

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
COLORADO STATE OFFICE
2850 YOUNGFIELD STREET
LAKEWOOD, COLORADO 80215**

In Reply Refer To:
2801/2920 (CO-923) P

November 21, 2011

EMS TRANSMISSION 11/22/2011
Instruction Memorandum No. CO-2012-008
Expires: 09/30/2013

To: District, Field, and Center Managers; Program Leads

From: Deputy State Director, Energy, Lands and Minerals

Subject: Rental for Class II Injection Facilities and Wells – Produced Water Disposal Wells

Program Area: Lands and Realty Management and Oil and Gas Management.

Purpose: This Instruction Memorandum (IM) establishes a rental schedule for produced water disposal well and facilities authorized as a right-of-way (ROW) under the Federal Land Policy and Management Act of 1976. Although Class II injections wells are defined by the Environmental Protection Agency (EPA) as wells that dispose of produced water, inject for enhanced recovery of oil or natural gas, and for hydrocarbon storage wells, this IM applies only to the rental for the permanent disposal of produced water that would be authorized under a ROW. A ROW grant is required for disposal of produced water on public land (Federal surface), except for on-lease or on-unit well facilities that are used solely for that lease or unit. 43 CFR §2801.9 specifies when you must obtain a ROW grant and Onshore Oil and Gas Order Number 7 specifies procedural requirements for disposal of produced water. This IM does not apply to the disposal of produced water into pits and ponds.

The Colorado State Office is working with the Washington Office and the Office of the Solicitor to determine the procedures for handling produced water disposal well facilities built on split estate fee surface, when the injection of produced water affects or utilizes Federal pore space. Until policy has been established for this scenario, this type of use will not be addressed in the IM.

Policy/Action: Current BLM policy does not establish a rental schedule for produced water disposal facilities and wells authorized under a ROW. It is up to the individual BLM state offices to determine fair market value. Rent as specified in 43 CFR §2806 is appropriate for

ROW facilities. This IM establishes a rental schedule for the produced water disposal facilities that will consist of two components: 1) an annual site rental of \$3,000 for the well facilities on public land up to 10-acres in size (Reference IM CO-2011-023) and; 2) a \$0.15 per barrel rate for non-commercial injection or a \$0.25 per barrel rate for commercial uses.

If the ancillary facilities, such as roads and pipelines, are part of the ROW grant, then the ancillary facilities are included under the annual site rental, only if the total acreage of all the facilities is not greater than 10-acres in size. All produced water disposal well facilities over 10-acres in size would require an appraisal for determination of the annual site rental. However, if the ancillary facilities are separate grants, then use the national linear ROW schedule to determine rent for these facilities. See ROW Interim Manual 2806 for additional guidance on rental considerations and ancillary uses.

For oil and gas operations, a non-commercial disposal facility is defined as a disposal well operated by a single operator injecting oil and gas well produced waters from any combination of private or Federal leases, communitization agreement, or unit mineral estate operated by that same operator. A non-commercial facility would be charged the annual site rental of \$3,000 and the non-commercial per barrel injection rate of \$0.15. A single operator is defined as a single entity and does not include associations such as subsidiary, affiliate, division and spin off.

For oil and gas operations, a commercial disposal facility is defined as a disposal well injecting oil and gas well produced waters from private or Federal mineral estate wells operated by any entity other than the ROW holder. A commercial facility is also defined as a disposal well facility independently created for the sole purpose of accepting for payment oil and gas well produced waters for disposal. This definition does not include any other type of oil field wastes. A commercial facility would be charged the annual site rental of \$3,000 and the commercial per barrel injection rate of \$0.25.

Billing shall be made annually and not subject to multi-year intervals. BLM Colorado will not back bill previous years for existing produced water disposal facilities to incorporate the rates in this IM. The initial billing will consist of the annual site rental plus the estimated rent payment for the number of barrels injected for the coming year. The final billing for the actual number of barrels injected shall be collected prior to the next years' initial billing. The holder will provide the total number of barrels injected each year to the BLM and these totals are subject to BLM review for compliance. Compliance checks are a realty billing action and not subject to field inspections by the Minerals or Lands & Realty Programs. If the validity of the number of barrels injected by a holder is in question, the BLM may request additional information from the holder, such as run tickets. If an injection well is not used during the year, the holder still would be charged the site rental of \$3,000 for the year.

This schedule may be adjusted every five (5)-years or earlier, as determined by the State Office, to reflect changes in the fair market value.

The rent schedule shall be used for ROW grants authorized on public lands (Federal surface) under the following scenarios:

Produced water disposal from off-lease or off-unit (Federally approved agreements or units) -

- Injection of fluids produced off-lease or off-unit requires a ROW for the injection facility.

Produced water disposal injection fees:

- For fluids produced off-lease or off-unit by the same entity that operates the injection facility, injection is charged at the noncommercial per barrel rate of \$0.15.
- For fluids produced off-lease or off-unit by any other entity than the ROW holder of the injection facility, injection is charged at the commercial per barrel rate of \$0.25.

Off-lease or off-unit produced water disposal being transported to the lease or unit -

- If off-lease or off-unit fluids are produced by the same operator that operates the on-lease or on-unit produced water disposal facility, a ROW will be required, but at the noncommercial per barrel injection fee.
- ROW grants are required for any produced water disposal facilities located on public surface lands which are not used solely for a Federal oil and gas lease or agreement.

Injection of produced water disposal from on-lease or on-unit does not require a ROW for the produced water disposal facility. No fees are required for produced water disposal on-lease or on-unit.

Most existing grants include a rental clause that states the authorized officer, whenever necessary, can update the rental to reflect changes in the fair market rental value, in accordance with comparable commercial practices. As long as this type of rental clause is included in the grant, updating the rental is not an appealable decision. However, new grants issued with a Rental Determination Decision are appealable decisions.

Attachment 1 contains approved stipulations to be used with produced water injection well ROW grants.

Timeframe: This IM is effective immediately.

Budget Impact: The implementation of this IM will reduce the number of appraisal requests to the Office of Valuation Services and will result in a savings to the program Statewide, as well as building a rental schedule process for Colorado, Utah, and Wyoming, and potentially Montana and New Mexico. However, separate guidance would be drafted and issued for each State.

Background: Traditionally, appraisers were tasked with determining “market rental” through an appraisal of these grants. Requesting individual appraisals for each injection well facility was neither timely nor an efficient use of resources. However, that fact did not eliminate the need for

sound rental determinations, as the grant and authorization holders are due reasonable support for the rental they are charged when authorized to use public land for private and commercial purposes. A consistent approach for determining rent was needed for each state.

With the April 22, 2005, implementation of regulations at 43 CFR §2806.50, the methods by which BLM establishes rental for nonlinear rights-of-way were changed to allow methods other than appraisals. The pertinent citation follows, in part:

Other Rights-of-Way

Sec. §2806.50 How will BLM determine the rent for a grant when neither the linear rent schedule at Sec. §2806.20 nor the communication use rent schedule at Sec. §2806.30 applies?

When neither the linear nor the communication use rent schedule is appropriate, BLM determines your rent through a process based on comparable commercial practices, appraisals, competitive bid, or other reasonable methods.

Currently, there is a lack of consistency across state boundaries as well as within Colorado. In 2009, the BLM Colorado State Office requested assistance from the Office of Valuation Services (OVS) in establishing a surface rental rate schedule for small site ROW up to 10-acres in size and a rental rate for oil and gas well produced water injection wells. A market survey was completed with an effective date of December 31, 2009. Both requests were combined into one document because of the overlapping work to complete the assignment. The intended use of this rental schedule is to assist the BLM in maintaining uniformity of fees charged for this type of use. In addition to per barrel rate, most operators also pay a surface fee for the well pad area.

It was determined through the research and analysis of uses ranging from 0.11 to 10 acres, that the rental was not typically based on per acre value and there was no correlation of size and lease rate. Additionally, there was no bottom threshold for size where the schedule does not apply. Based on the data collected, a rate of \$3,000 per year for non-linear uses up to 10 acres in size was recommended and this rate will be used in Colorado.

In determining rates for produced water disposal through injection, the extent of the data collection was based on operations in a five-state area comprising Colorado, Montana, New Mexico, Wyoming, and Utah. The following table summarizes the per barrel injection rates for disposal of produced water into subsurface voids owned and administered by the United States in Colorado only:

Basin	State	Rate, Non-Commercial (BBL)	Rate, Commercial (BBL)
San Juan	CO	\$0.15	\$0.25
Raton	CO	\$0.15	\$0.25

The data collected in Colorado is distributed across the entire state and gives a fairly narrow indication of what rates are being charged for disposal of produced water. The range is from

\$0.10 per barrel up to \$0.50 per barrel. The vast majority of participants interviewed for the analysis either specifically cited higher rates for commercial use or indicated that a higher rate would be charged if a commercial use was included in the application.

The rates are listed by basin for the five-state area because the areas of development associated with this use do not follow state boundaries. Although the rates listed above are by basins, the rates will apply all across Colorado.

Directives Affected: A Colorado Handbook Supplement will be created to incorporate the new policy and guidelines.

Coordination: This rental policy was coordinated with the Office of the Solicitor, Washington Office Branch Chief for Rights-of-Way (WO-350) and the Division Chief for the Office of Fluid Minerals (WO-310); State Realty Program Leads in Montana, New Mexico, Wyoming, Utah; Office of Communications (CO-912); Branch of Fluid Minerals (CO-922); Branch of Lands and Realty (CO-923) and the Colorado Realty and Oil & Gas Program Leads at the Field Offices.

Contact: If there are any questions related to this IM, please contact Maryanne Kurtinaitis, Renewable Energy Program Manager, at (303) 239-3708 or John Beck, Branch Chief, for Lands and Realty, at (303) 239-3882.

Signed by:
Michael Madrid
Acting Deputy State Director,
Energy, Lands and Minerals

Authenticated by:
Cathy Cooney
Branch of IRM & Access

1 Attachment:

1 – Approved Stipulations for Produced Water Injection Well ROW Grants (1p)