for the project**
- **The necessity for the BLM to contact any traditional leaders or religious practitioners. If the BLM is already aware of such leaders or practitioners, the letter should state that the BLM plans to contact those individuals as well.**

# **5. Records Management**

## **5.1. Protection of Sensitive Cultural Resource Information**

Cultural resources and their records are protected under law. Section 304 of the NHPA protects certain sensitive information about historic properties from disclosure to the public when such disclosure could result in a significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners.

Management and staff that are involved in Native American consultation must clearly represent the types of information they are seeking and how the information will be applied. All sensitive data should be secured and maintained by the individual field offices. Each BLM office usually develops maps in accordance with the BLM Federal Geographic Data Committee when depicting areas where tribes have identified concerns and issues. These maps are not for public viewing.

When protecting sacred site and other sensitive tribal information from public disclosure, consider refraining from housing such information within any formal federal government system of records. Instead the data could be housed at tribal offices through the use of joint agreements allowing BLM officials with “need-to-know” access to the files at tribal offices. BLM field offices should consult the Office of the Regional Solicitor (Solicitor’s Office) regarding the application of these statutes and strategies to protect from public disclosure sensitive information regarding sacred sites or places of traditional religious or cultural importance versus the requirement to disclose such information if used by the BLM to make decisions.

## **5.2. How to Use and Maintain Information from the Tribes**

Information obtained from the tribes could be subject to FOIA. BLM officers need to be clear when consulting with the tribes that information may not be confidential under law. The tribes may wish to discuss by phone or at a face-to-face meeting when concerns involve areas that may be considered

highly sensitive, and tribes may clearly state that they cannot discuss the details, or request the specific details not be part of the permanent record. The tribes should be apprised that verbal information can be included in the administrative file and included in a FOIA. If a FOIA request is made for tribal information, the BLM will notify and discuss with the affected tribe(s). During consultation at the land use planning stage, BLM should emphasize to tribes that when provided with adequate information (strengthened by tribal input), the BLM is better able to consider decisions that may be beneficial to tribes.

With an appropriate level of information, BLM can protect and accommodate tribal use of culturally important places identified through consultation during development of RMPs/LUPs and during oil and gas lease and APD development. This could include the following:

- **Protecting sacred places from incompatible uses.** When the BLM learns about these places during land use planning, before allocation decisions are made, the agency may be better able to protect those locations during the oil and gas leasing and APD stages.
- **Avoiding authorization of conflicting activities at sacred places.** When the BLM knows where sacred and ceremonial places are located, and when they are likely to be used, the agency can make decisions in LUPs to avoid conflicting activities at those locations at those critical times and guard against disclosures of any culturally sensitive tribal information without tribal consent.
- **Making off-highway vehicle (OHV) designation decisions that can accommodate both tribal use and resource protection.** The BLM often conceives OHV restrictions as protecting areas from potential damage; however, closing certain areas to OHV use through land use planning allocation decisions and route designations can inadvertently restrict or prohibit access to sacred places by tribal elders and religious practitioners who are unable to walk long distances. Tribes must be encouraged to participate in land use planning at the RMP level to identify their preferences for open/limited/closed OHV area allocations for motorized travel. Tribes also must be encouraged to participate and be consulted

during the travel and transportation management implementation planning when route designations are determined. This will ensure that they will be able to continue visiting places important to them on the public lands.

- **Facilitating traditional gathering of culturally important plants.** Administrative actions can be identified in LUPs that will enable the gathering of medicinal plants, basketry materials, and other resources used in tribal cultures.
- **Making special designations to protect natural or mineral resources, historic properties, sacred sites, and traditional use areas.** ACECs can be designated in whole or in part within RMPs to protect land and resources of traditional cultural or religious importance to tribes. Protective stipulations attached to the management of these areas can help accommodate use and access by tribal people and limit potentially conflicting land uses.
- **Developing consultation agreements with tribes.** These communication protocols help structure and facilitate consultation on planning generally and on subsequent specific land use actions. They establish contacts for both government-to-government consultation and less formal staff communication. The agreements can identify tribal staff contacts and traditional or religious practitioners. Tribes can coordinate with BLM to identify which types of actions they wish to be consulted about and/or areas requiring consultation whenever actions are planned there.
- **Developing comprehensive NAGPRA agreements.** LUPs offer a good opportunity to develop NAGPRA agreements with tribes that have claimed, or are likely to claim, Native American human remains or other cultural items subject to NAGPRA within the planning area. Per 43 CFR 10.5(f), these agreements need to address land management activities that could result in the intentional excavation or inadvertent discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony, and describe the procedures that will be followed to notify and consult with lineal descendants and Indian tribes and for determining custody, treatment, and disposition.

These agreements need to comply with the requirements of 43 CFR 10.5 and 10.6 and may take some effort to establish in the short term. Individual tribes have the choice to become a cooperating agency when they feel that it is in their best interest to do so. Establishment of cooperating agency status with a particular tribe does not adversely affect that tribe's sovereignty, nor does it relieve the BLM of its ongoing responsibilities to fully consult regarding proposed decisions or actions with that tribe.

Once a determination to withhold information from the public has been made, the keeper of the register, in consultation with the BLM, will determine who (if anyone) may have access to the information. If the information was developed in order to comply with NHPA Section 106, the BLM must consult with the ACHP in making determinations regarding withholding the information from the public.

### **5.3. Continuity of Information Maintained at Field Offices**

BLM program specialists and staff play an important role in gathering information and briefing management on issues affecting BLM-tribal relations. It is important that the relationships that have been established between BLM staff and tribal members have continuity. BLM staff should provide comprehensive information, recommendations, and advice regarding tribes' traditional and ongoing uses of public lands, practices and beliefs, locations and uses of importance on public lands, and other information necessary for consultation. Staff members must collaborate frequently with their tribal counterparts within tribal governments to facilitate compliance with laws and regulations requiring tribal consultation and input into federal decision-making.

BLM staff should arrange consultation meetings and meet with tribal staff to discuss issues once BLM managers and tribal officials decide it is time to consult on an issue of concern. BLM staff should identify opportunities for cooperative agreements or other proactive relationships in the fields of education, outreach, and research with tribes and play key roles in contracting and in managing sensitive information. Only BLM managers, however, can represent the BLM in government-to-government interactions.

## **5.4. Confidentiality of Information**

Maps and records should depict and discuss lands historically occupied or used by tribal members and should also locate areas identified as having ongoing traditional religious significance and use. However, when information that is extremely sensitive is included with oil and gas leasing documents and other LUPs, maps and records must be treated as confidential working files with limited internal access and kept from public view. The metadata should indicate its confidentiality. The following regulations pertain to confidentiality.

### **5.4.1. Federal Advisory Committee Act**

The Federal Advisory Committee Act (FACA) requirements for open meetings and public access do not apply to tribal consultation involving only federal and tribal representatives, because Congress has exempted intergovernmental consultation from FACA requirements. Please consult the solicitor's office on the scope of the exemption when arranging a tribal consultation.

### **5.4.2. Archaeological Resources Protection Act**

The regulations (43 CFR 7) implementing ARPA (16 U.S.C. 470aa–470mm) require protection from public release. It is important to note that ARPA's non-disclosure obligation has important limitations. First, the statute mandates protection against publicly releasing information about "archaeological resources," which include "material remains of past human life or activities which are of archaeological interest" and are at least 100 years of age. Second, even when the information involves an archaeological resource, if the state's governor requests the information, the agency must provide it. State statutes governing disclosure or protection of such information would govern its protection from that point forward. Third, ARPA only applies to public surface. Therefore, information gathered from BLM consultation regarding private or state surface is not protected under this statute.

### **5.4.3. National Historic Preservation Act (NHPA)**

The National Historic Preservation Act (54 U.S.C. 300101 et seq.) requires the non-disclosure of sensitive information following procedures that

agencies must follow under 54 U.S.C. 307103. Although courts have not yet ruled that NHPA is a withholding statute under FOIA, it is often accepted as such. NHPA provides that the head of a federal agency conducting NHPA consultation shall, after consulting with the Secretary of the Interior, “withhold from disclosure to the public information about the location, character, or ownership of a historic property” if the Secretary and the agency conclude that disclosure would do any of three things: (1) cause a significant invasion of privacy; (2) risk harm to the historic resource, or (3) impede the use of a traditional religious site by practitioners. The biggest limitation in utilizing this protection is that in order to withhold sacred site information under the NHPA, BLM must first determine that the information pertains to historic properties. These are properties included in or eligible for inclusion on the NRHP. The BLM can only make a conditional promise to withhold information under the NHPA if there is a sufficient basis to conclude that the site or sites in question are likely to be considered historic properties.

#### **5.4.4. State Laws**

State-adopted versions of the 1979 Uniform Trade Secret Act and the 1974 Privacy Act (5 U.S.C. 552a) may also provide limited degrees of protection.

#### **5.4.5. Other Means of Protection**

Another option to consider for protecting sacred site and other sensitive tribal information from public disclosure is to refrain from housing such information within any formal federal government system of records. Such data might be housed at tribal offices with joint use agreements allowing BLM officials with a need to know access to the files at tribal offices. Field offices should consult the Solicitor’s Office regarding the application of these statutes and strategies to protect from public disclosure sensitive information regarding sacred sites or places of traditional religious or cultural importance when considering the requirement to disclose such information if used by the BLM to make decisions.

## 5.5. Freedom of Information Act Requests

When sensitive information is in an agency's possession, the information may be subject to disclosure if it is requested under FOIA or distributed as part of publicly available NEPA analysis.

The BLMs ability to protect sensitive tribal information as confidential depends on the degree to which it fits within one of FOIA's nine exemptions. These exemptions may protect files maintained on sacred sites. Whether or not all such information can be protected under them should be discussed with the Solicitor's Office.

The ACHP is an independent federal agency that promotes the preservation, enhancement, and productive use of historic resources. The ACHP has prepared non-binding guidance to help federal agencies comply with NHPA Section 106 ([https://www.achp.gov/protecting-historic-properties/Section\\_106\\_Archaeology\\_Guidance](https://www.achp.gov/protecting-historic-properties/Section_106_Archaeology_Guidance)). The guidance outlines several issues to consider about the use of Section 304 of NHPA to restrict disclosure of information from a FOIA request:

- Only information about a property's "location, character, or ownership" is protected from release under FOIA. Not all records, field notes, or data analyses are subject to withholding under Section 304 of the NHPA
- Only information about a historic resource, as defined in Section 301 of NHPA, may be kept confidential under Section 304; that is, the information must be about a property that is listed on, or eligible for listing on, the National Register (36 CFR 60.4)
- Information about a historical site that is not listed on, or is not eligible for listing on, the National Register may not be withheld from FOIA disclosure under Section 304
- Information about which a determination has not been made should be withheld pending the determination.

Several of the following exemptions may apply:

- Exemption 3 protects from disclosure matters “specifically exempted from disclosure by statute.”
- Exemption 6 exempts “personal and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”
- Another possibility concerns the “trade secrets” exemption. It applies to trade secrets and commercial or financial information that is also privileged or confidential.

If a tribe submits information under a claim of protection, however, the BLM can assert an applicable privilege for it and seek to protect that information from public disclosure. A challenge to an assertion of privilege may be ultimately resolved by the federal judiciary if a decision is challenged in court. Under this circumstance, a privileged document may be subject to review or possible release by a court, notwithstanding the BLM’s good faith assertion of an applicable privilege.

Tribes must assess and be comfortable with any and all submissions they make to assist the BLM in its land-use planning process, understanding that there is some risk that documents may, in the end, be publicly disclosed.

## 6. BLM Points of Contact

The BLM field offices in the table that follows lease federal fluid minerals on federal surface and subsurface in the State of Colorado. For the most current information, contact the BLM Colorado State Office:

Bureau of Land Management  
Colorado State Office  
2850 Youngfield Street  
Lakewood, CO 80215  
(303) 239-3600

<https://www.blm.gov/office/colorado-state-office>

Office	Management Contact	Phone	Email	Archaeologist	Phone	Email
Royal Gorge* (Canon City)	Keith Berger	719-269-8515	<a href="mailto:kberger@blm.gov">kberger@blm.gov</a>	Monica Weimer	719-269-8557	<a href="mailto:mwiemer@blm.gov">mwiemer@blm.gov</a>
White River* (Meeker)	William Mills	970-878-3802	<a href="mailto:wmills@blm.gov">wmills@blm.gov</a>	Lukas Trout	970-878-3809	<a href="mailto:ltrout@blm.gov">ltrout@blm.gov</a>
Little Snake (Craig)	Bruce Sillitoe	970-826-5089	<a href="mailto:bsillitoe@blm.gov">bsillitoe@blm.gov</a>	Brian Naze	970-826-5095	<a href="mailto:bnaze@blm.gov">bnaze@blm.gov</a>
Kremmling	Vacant	970-724-3001		Billy Wyatt	970-724-3038	<a href="mailto:bw Wyatt@blm.gov">bw Wyatt@blm.gov</a>
Colorado River Valley* (Silt)	Larry Sandoval	970-876-9002	<a href="mailto:lsandoval@blm.gov">lsandoval@blm.gov</a>	John Brogan	970-876-9052	<a href="mailto:jbrogan@blm.gov">jbrogan@blm.gov</a>
Grand Junction	Gregory Wolfgang	707-986-5402	<a href="mailto:gwolfgang@blm.gov">gwolfgang@blm.gov</a>	Natasha Krasnow	970-244-3017	<a href="mailto:nkrasnow@blm.gov">nkrasnow@blm.gov</a>
Uncompahgre (Montrose)	Suzanne Copping	970-240-5338	<a href="mailto:scopping@blm.gov">scopping@blm.gov</a>	Collin Price	970-240-5303	<a href="mailto:cprice@blm.gov">cprice@blm.gov</a>
Tres Rios* (Dolores)	Connie Clementson	970-882-1150	<a href="mailto:cclementson@blm.gov">cclementson@blm.gov</a>	Brian Yaquinto	970-882-1132	<a href="mailto:byaquinto@blm.gov">byaquinto@blm.gov</a>
Colorado State Office Denver	Kemba Anderson, Branch	303-239-3939	<a href="mailto:kembaand@blm.gov">kembaand@blm.gov</a>	Natalie Clark	970-244-3038	<a href="mailto:nfclark@blm.gov">nfclark@blm.gov</a>

\* Denotes lead or lead consolidated office

# 7. Reference Materials

## 7.1. Manuals and Handbooks

Link	Name of Document
<a href="#">43 CFR 3150</a>	Code of Federal Regulations, Title 43 - Geophysical
<a href="#">BLM Manual Section 3150</a>	Geophysical Manual
<a href="#">43 CFR 3160</a>	Code of Federal Regulations, Title 43 - Onshore Oil & Gas Ops
<a href="#">Form 3160-3</a>	Application for Permit to Drill or Reenter
<a href="#">BLM Handbook H-3100-1</a>	Oil and Gas Leasing Handbook
<a href="#">BLM Handbook H-3160-1</a>	Technical and Environmental Considerations for APDs and Subsequent Operations
<a href="#">BLM Handbook H-3160-5</a>	Inspection & Enforcement Strategy
<a href="#">BLM Handbook H-1624-1</a>	Planning for Fluid Minerals
<a href="#">516 DM 11</a>	BLM Oil & Gas DM/BLM CXs (Link to ELIPS)
<a href="#">Onshore Energy SOP</a>	Onshore Energy and Mineral Lease Management Interagency SOP
<a href="#">Onshore Order #1</a>	Onshore Oil and Gas Order #1: Approval of Operations
<a href="#">Onshore Order #1 Amend</a>	Approval of Operations
<a href="#">Onshore Order #2</a>	Onshore Oil and Gas Order #2: Drilling Operations
<a href="#">43 CFR 3173</a>	Replaced Onshore Oil and Gas Order #3: Site Security
<a href="#">43 CFR 3174</a>	Replaced Onshore Oil and Gas Order #4: Measurement of Oil
<a href="#">43 CFR 3175</a>	Replaced Onshore Oil and Gas Order #5: Measurement of Gas
<a href="#">Onshore Order #6</a>	Onshore Oil and Gas Order #6: Hydrogen Sulfide Operations

Link	Name of Document
<a href="#">Onshore Order #7</a>	Onshore Oil and Gas Order #7: Disposal of Produced Water
<a href="#">NTL-3A</a>	Notice to Lessees 3A: Reporting of Undesirable Events
<a href="#">BLM/USFS Gold Book</a>	Surface Operating Standards and Guidelines for Oil and Gas Exploration & Development
<a href="#">BLM Manual Section 9113</a>	BLM Manual Section 9113 - Roads
<a href="#">BLM Handbook H-9113-1</a>	Guidelines for Determination of Curve Widening
<a href="#">BLM Handbook H-9113-2</a>	Roads - Inventory and Maintenance
<a href="#">BLM Handbook H-1790-1</a>	BLM National Environmental Policy Act Handbook
<b>List of BLM Manuals for Cultural Resources, 8000 Series</b>	
<a href="#">BLM Manual Section 8100</a>	The Foundation for Managing Cultural Resources
<a href="#">BLM Manual Section 8110</a>	Identifying and Evaluating Cultural Resources
<a href="#">BLM Manual Series 8130</a>	Planning for Uses of Cultural Resources
<a href="#">BLM Manual Series 8140</a>	Protecting Cultural Resources
<a href="#">BLM Manual Series 8150</a>	Permitting Uses of Cultural Resources
<a href="#">BLM Manual Series 8170</a>	Interpreting Cultural Resources for the Public
<b>BLM Manual for Tribal Relations, 1700 Series</b>	
<a href="#">BLM Manual Series 1780</a>	Tribal Relations

## 7.2. Onsite Coordination with Tribes Regarding Fluid Minerals, Onshore Oil and Gas Order No. 1

- Regulations, Onshore Orders and Notices to Lessees, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/onshore-orders>, governs onshore oil and gas operations, federal and Indian oil and gas leases, and approval of operations. Updated versions of this order cover procedures for processing applications for permits to drill and the use of BMPs in lease development.
- H-1624-1, Planning for Fluid Mineral Resources, <https://www.blm.gov/sites/blm.gov/files/H-1624-1%20rel%201-1791.pdf>, provides detailed instructions for complying with the fluid minerals supplemental program guidance for resource management planning. It covers procedural directions for analyzing and documenting reasonably foreseeable fluid mineral development and the impact of such development on the human environment.

# 8. Glossary of BLM Commonly Used Terms

[BLM Manual 1780, Tribal Relations](#), and [H-1780-1, Improving and Sustaining BLM-Tribal Relations](#), both include acronyms and abbreviations and a glossary of terms. Although tribal and cultural abbreviations such as ARPA, BIA, and NAGPRA are defined in those documents, oil and gas terms are not. This chapter describes terms commonly used in the fluid minerals program and any additional terms not defined by the manuals listed above. A list of acronyms and their definitions used in this document can be found at the front of this handbook.

## -A-

**Abandonment.** An act disclaiming further interest in rights to an oil and gas lease. This must be provable under strict rules of evidence and cannot be presumed, since a question of individual intent is involved.

Abandonment is also plugging a well, removal of installations, and termination of operations for production from the well. Conclusively abandoned, unpatented oil placer mining claims are subject to conversion into a noncompetitive oil and gas lease pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 188(f)).

**Adverse effect.** The effect wrought on a historic property by a project that results in the loss or diminution of the very characteristics that made the property eligible for listing in the NRHP in the first place. The criteria of adverse effect as well as examples of adverse effects are defined in regulation under 36 CFR §800.5. Examples include physical destruction or damage to all or part of the property; alteration of the property that is inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties; removal of a property from its historic location; change in the use of a historic property; change to the physical features within the property's setting that contribute to its significance; introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's character-defining attributes; neglect that leads to deterioration in instances other than those where neglect and deterioration are recognized qualities of a property of religious or cultural significance to

an Indian tribe or Native Hawaiian organization; and transfer, lease, and/or the sale of a property out of federal ownership or control without sufficient enforceable measures in place to ensure the long-term preservation of the property's significance.

**Advisory Council on Historic Preservation (ACHP).** An independent federal agency that serves as the chief policy advisor to the U.S. President and Congress on historic preservation matters. There is permanent ACHP staff as well as a presidentially appointed member Council comprised of the heads of federal agencies, select cabinet members, and subject-area experts.

**Agreement documents.** Agreement documents are documents that serve to streamline and customize the Section 106 compliance process. These are legally binding documents that assign particular roles and responsibilities to the organizations and/or agencies who negotiate and sign them. Agreement documents can be project-specific (e.g., a memorandum of agreement (MOA) to mitigate the adverse effects of the demolition of a particular historic property as part of an undertaking), can speak to an entire class of undertakings within a particular APE whose effects on historic properties are not known at the outset (e.g., a programmatic agreement for grazing allotment permit renewals on lands managed by a specific federal agency in a defined location), can be multi-party, multi-agency, and even multi-state.

Some documents, such as nationwide programmatic agreements, are written by federal agencies to guide cultural resource management practices across the country. Others, such as program comments, are created by bodies such as the Advisory Council on Historic Preservation after seeking input from other agencies, SHPOs, and organizations or may be crafted by a particular agency to address resources distinct to their installations, their mission, and their agency history. The ACHP website maintains a list of nationwide programmatic agreements, Department of Defense program comments, and a host of other useful resources. All executed MOAs are forwarded by the lead federal agency to the ACHP for filing.

**Aliquot part.** A subdivision of a section arrived at by dividing a section into halves and quarters (e.g.,  $\frac{1}{2}$  section,  $\frac{1}{4}$  section,  $\frac{1}{4}$   $\frac{1}{4}$  section) down

to 40 acres, unless the acreage is a lot, which may be more or less than 40 acres.

**Allotted Lands.** Allotted trust lands are held in trust for the use of the individual Indians (or their heirs). The Federal Government holds the titles, and the individual (or heirs) holds the beneficial interest.

**Applicant.** A party submitting an application under the simultaneous leasing program is properly referred to as an applicant until such time as the successful drawee submits in a timely manner the executed lease offer form as completed by the appropriate state office. With the timely submission of the executed lease offer and advance rental if for simultaneous filings made prior to August 1984, the applicant becomes the lease offeror.

**Area of potential effect.** This is defined in regulation as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any are present within the area. The APE is not an arbitrary buffer or search area; instead, it is influenced by the scale and nature of the undertaking and should take into account site-specific variables such as topography, height of components of the undertaking, and similar project-specific details. There is no "one size, fits all" APE for projects of a specific type, and the APE may not be a uniform shape.

**Authorized Officer.** Any employee of the BLM who has been delegated the authority to perform the duties set forth to maintain regulatory requirements.

**-B-**

**Bureau of Land Management (BLM).** An agency within the U.S. Department of the Interior, the Bureau of Land Management's mission is to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations. Congress tasked the BLM with a mandate of managing public lands for a variety of uses such as energy development, livestock grazing, recreation, and timber harvesting while ensuring natural, cultural, and historic resources are maintained for present and future use.

**Bureau of Indian Affairs (BIA).** BIA is the oldest agency of the U.S. Department of the Interior. Established in 1824, it is responsible for the administration and management of 55 million surface acres and 57 million acres of subsurface minerals estates held in trust by the United States for American Indian, Indian tribes, and Alaska Natives. The Bureau of Indian Affairs' mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives.

**-C-**

**Canons of Construction.** Ambiguities in treaties are to be interpreted as Native Americans would have understood them at the time of signing. Treaties are to be broadly construed in determining tribal rights but narrowly interpreted when considering elimination or abrogation of those rights.

**Categorical exclusion (CX) review.** This is a screening process to determine whether further environmental analysis is necessary or if the action is in a category which meets any of the nine exemptions of NEPA, as set forth in 516 DM 2.3A(3). Mitigating measures can be considered as part of the screening process. Each CX review must be documented by the decision-maker and must specifically justify any stipulations developed as part of the review. Where other environmental documentation exists, such as an environmental assessment or environmental impact statement, area-wide or umbrella, a CX review is not the process to be utilized.

**Closed.** This generally denotes that an area is not available for a particular use or uses. Refer to specific definitions found in law, regulations, or policy guidance for application to individual programs. For example, 43 CFR 8340.0-5 sets forth the specific meaning of "closed" as it relates to off-highway vehicle use, and 43 CFR 8364 defines "closed" as it relates to closure and restriction orders.

**Communitization agreement.** An agreement that allows the bringing together of leases sufficient for the granting of well permit(s) under applicable state spacing requirements. Communitization involves one or more specific geologic formations.

**Competitive lease.** A lease for lands within a known geological structure (KGS) or favorable petroleum geological province (FPGP) that is awarded to the successful bidder at public sale for not less than fair market value. A single competitive lease cannot cover more than 640 acres in accordance with the Mineral Leasing Act of 1920, as amended, except in Alaska, where lands within a FPGP are divided into competitive leasing blocks of not more than 2,560 acres.

**Competitive sale.** Offering of oil and gas leases within a KGS, FPGP, surplus or drainage lands, by competitive bids of not less than fair market value, usually involving a minimum bonus bid per acre.

**Consultation.** This is a deliberative process that aims to create effective collaboration and informed federal decision-making. Consultation is built upon a government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the right of Indian tribes or the consultation process. Federal consultation conducted in a meaningful and good-faith manner further facilitates effective department operations and government practices.

**Confidentiality.** Tribes should be informed that the information they provide may become public record and subject to FOIA requests and they should only submit information or material that they are willing to release as part of the public record. BLM should respect a tribe's refusal to share information and find a way to work around it. Tribes are particularly sensitive about the disclosure of certain kinds of information, such as religious practices, sacred sites, traditional knowledge, intellectual property, and cultural resources.

**Cooperating agency.** An agency that assists the lead federal agency in developing an EA or EIS. The Council on Environmental Quality (CEQ) regulations implementing NEPA define a cooperating agency as any agency that has jurisdiction by law or special expertise for proposals covered by NEPA (40 CFR 1501.6). Any Federal, state, local government jurisdiction with such qualifications may become a cooperating agency by agreement with the lead agency.

**Coordination.** Communication between the BLM and Indian tribes involving leadership or staff to increase cooperation between the two parties and the effectiveness of their relationship.

**Criteria considerations.** Despite the fact that certain types of properties are not typically considered for listing in the NRHP (e.g., religious properties, properties that have been moved, birthplaces or gravesites of famous individuals, reconstructed properties, commemorative properties, and properties of less than 50 years of age), there are seven criteria considerations (a–g, inclusive), which outline circumstances under which those seven "typically not considered" properties might well be deemed eligible for listing in the National Register.

**Cultural landscapes.** These can range from thousands of acres of rural tracts of land to a small homestead with a front yard of less than one acre. Like historic buildings and districts, these special places reveal aspects of the country's origins and development through their form and features and the ways they were used. Cultural landscapes also reveal much about humans' evolving relationship with the natural world.

**Cultural resources.** These can be defined as physical evidence or place of past human activity, such as a site, object, landscape, structure, object or natural feature, especially one that is significant to a group of people traditionally associated with it. Cultural resources may or may not be historic properties as defined under NHPA, but all historic properties are cultural resources. Types of cultural resources can include the following:

- **Archeological resources:** The remains of past human activity and records documenting the scientific analysis of these remains.
- **Historic structures:** Material assemblies that extend the limits of human capability.
- **Cultural landscapes:** Settings that humans have created in the natural world.
- **Ethnographic resources:** Sites, structures, landscapes, objects or natural features of significance to a traditionally associated group of people.

- **Objects:** Manifestations of human behavior, manipulation, and ideas.

**Cultural resource management (CRM).** Broadly speaking, this is the management of cultural resources as well as the potential effects they may experience as the result of day-to-day human activity, development, and change.

**Cumulative effects.** This is a term that is used under NEPA, and although it is not defined in the Section 106 regulations, it can be understood to denote the incremental impacts or effects of an action when added to other past, present, and reasonably foreseeable future actions. It is important to remember that individually minor impacts can collectively result in substantial long-term impacts.

–D–

**Designated operator.** Operator appointed by, employed by, or contracted by the lessee or the holder of operating rights to conduct operations on the lease or a portion thereof. The designated operator does not have a legal interest in the lease and may not obtain a share of the revenues. Designation of operator is filed with the authorized officer.

**Determination of eligibility.** The process by which the significance of a resource is determined in relation to its eligibility for listing in the NRHP.

**Determination of effect.** The decision resulting from consideration of all project components and potential for direct and indirect effects, the duration of those effects (if any), the presence/absence of historic properties in the area of potential effect, that ultimately results in a decision regarding whether a proposed undertaking will result in no potential to effect historic properties, no historic properties affected, no adverse effect, or adverse effect.

**Direct APE.** After taking into account all project components (e.g., staging areas, access to the site, lay down areas, etc.), this is the resulting bounded geographic area within which direct physical effects (e.g., ground disturbance, demolition, relocation of historic materials) will be experienced.

**Director.** Director of the Bureau of Land Management.

**–E–**

**Environmental assessment.** Under NEPA, an EA documents the analysis of whether a proposed project will have a significant impact on the human environment, the effects of all possible alternatives, and the determination of whether an environmental impact statement will be required.

**Environmental impact statement.** Under NEPA, an EIS is a published document that presents for the decision-maker a proposed project, or action, significant issues, impacts on the human environment, alternatives, mitigations, and responses to comments from the public.

**Environmental justice.** This refers to the federal government's obligation to ensure that ethnic minority or low-income sectors of the population are not disproportionately affected by adverse environmental impacts or hazards. Specifically, the term refers to impacts that might be caused by programs, policies, or actions of the federal government, although it has also been applied to actions of other agencies and private industry.

**Ethnography.** Structured and systematic analysis of the culture of a community or other distinctive social unit, through fieldwork-based study with members of the community as well as other sources.

**Ethnohistory.** Study of a cultural group's past based on various sources, including ethnography, oral tradition, linguistics, ecology, and other relevant disciplines.

**–F–**

**Federally recognized tribes.** A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.

Furthermore, federally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. At present, there are 567 federally recognized American Indian and Alaska Native tribes and villages.

**Finding of no significant impact (FONSI).** A document summarizing the conclusion when the environmental review under the provision of NEPA reveals no significant impacts or when a project is altered to eliminate any significant adverse impacts.

**Fluid minerals.** For the purposes of this handbook, fluid minerals are oil and gas as defined in 43 CFR 300.0-5.

## –G–

**Government-to-government consultation.** A government-to-government relationship is a mutual recognition of the authority of the respective parties. As such, it is a concept that draws upon principles of international law and diplomacy, particularly those used for establishing and maintaining a formal relationship between nations. In order to successfully engage in this type of relationship, it is necessary for the parties to be respectful of each other's positions as governmental entities. The BLM maintains government-to-government relationships with tribal governments by working directly with them, observing legislative mandates and trust responsibilities, and respecting Native American cultural values whenever the BLM develops policies, plans projects, and implements programs that affect tribal interests.

**Government-to-government relationship.** The unique legal relationship between the United States and tribal governments.

## –H–

**Historic properties.** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP.

**IM-2018-034.** Sets out the policy of the BLM to simplify and streamline the leasing process to alleviate unnecessary impediments and burdens, to expedite the offering of lands for lease, and to ensure quarterly oil and gas lease sales are consistently held in accordance with the Mineral Leasing Act of 1920 (30 U.S.C. § 226), EO 13783, and Secretary Order 3354. This IM supersedes existing policy announced in IM No. 2010-117, *Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews*, issued on May 17, 2010, and replaces any conflicting guidance or directive found in the BLM Manual or BLM Handbook. The policy applies to the leasing of federal minerals under BLM-administered surface, state-owned surface, and private surface estates. *The BLM does not manage leasing on Indian lands; therefore, this policy does not apply to Indian lands.*

**Indian allottee.** Any Indian for whom land or interest in land is held in trust by the United States or who holds title subject to federal restriction against alienation.

**Indian lands.** Any lands, title to which is either (1) held in trust by the United States for benefit of any Indian tribe or individual or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

**Indian organization.** This includes (1) those federally recognized, tribally constituted entities designated by their governing body to facilitate BLM communications and consultation activities or (2) any regional or national organizations whose board is composed of federally recognized tribes and elected/appointed tribal leaders. These organizations represent the interests of tribes when authorized by those tribes, such as the National Association of Tribal Historic Preservation Officers.

**Indian tribe.** Any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (Pub. L. 103-454; 108 Stat. 4791; 25 U.S.C. 479a-1.)

**Indian trust assets.** Lands, natural resources, money, or other assets held by the Federal Government in trust or that are restricted against alienation

for Indian tribes and individual Indians except by acts of Congress. In the case of the BLM, this term usually applies to any trust mineral lease (fluids or solids) for which the BLM has responsibilities on or within the boundaries of defined Indian lands and allotments, although fiduciary trust obligations may exist when the effect of actions on BLM lands reach Indian lands.

**Indirect APE.** This is defined as the area that, after taking into account all project elements and potential indirect effects (e.g., visual intrusions, noise, vibration, smell, dust, etc.), is the resulting bounded geographic area within which those effects will be experienced.

**Indirect effect(s).** These are the visual, auditory, and/or atmospheric impacts that may result from a proposed undertaking. Indirect effects may be either permanent or temporary in nature. In the context of a Section 106 review, it is useful to identify the anticipated duration of any indirect effects.

**Inherently governmental function.** As defined by the Federal Activities Inventory Reform (FAIR) Act of 1998 and 2003 Office of Management and Budget Circular A-76, these are functions that, as a matter of federal law and policy, must be performed by governmental employees and cannot be contracted out. They are functions so intimately related to the public interest as to require or mandate performance by government personnel. These activities require the exercise of substantial discretion in applying governmental authority and/or in making decisions for the government. Inherently governmental functions normally fall within two categories: the exercise of sovereign governmental authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements.

-L-

**Lease.** A contract in legal form that provides for the right to develop and produce oil and gas resources for a specific period of time under certain agreed-upon terms and conditions.

- a. Lease commitment - the process by which an oil and gas lease becomes part of a unit agreement; requires unit joinder acceptance/approval by the authorized officer for all the record

title holders and operating rights holders in the lease (for any leased lands within the unit area).

- b. Lease committed in part - a lease commitment in a unit agreement of a federal oil and gas lease, which includes land both within the unit area and outside the unit area. A fully committed federal lease in such a status will be segregated into two leases and the lease outside the unit area entitled to a 2-year extension from the effective date of commitment (if not already in a longer term).
- c. Partially committed lease - an oil or gas lease in which one or some, but not all, working interest owners have committed their interest in the lease to a unit agreement. Such a lease becomes fully committed upon the approval/acceptance of unit joinders from all previously uncommitted lease working interest owners.

**Note:** The terms “committed in part” and “partially committed” are frequently confused, and BLM employees discussing these terms need to ensure that all parties to the discussion use and understand which situation is involved to avoid misunderstandings. “Lease committed in part” is normally used to describe leases where an effective unit joinder requires the BLM to segregate the lease; once the lease is segregated, the lease embracing the lands in the unit area is then fully committed. “Partially committed” is normally used by personnel responsible for supervision of the unit agreement to describe leases (which could later become committed in part) where subsequent late joinders could result in effective lease commitment.

**Lease amendment.** A modification in the terms or conditions, land description, rental, royalty, etc., of a lease after lease issuance. The lessee has the right to appeal a decision issuing an amendment to a lease.

–M–

**Management of land boundary.** The BLM’s Management of Land Boundary (MLB) Cadastral Program strives to incorporate land tenure specialists into the consultation processes and products by early involvement in planning projects.

**Master leasing plan.** A BLM tool to manage oil and gas activity on sensitive landscapes within its jurisdiction and provide for phased development or reduction in the number of speculative leases. These can be done with an RMP or independently of one. IM-2018-034 ended the development of any new of MLPs; only MLPs that were approved prior to the issuance of IM-2018-034 can be used.

**Mitigation.** This refers to specific processes and strategies outlined in an agreement document (most commonly an MOA) in order to ameliorate, offset, compensate for, or ease the adverse effects of a proposed undertaking on a historic property or properties.

–N–

**National Historic Preservation Act.** The NHPA is legislation intended to preserve historic and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. One of the primary reasons the NHPA has been so successful is because the consultation process under Section 106 creates a means of assuring that historic properties are identified and considered in the federal planning process, including processes involved in the award of a federal grant or license. The Section 106 consultation process requires a federal agency to determine if a proposed federal undertaking could affect historic properties.

**Native American.** Any individual descended from a native group of the Americas, including Aleuts, Eskimos, and American Indians who may also be members of federally recognized tribes or American Indian and Alaska Native organizations.

**Noncompetitive lease.** An oil and gas lease which is issued to the first qualified applicant for an over-the-counter filing, or as a result of a simultaneous filing for oil and gas. The lease lands must be outside a KGS or FPGP.

**Notice.** Communication of an official action to all interested parties by certified or registered mail, posting in the state office public room, personal service, or by publication in the *Federal Register*.

**Notice to lessee (NTL).** A written notice issued by the authorized officer giving instructions on specific items implementing the regulations under 43 CFR 3160 and operating orders.

**Non-trust asset.** An asset that is not held in trust by the United States for the benefit of an Indian tribe. Examples include natural and heritage resources not on tribal trust lands such as reservations and allotments, sacred sites, human remains, and cultural items subject to NAGPRA.

**–P–**

**Policies that have tribal implications.** Regulations, legislative comments, or proposed legislation as well as other policy statements or actions that potentially have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Property of traditional religious and cultural importance.** A form of historic property as defined in 36 CFR 800; a tangible property (district, site, building, structure, or object) that is associated with cultural practices or beliefs of a living community that (1) are rooted in that community's history and (2) are important in maintaining the cultural identity of the community. The significance of these properties lies in the role that they play in a community's historically rooted beliefs, customs, and practices. This term may be considered synonymous with traditional cultural property (TCP; see below).

**Proposed land use.** Any use of lands or resources, BLM-administered or not, that requires a BLM manager's formal approval, whether proposed by BLM or by an outside applicant.

**Protest and appeal:** A protest is distinguished from an appeal in that it is generally presented before a final decision has been made. Appeals are received after a final decision. The answer to a protest may or may not be appealable.

## -R-

**Reburial.** An action requested of federal agencies by lineal descendants or Indian tribes concerning human remains and/or other NAGPRA “cultural items” that (1) have been repatriated from museum collections or (2) have had their custody transferred following an intentional excavation or inadvertent discovery.

**Repatriation.** Transfer of control of human remains, funerary objects, sacred objects, and objects of cultural patrimony by museums or federal agencies to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization in accordance with NAGPRA and its regulations under 43 CFR 10.

**Reservation.** Unless another definition is required by federal statute or regulation, the area of land reserved for a tribe or tribes under treaty or other agreement with the United States, executive order, proclamation, secretarial order, or federal statute.

**Reserved Rights Doctrine.** In signing treaties, the tribes reserved their inherent rights. These may, and in many cases do, include land, hunting, and fishing rights over ceded land, and the right to self-governance on the reservation.

## -S-

**Sacred site.** This means any specific, discrete, narrowly delineated location on federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site (EO 13007). A sacred site doesn't have to be eligible or a “historic property” to be a sacred site, but it could still be eligible.

**Secretary.** The Secretary of the Interior.

**Sovereignty.** The authority a government has to govern its own people.

**Stipulations.** Additional specific terms and conditions that change the manner in which an operation may be conducted on a lease or modify the lease rights granted.

**Subsistence use.** The customary and traditional use by Native Americans of renewable resources. For Alaska, specific statutory definition of “subsistence uses” comes from section 803 of the Alaska National Interest Lands Conservation Act of 1980 and is paraphrased as “the customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.”

**Sundry notice:** This is a written request to perform work not covered by another type of permit, or to change operations in a previously approved permit.

–T–

**Tradition.** Longstanding, socially conveyed, customary patterns of thought, cultural expression, and behavior, such as religious beliefs and practices, social customs, and land or resource uses. Traditions are shared generally within a social and/or cultural group and span generations. They represent a continuity of understanding relative to some activity, way of life, or mode of expression, which guides particular actions and beliefs. Traditions are not static but evolve to reflect changing economic, political, and technological circumstances. This knowledge includes an intimate and detailed understanding of plants, animals, and natural phenomena; the development and use of appropriate technologies for hunting, fishing, trapping, agriculture, and forestry; and a holistic concept or “world view” that parallels the scientific discipline of ecology.

**Traditional.** Conforming to tradition.

**“Traditional” community.** One that has beliefs, customs, and practices that have continued over time, been passed down through generation, are shared, and help define the traditions of the community.

**Traditional cultural property (TCP):** A phrase often used in reference to a “property of traditional religious and cultural importance” as defined in the NHPA. The property derives significance from traditional values associated with it by a social and/or cultural group such as an Indian tribe or local community. A traditional cultural property, then, can be defined generally as one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. Therefore, to be a formal TCP, the property must be eligible. Although the beliefs or practices associated are of central importance, the NRHP does not include intangible resources. They must be physical properties or places.

**Traditional ecological knowledge.** Cumulative body of knowledge of beliefs handed down generationally through cultural transmission regarding relationship of living beings with one another and their environment

**Tribal government.** The governing body of an Indian tribe as determined by tribal law.

**Tribal land.** Unless another definition is required by federal statute (such as NHPA) or regulation, land held in trust by the United States on behalf of an Indian tribe, land held by an Indian tribe in fee subject to federal restrictions against alienation, or land held by an Indian tribe in fee status.

**Tribal notification.** A one-way form of communication that provides information, data, or reports to Indian tribes by the BLM, leading to tribal consultation if the tribe so requests.

**Tribal officials.** Elected or duly appointed tribal leader or official designated in writing by an Indian tribe to represent the tribe in government-to-government consultations.

**Tribal sovereignty.** As articulated by Justice Marshall in *Worcester v. Georgia*, 1832, tribes have the inherent sovereignty, which includes making and enforcing their own laws within their lands. This authority is not granted by the Federal Government—it existed before the United States became a country. As part of the government-to-government relationships with tribal governments, the U.S. Government has an obligation to consult with tribes

whenever making a decision that has the potential to affect tribal lands, resources, or people.

**Tribal trust resource.** Resources held in trust by the United States on behalf of Indian tribes.

**Tribe.** See Indian tribe.

**Treaty.** A treaty is a contract between sovereign nations. The United States Constitution states that treaties are the supreme law of the land and all judges are bound by them. States cannot make laws that contradict a treaty, nor can the states make treaties. In treaties between tribes and the United States, tribes ceded lands to the United States. In addition, tribes received certain rights—rights they inherently already possessed. Treaties retain certain rights for the tribes. Each treaty is different. Reserved rights may include a portion of the land for a homeland, or hunting, fishing, or gathering rights, both on and off reservation lands. In exchange for ceded lands, the United States promised to provide certain services in perpetuity, such as health services, education, economic assistance, and protection against crimes and infringements by the United States citizens.

**Trust relationship.** The unique relationship between the United States and Indian tribes and individual Indians, which is guided by the trust responsibility.

**Trust responsibility.** The highest moral obligations that the United States must meet to ensure the protection of tribal and individual Indian lands, assets, resources, and treaty and similarly recognized rights. This responsibility to extend to all federal agencies.

–U–

**Undertaking.** A term with legal definition and application; i.e., actions “carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval” or “those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency” (see National Historic Preservation Act, Section 106 and Section 301(7), Appendix 5; [36 CFR Part 800](#)). Section 106 does not apply to actions subject to state or

local regulation only. The vast majority of land use authorizations approved by BLM, as well as BLM-funded projects, are undertakings for purposes of Section 106 of the NHPA.

# 9. Laws, Regulations, and Policies

## 9.1. Federal Laws

### **American Indian Religious Freedom Act 1978 (AIRFA):**

- The law protects the rights of Native peoples to practice their religions and requires federal agencies to consult with tribes to review policies and procedures that may affect tribal religious practices.
- U.S. policy to protect the right of American Indians to the free exercise of their traditional religion
  - Use of spiritual places
  - Use of plants, animals, minerals
  - Religious practices and beliefs
- May (or may not) be related to historic properties
- Coordinative need: make sure tribes are consulted.

### **Antiquities Act of 1906:**

- It provides for the protection of historic, prehistoric, and scientific features located on federal lands. It authorizes the President to designate as national monuments historic and natural resources of national significance located on federally owned or controlled land. The Secretaries of the Interior, Agriculture and Defense are authorized to issue permits for archaeological investigations on lands under their control to recognized educational and scientific institutions for the purpose of systematically and professionally gathering data of scientific value.

### **Archaeological Resources Protection Act of 1979 (ARPA):**

- This statute (16 U.S.C. 470aa-470mm; Public Law 96-95 and amendments to it) was enacted...to secure, for the present and

future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals (Sec. 2(4)(b)).

- (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 [of the United States Code] or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—
  - (1) further the purposes of this Act or the Act of June 27, 1960 [the Reservoir Salvage Act, as amended, 16 U.S.C. 469- 469c-1] and
  - (2) not create a risk of harm to such resources or to the site at which such resources are located.
- (b) Notwithstanding the provisions of subsection (a) of this section, upon the written request of the Governor of any State, which request shall state—**Archaeological Resources Protection Act 150**  
**FEDERAL HISTORIC PRESERVATION LAWS**
  - (1) the specific site or area for which information is sought,
  - (2) the purpose for which such information is sought,
  - (3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation, the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor. Under the Freedom of Information Act, information pertaining to the nature and location of certain archaeological resources is protected under 16 U.S.C. § 470hh (Archaeological Resources Protection Act of 1979).

## **Archeological and Historic Preservation Act of 1974 (AHPA):**

- This statute also is known as the Archeological Recovery Act and the Moss-Bennett bill, the latter referring to the primary sponsors of the bills in the Senate and House that led to the act. Its legislative and legal titles are Public Law 93-291 and 16 U.S.C.469-469c. Passed and signed into law in 1974, this act amended and expanded the Reservoir Salvage Act of 1960. The AHPA required that Federal agencies provide for “...the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of...any alteration of the terrain caused as a result of any Federal construction project of federally licensed activity or program (Section 1).”

This greatly expanded the number and range of Federal agencies that had to take archeological resources into account when executing, funding, or licensing projects. The Reservoir Salvage Act had required such attention only of Federal agencies that constructed reservoirs and related structures, mainly the Corps of Engineers and the Bureau of Reclamation.

## **BLM H-1780-1 Improving and Sustaining Tribal Relations:**

- Link: [https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1_0.pdf)

## **Federal Caves Resources Protection Act (FCRPA):**

- 1988 (FCRPA)(16 U.S.C. § 4301 et seq.) directs the Secretaries of the Department of the Interior and the Department of Agriculture to inventory and list significant caves on federal lands. This act recognizes that significant caves are an invaluable and irreplaceable part of our natural heritage, and that caves may be threatened by improper use and increased recreational demand. The purpose of the act is to secure and protect significant caves on federal land for the benefit and enjoyment of all people while fostering increased cooperation and information exchange among those who use caves for scientific, educational, or recreational purposes. The FCRPA also specifically addresses confidentiality of

information regarding the nature and location of caves to ensure their protection, including exemptions for cave location information from FOIA.

- Federal agencies manage all caves as significant unless found differently through inventory

#### **Federal Land Policy and Management Act of 1976:**

- Applicable to lands managed by the Bureau of Land Management. As indicated, however, if land managers do not pay attention to Indian input, the Supreme Court has held that there is no legal redress under AIRFA available to Indian individuals or tribes.

#### **Historic Sites Act of 1935:**

- Establishes as a national policy the preservation for public use of historic sites, buildings, and objects. This act led to the eventual establishment within the National Park Service of the Historic Sites Survey, the Historic American Building Survey (HABS), the Historic American Engineering Record (HAER), and the National Historic Landmarks Program.

#### **National Environmental Policy Act of 1969:**

- The NEPA process is intended to facilitate public participation and disclosure in the federal planning process, and also help federal government officials “make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment” (40 CFR 1500.1(c)). The NEPA process analyzes and discloses the significant impacts a proposed action may have on the quality of the human environment.
- 1508.14 Human environment: shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. See the definition of “effects” ( [§ 1508.8](#)).
- This means that economic or social effects are not intended by themselves to require preparation of an environmental impact

statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time but are still foreseeable, Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effect on air and water and other natural systems (i.e. vapor and hot springs, and Ute trails, and sacred sites above), including ecosystems.

- Effects and impacts as used in these regulations are synonymous. Effects includes ecological, aesthetic, historic, cultural, economic, social or health, whether direct, indirect, or cumulative.

#### **National Historic Preservation Act of 1966:**

- Sets the federal policy for preserving national heritage
- Establishes a federal-state and federal-tribal partnership
- Establishes the National Register of Historic Places and National Historic Landmarks Programs
- Mandates the selection of qualified state historic preservation officers
- Establishes the Advisory Council on Historic Preservation
- Charges federal agencies with responsible stewardship
- Establishes the role of certified local governments within the states
- Section 106

36 CFR 800.2 Participants in the Section 106 process

(c)Consulting parties:

(c)(2) Indian Tribes and Native Hawaiian Organizations (NHO)(c)(2)  
(B) Tribes that have not assumed SHPO functions

(ii) *Consultation on historic properties of significance to Indian Tribes and NHO's...*, This requirement applies regardless of the location of the historic property.

(iii)(A) ..., process provides reasonable opportunity to identify its concerns about historic properties, and advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its view on the undertaking's effects on such properties, and participate in the resolution of adverse effects...

(C) ..., *The agency official shall consult with representatives designated or identified by the tribal government or the governing body of an NHO..., consultation should be conducted in a sensitive manner...*,

- **880.3 Initiation of the Section 106 Process**

(b) *Coordinate with other reviews.*

NAGPRA, NEPA, AIRFA, ARPA, and agency specific legislation, such as section 4(f) of the Dept. of Transportation Act.

- **800.4 Identification of historic properties**

(a)(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them..., (c) *Evaluate historic significance.*

(1) *Apply National Register criteria.*

The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

- **800.5 Assessment of adverse effects**

- **800.6 Resolution of Adverse effects**

- 800.7 Failure to resolve adverse effects
- 800.8 Coordination with the National Environmental Policy Act (NEPA)
- **Section 110:** is intended to ensure that historic preservation in fully integrated into the ongoing programs..., and that the costs of preservation activities are eligible projects costs in all undertaking conducted or assisted by a federal agency.
- **Section 304:** (a) The head of a Federal agency, or other public official receiving grant assistance pursuant to this division, after consultation with the Secretary [of the Interior], shall withhold from disclosure to the public information about the location, character, or ownership of a historic property if the Secretary and the agency determine that disclosure may-
  - (1) cause a significant invasion of privacy;
  - (2) risk harm to the historic property; or
  - (3) impede the use of a traditional religious site by practitioners.

(b) When the head of a Federal agency or other public official determines that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with the Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this division.

(c) When information described in subsection (a) has been developed in the course of an agency's compliance with section 306107 or 306108 of this title [the NHPA], the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

**Native American Graves Protection and Repatriation Act of 1990 (NAGPRA):**

- (Public Law 101-601; 25 U.S.C. 3001-3013) describes the rights of Native American lineal descendants, Indian tribes, and Native Hawaiian organizations with respect to the treatment, repatriation, and disposition of Native American human remains, funerary

objects, sacred objects, and objects of cultural patrimony, referred to collectively in the statute as cultural items, with which they can show a relationship of lineal descent or cultural affiliation. One major purpose of this statute (Sections 5-7) is to require that Federal agencies and museums receiving Federal funds inventory holdings of Native American human remains and funerary objects and provide written summaries of other cultural items.

- The second major purpose of the statute is to provide greater protection for Native American burial sites and more careful control over the removal of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on Federal and tribal lands. NAGPRA requires that Indian tribes or Native Hawaiian organizations be consulted whenever archeological investigations encounter, or are expected to encounter, Native American cultural items or when such items are unexpectedly discovered on Federal or tribal lands (Section 3). Excavation or removal of any such items also must be done under procedures required by the Archaeological Resources Protection Act (Sec. 3 (c)(1)).
- Other provisions of NAGPRA: (1) stipulates that illegal trafficking in human remains and cultural items may result in criminal penalties (Section 4); (2) authorizes the Secretary of the Interior to administer a grants program to assist museums and Indian Tribes in complying with certain requirements of the statute (Section 10); (3) requires the Secretary of the Interior to establish a Review Committee to provide advice and assistance in carrying out key provisions of the statute (Section 8); authorizes the Secretary of the Interior to penalize museums that fail to comply with the statute (Section 9); and, (5) directs the Secretary to develop regulations in consultation with this Review Committee (Section 13).

## 9.2. Executive Orders

Presidential executive orders apply to agencies on an agency-wide or program-wide basis rather than on a project-by-project basis. Agency staff are responsible for working or coordinating with Indian tribal governments

should be familiar with the applicable executive orders and act in accordance with the intent of the directives. Several of the orders specific to consultation with federally recognized Indian tribes include the following.

**EO 13007: Indian Sacred Sites 1996:**

- Requires federal land-managing agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. It also requires agencies to develop procedures for reasonable notification of proposed actions or land management policies that may restrict access to or ceremonial use of, or adversely affect, sacred sites.

**EO 13175: Consultation and Coordination with Tribal Governments 2000:**

- Establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.
- Strengthen government-to-government relationships with the tribes
- Reduce the imposition of unfunded mandates upon Indian tribes

**EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations 1994:**

- Environmental Justice-Coordinative need; Make sure consultation includes environmental justice populations and their interests are addressed.

**EO 13006: Locating Federal Facilities on Historic Properties in Our Nations Central Cities, subject to the Rural Development Act and Executive Order 12072:**

- Requires that first consideration be given to locate federal facilities in historic buildings and districts within central business areas when operationally appropriate and economically prudent. It also directs federal agencies to remove regulatory barriers, review their policies, and build new partnerships with the goal of enhancing participation in the National Historic Preservation Program.

space acquisition, give priority to using reuse of Historic bldg. and consider if compatible to historic district.

### **9.3. State Laws: CRS-24-80-1301FF: Discovery of Human Remains**

Unmarked Human Graves Law and the State NAGPRA Process, etc.

### **9.4. Tribal Laws**

Southern Ute Indian Tribal Burial Protection Policy (Resolution 00-221), Non-Ground Disturbing Cultural Resource Inventory (Resolution 98-59), etc.

# 10. Quarterly Notification Letters to Tribes

*Figure 10.1. Example of Consolidated Tribal Letter*



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
White River Field Office  
220 East Market Street  
Meeker, CO 81641



In Reply Refer To:  
Date :5984

Tribal members and addresses listed  
December 19, 2019

Dear Tribal Member:

The Bureau of Land Management (BLM) White River Field Office (WRFO), Kremmling (KFO) and Little Snake Field Office (LSFO) would like to inform the (insert Tribe Name) of the proposed December 19, 2019 Competitive Oil and Gas Lease Sale in our field offices, which will be subject to National Environmental Policy Act (NEPA) analysis (NEPA# DOI-BLM-CO-050-2019-0060-EA). The purpose of this letter is to initiate consultation with you per the consultation and notification requirements of NEPA, Section 106 of the National Historic Preservation Act of 1966 (NHPA), the Archaeological Resources Protection Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and Executive Order 13007. As part of the consultation process please identify those places of tribal importance that you feel the BLM should consider, protect, or otherwise provide for during project planning and implementation.

The BLM Colorado State Office conducts a quarterly competitive lease sale to sell available oil and gas lease parcels. This sale will follow the upcoming September 26, 2019 oil and gas lease sale, which our field offices consulted on

with the (insert Tribe Name) in a letter dated April 8, 2019. Policy changes to the quarterly lease sale fall under the 2018 leasing reform (IM WO-2018-034). Under this reform, effective January 31, 2018, the entire state is now eligible for each quarterly sale, rather than rotated by field office area. Additionally, Notices of Competitive Lease Sale (NCLS) and the associated NEPA analysis are now announced 45 days before the lease sale. Given the current directive to " ... simplify and streamline the leasing process for more efficient and effective oil and gas lease management," the WRFO will now initiate government-to-government consultation with the (insert Tribe) on behalf of the LSFO and KFO for each quarterly lease sale. This Instruction Memorandum is available for review on the BLM website: <https://www.blm.gov/policy/im-2018-034>

The NCLS lists lease parcels to be offered at the auction and includes details on the conduct of the sale, including the lease stipulations applicable to each parcel. We invite you to visit our website to view the nominated parcels, recommended stipulations, and maps and shapefiles associated with this sale. This website can be found at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado>

The proposed sale includes two parcels in the LSFO and one parcel in the WRFO (Attachment 1). The LSFO parcels encompass a total of 3,698.6 acres: ~96 percent of which are on BLM-managed surface and 4 percent are on private surface. The WRFO parcel totals 320 acres, all of which are on private surface. Virtually all lands are subject to Exhibit CO-39 to protect cultural resources

(Attachment 2).

An existing literature review and assessments were completed for the three proposed parcels by WRFO archaeologist Luke Trout on July 30, 2019. The literature review was performed using records in the LSFO and WRFO database, and relevant information in the COMPASS database maintained by the Colorado Office of Archaeology and Historic Preservation. The assessment is summarized here in order to provide an estimate of what cultural resources would be affected during the potential future development of these parcels.

Please note that this site assessment is limited due to a lack of previous Class III level inventory within the parcels. This lack of previous survey within proposed lease parcels is a common factor in the ability to analyze potential impacts to cultural resources at the leasing stage of oil and gas development; Class III inventories are performed as a result of specific development proposals following the current leasing process. The results of the assessment are summarized below.

The two proposed LSFO parcels (XXXX, XXXX) span from XXXX Creek to the east, to within XXX miles of XXXX Draw to the west. These parcels are

also located XX miles north-northwest of XXXX Canyons, and XXX miles north-northeast of XXXX Mountain. Moffat County Road XX transects Parcel XXXX before becoming Wyoming Highway 430. These parcels are located within TXXN, RXX-XXW, in an area of alluvial fans and rolling hills, with vegetation dominated by Wyoming big sagebrush and Gardner's saltbush. Indian ricegrass and several varieties of wheatgrass are also common. According to the available data, previous Class III cultural inventories cover less than 6 percent of these parcels. Excluding historic Euroamerican cultural resources, these inventories identified XXX .

The WRFO parcel (XXXX) is located in XXXX Valley, XXXX miles north-northwest of XXXX Mountain, on the border of Rio Blanco and Moffat Counties. This parcel is located within TXXN, RXXW, in a landscape of ridgelines and rolling hills dominated by a pinyon-juniper woodland. According to the available data, previous Class III cultural inventories cover 11 percent of this parcel. As a result of these inventories, XXXX.

Previous consultation with the Ute Tribes identified that the XXXX Gulch area, located over XXXX miles from Parcel XXXX, is an area of particular concern in the WRFO. This area will be accounted for in the WRFO's pending landscape-scale ethnographic project in the XXXX Basin. Through tribal consultation the WRFO and ethnographic contractor XXXX will identify topics of interest for understanding indigenous landscape-scale use, which will in turn affect how the BLM manages potential future development proposals for any of the parcels proposed for the upcoming sale in the area.

The proposed lease sale would not authorize any new construction of surface disturbance, nor obligate the WRFO to approve any particular well pad design or location, associated facilities, or associated infrastructure. Approving the lease sale does, however, obligate the WRFO to approve access to leased minerals somewhere within the lease area under reasonable conditions of approval (COAs). Before any APDs are approved for exploration or drilling, a Class III cultural resources survey would be undertaken to comply with Section 106 of the NHPA. The WRFO requires a minimum 40-acre inventory block around all proposed well pad locations. The WRFO standard cultural program procedure is to avoid all sites. If sites that are potentially eligible for NRHP listing are located during cultural surveys, well pads and associated roads and pipelines are attempted to be moved or redesigned to avoid these sites by at least 100-meters, though any development that produces vibrations would be restricted within 200-meters of rock art and standing architecture sites.

We are inviting the (insert Tribe Name) to provide us with any additional comments, issues, or concerns they may have regarding this proposed undertaking. If there are specific locations or general areas of traditional cultural

importance that may be affected by this project, it is important that those locations are identified to us as early in the planning and/or implementation process as possible in order for us to protect or otherwise provide for such places. Please provide your comments within 30 days of the receipt of this letter. Any comments will be analyzed and incorporated into the environmental analysis as appropriate. If more information is needed on this project, please contact us.

Luke Trout, the WRFO oil and gas archaeologist, will serve as the initial contact for questions and concerns. He can be contacted at any time for information, questions, comments, or requests pertaining to any projects, our general procedures for consultation, or to set up meetings and in-person consultations. He can be reached by phone at 970-878-3809, by email at [ltrout@blm.gov](mailto:ltrout@blm.gov), or at the address above. I can also be reached by the above address, by phone at 970-878-3802, or by email at [K1walter@blm.gov](mailto:K1walter@blm.gov).

We look forward to working with you to assure that our land management activities consider and protect places of importance.

Sincerely,

Field Manager, XXFO

Enclosure(s)

Cc: Name/title

Possible Attachments:

- 1) Overview Map of Parcels (- statewide lease sale maps available upon request)
- 2) Statewide Stipulation Exhibit CO-39 for Oil and Gas Leases

# 11. Training

New BLM managers and staff should take training on tribal consultation and relations, such as courses provided by the National Training Center (NTC). Several are available online. Existing staff should take refresher courses as appropriate. In house BLM training should consist of Tribal liaisons briefing new managers and staff regarding the history of local tribal relations, existing agreements, prominent issues, and resources of concern to the tribe that the BLM knows about. Tribal liaisons should accompany managers in meetings.

## 11.1. Training for Managers and Employees

- **BLM 1780 Tribal Relations:** Training should be provided to all managers, cultural resources specialists, and other specialists who work with the tribes. This should be done on an annual basis. Training has previously been provided by the State Deputy Preservation Officer. For reference: [https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1_0.pdf)
- **DOI learn options:** Effective Tribal Consultation (BLM) and Improving and Sustaining Tribal Relations
- **DOI: Consulting with Tribal Nations:** In person training provided by the NTC. Suggested for managers, planners, tribal members, and cultural resource consultants.
- **NHPA and other laws:** Training on the NHPA, Section 106, Section 110, NEPA, ARPA, American Indian Religious Freedom Act 1978 (AIRFA), EO 13007, Historic Sites Act, etc. There should be a training involving all cultural resource laws that BLM is required to follow as a federal agency and how such laws interact. This training would include instruction on how NHPA works with NEPA, and how NEPA has its own mandates for cultural resources and how it incorporates the other laws BLM is required to follow. This training would also discuss types of cultural resources that the BLM manages and the laws governing the management of these resources. Such training is envisioned as an all-

day event would be expected to be offered as required training for managers and all cultural resources specialists in the BLM.

- **The Cultural Heritage Program: A Course for Managers:** There are three videos available in the course activities section and are viewable in DOI Talent upon enrollment in the course. These videos should be viewed prior to attending the course and should be viewed in the following order:
- Tribal Sovereignty- <https://fws.rev.vbrick.com/#/videos/ad42aa11-8190-4649-8b32-70f1fb73acaf>
- Trust Responsibilities : <https://fws.rev.vbrick.com/#/videos/c2e00f62-5c8f-4015-8ac5-5f4f963e09fb>
- Tribal Consultation: <https://fws.rev.vbrick.com/#/videos/95fc950f-5182-4438-b5d0-c579244724ba>

## **11.2. Cultural Resources Specialist Training**

- Fundamentals for Managing the Cultural Heritage Program: 8100-Critical training for all cultural resource specialists employed by BLM
- Archaeological Resources Protection Act for Cultural Resources Professionals
- Native American Graves Protection and Repatriation Act Training

## **11.3. Training Available for Tribes to Understand BLM Processes**

- DOI: Consulting with Tribal Nations: in-person training provided by the NTC. Suggested for managers, planners, tribal members, and cultural resource consultants.

# **12. Contributors to the Development of the Tribal Oil and Gas Handbook**

## **12.1. Ute Tribes**

**Terry Knight, Ute Mountain Ute Tribe**

**Nichol Shurack, Ute Mountain Ute Tribe**

**Betsy Chapoose, Ute Indian Tribe of the Uintah and Ouray Reservation**

**Brock Chapoose, Ute Indian Tribe of the Uintah and Ouray Reservation**

**Cassandra Atencio, Southern Ute Indian Tribe**

**Garrett Briggs, Southern Ute Indian Tribe**

## **12.2. BLM Employees**

**Cathy Cook, District Manager, Rocky Mountain District**

**Elijah Waters, District Manager, Northwest District (Acting)**

**Stephanie Connolly, District Manager, Southwest District**

**Alicia Austin-Johnson, Associate District Manager, Northwest District**

**Erin Jones, Planning & Environmental Coordinator, Northwest District**

**Peter Cowan, Branch Chief, Fluid Minerals**

**Kent Walter, Field Manager, White River Field Office**

**James Roberts. Lead NRS, White River Field Office**

**Keith Berger, Field Manager, Royal Gorge Field Office**

**Bill Mills, Field Manager, Kremmling Field Office**

**Connie Clementson, Field Manager, Tres Rios Field Office**

**Greg Larson, Field Manager, Uncompahgre Field Office**

**Larry Sandoval, Field Manager, Colorado River Valley Field Office**

**Greg Wolfgang, Field Manager, Grand Junction Field Office**

**Bill Wyatt Archaeologist, Kremmling Field Office**

**Lukas Trout, Archaeologist, White River Field Office**

**Jaci Wells, Archaeologist, Colorado State Office (Acting)**

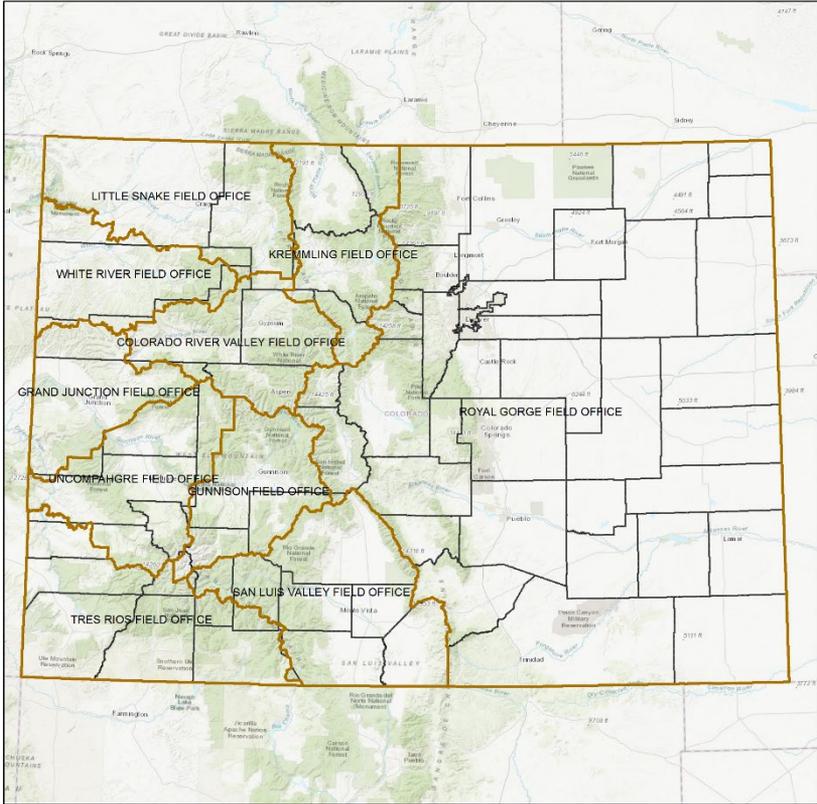
**Sharon Sales, Lead NRS, Colorado State Office (Acting)**

**Jessica Montag, Socioeconomic Specialist, Colorado State Office**

**Danielle Courtois, Oil and Gas NEPA Planner, Northwest District / Southwest District**

**Marie Lawrence, Planning and Environmental Specialist and Technical Writer-Editor, Royal Gorge Field Office**

# 12.3. Bureau of Land Management Field Offices in the State of Colorado



-  BLM Colorado Field Office Boundaries
-  County Boundaries

**Bureau of Land Management  
Colorado State Office  
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Lakewood, CO 80215  
(303) 239-3600**