

UNITED STATES DEPARTMENT OF THE INTERIOR  
 BUREAU OF LAND MANAGEMENT  
 WASHINGTON, D.C. 20240

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August 12, 1993

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EMS TRANSMISSION 8/13/93  
 Instruction Memorandum No. 93-317  
 Expires 9/30/94

To: All SD's, SCD

From: Director

Subject: Policy to ~~Extend~~ 1930 Act Oil and Gas Right-of-Way Leases and  
 Compensatory Royalty Agreements Beyond 20 Years When Such Lands are  
 in Producing Status

DISTRIBUTION: State Office Oil and Gas Adjudication Sections

ISSUE: Attendees at the Fluid Minerals Adjudication Conference in December 1992 requested that the Bureau of Land Management (BLM) policy be clarified concerning extension and continuance of oil and gas leases and compensatory royalty agreements (CRA's) covering lands in rights-of-way issued under the Act of May 21, 1930, beyond the 20-year term when such lands are in producing status. Of particular concern was how royalty monies can continue to be earned for 1930 Act leases or CRA's having either actual or allocated production when such authorized cases expire at the end of their 20-year term. Royalty payments made on these cases beyond the 20-year term have posed problems for the Minerals Management Service (MMS) since such monies cannot be accepted and applied to the lease account in the MMS's automated system after the expiration date of the lease or CRA. Only if the lease or CRA is extended in the MMS system will the royalty payments continue to be accepted and applied properly.

OBJECTIVE: This directive establishes BLM policy for the continuation of 1930 Act leases and CRA's which are in producing status or are capable of producing oil or gas in paying quantities at the end of their 20-year term. This policy expands on existing procedures whereby 1930 Act leases/CRA's subject to unit agreements continue in force, with the lease term remaining co-extensive with the life of the unit agreement. This expanded policy will allow 1930 Act leases/CRA's to be continued beyond the 20-year term by actual or allocated production, or when such leases/CRA's are capable of producing oil or gas in paying quantities, or when such leases/CRA's are subject to unit and communitization agreements. The objective of this directive is to eliminate confusion and promote consistency throughout the BLM in the continuance of this type of 1930 Act lease or CRA beyond its 20-year term under certain specified circumstances.

BACKGROUND: The issue of continuation/extensions of producing leases and CRA's issued in accordance with the Act of May 21, 1930 (30 U.S.C. 301-306) is a continuing problem for the BLM offices and the MMS because expiration of leases in producing status is contrary to standard industry and the BLM procedures commonly applicable to all other leases that are issued under the Mineral Leasing Act of 1920. However, the 1930 Act is silent regarding extensions or continuation of producing leases and CRA's issued under the Act at the end of the 20-year term specified in the Act. We are aware of one BLM office's belief that these leases/CRA's cannot be granted continuations or extensions beyond their 20-year term regardless of being in producing status, and another view expressed by two other BLM offices that the Department could establish the policy to extend or continue the 1930 Act leases/CRA's for as long as the involved lands are in producing status, i.e., actual or allocated production. Others have suggested that the 1930 Act be repealed. However, as stated in the Solicitor's Opinion, Phillips Petroleum Company, A-26528, January 15, 1953:

"Where Congress has accepted an administrative construction of a statute and confirmed it through the enactment of further legislation because of it, the administrative agency cannot thereafter change the statutory construction. By virtue of administrative interpretation, accepted and confirmed by Congress, the Mineral Leasing Act of 1920 is inapplicable to oil and gas deposits underlying railroad rights-of-way acquired pursuant to the act of March 3, 1875."

Accordingly, it must be concluded that this type of action is not appropriate or viable to resolve the issue.

The 1930 Act and implementing regulations at 43 CFR Subpart 3109 authorize issuance of leases and CRA's for lands subject to certain rights-of-way. Unlike the Mineral Leasing Act of 1920, the 1930 Act does not specifically provide extension provisions for these leases and CRA's. The oil and gas leasing extension regulations at 43 CFR 3107.3-3 provide that any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration of the primary term.

The BLM Oil and Gas Leasing Interim Guidance Handbook, H-3109-1, Leasing Under Special Acts, provides the following instructions for the extension of 1930 Act leases and CRA's based on the cited regulation:

If the lease is subject to a unit agreement, the terms of such agreement are to govern where inconsistencies with the terms of the lease occur. Thus, the lease may continue in force and its term may remain co-extensive with the life of the unit agreement.

The Interim Guidance H-3109-1 also specifies that the Act of May 21, 1930, does not allow extension of a lease or CRA for diligent drilling or unit termination, or for discontinuance of compensatory royalty payments. However, the Interim Guidance

H-3109-1 is silent about leases committed to communitization agreements (CA's) and, according to comments made at the December 1992 Fluid Minerals Adjudication Conference, the BLM offices have not consistently applied the H-3109-1 extension instructions to leases and CRA's in CA's. In accordance with this directive, the H-3109-1 will be expanded to include CA's in the above section.

Also, the leasing regulations at 43 CFR 3107.2-1 state that leases shall be extended so long as oil or gas is being produced in paying quantities. These regulation provisions are silent with respect to the 1930 Act leases/CRA's and, therefore, should be assumed to allow applicability to leases/CRA's issued under the 1930 Act as well as leases issued under the Mineral Leasing Act of 1920. These regulations have been applied inconsistently by the BLM State Office oil and gas leasing adjudication staffs with respect to 1930 Act leases/CRA's.

POLICY: We have determined that to avoid the possible loss of royalty revenues resulting from the expiration of producing 1930 Act leases and CRA's and the associated costs involved in having to reauthorize the production by issuance of another lease or CRA at the end of each 20-year term, the BLM policy shall be as follows.

All BLM States having leases and CRA's issued under the Act of May 21, 1930, shall continue and extend each such lease or CRA at the end of its 20-year term for so long as actual or allocated production is being received or so long as the lease is capable of producing oil or gas in paying quantities. This BLM policy does not allow extension of a 1930 Act lease or CRA solely for diligent drilling, discontinuance of compensatory royalty payments, or unit termination or expiration. That is, these leases shall not be subject to extensions for diligent drilling over the expiration date, or for any period after compensatory royalty payments have ceased, or due to the termination or expiration of any cooperative agreement (unit or CA) involving the lease or CRA. However, if the lease is subject to a unit or CA, the terms of such agreement are to govern where inconsistencies with the terms of the lease occur. Thus, the lease may continue in force and its term may remain co-extensive with the life of the unit or CA.

**IMPLEMENTATION AND SCHEDULE:** Effective immediately, 1930 Act leases and CRA's that are currently in effect which are receiving actual or allocated production at the end of their 20-year term shall be continued or extended in accordance with the policy stated above. Production and expiration information on the automated serial register page or case abstract shall be in conformance with the BLM fluid mineral leasing data entry standards. The existing leases and CRA's shall be amended by decision to indicate that ". . . such lease/CRA be in effect for a period of 20 years, and so long thereafter as oil or gas is produced in paying quantities, subject to any cooperative agreement heretofore or hereafter approved by the BLM authorized officer, the provisions of said agreement to govern the lands subject thereto where inconsistencies with the terms of this lease/CRA occur."

**COORDINATION:** Coordination regarding the production status of all 1930 Act leases and CRA's currently in effect shall require notification by Field Office operations personnel to the State Office adjudication staff to advise them whether the lease/CRA is within a unit agreement or CA, whether production is allocated or actual, and whether any wells on the lands in such leases/CRA's are capable of producing oil or gas in paying quantities.

For those 1930 Act leases/CRA's at or near the end of the 20-year term which do not contain the above proviso for continuation of the lease, after notification of extension/continuation to the holder of the lease/CRA, appropriate notification also shall be given to the MMS Data Management Division to extend the lease/CRA in the MMS's automated system to allow the payment of royalty monies to continue to be properly noted on the applicable lease account.

**MANUAL/HANDBOOK:** The BLM Oil and Gas Leasing Handbook, H-3109-1, Leasing Under Special Acts, will be revised prior to final release to incorporate this clarified policy and procedure.

**CONTACT PERSON:** Questions may be addressed to Lois Mason, Division of Fluid Minerals, FTS (202) 653-2182.

Signed  
Hillary A. Oden  
Assistant Director, Energy and Mineral  
Resources

Authenticated  
Dawn Slaughter  
Directives, W0873



Effective August 12, 1993, all 1930 Act leases and CRA's that are currently in effect which are receiving actual or allocated production at the end of their 20 year term are being extended in accordance with the policy stated above. In addition, this decision amends such leases/CRA's to indicate "such Lease/Compensatory Royalty Agreement be in effect for a period of 20 years, and so long thereafter as oil or gas is produced in paying quantities, subject to any cooperative agreement heretofore or hereafter approved by the BLM authorized officer, the provisions of said agreement to govern the lands subject thereto where inconsistencies with the terms of this Lease/Compensatory Royalty Agreement occur."

This policy change will also apply to leases which were deemed to have expired by their own terms under the previous policy but which have not been formally offered for invitation to bid.

/s/ Patricia N. Gillard

**ACTING**

Janet M. Budzilek, Chief  
Fluid Minerals Adjudication Section

cc: MMS/RMP  
District Office ✓

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