

## H-3105-1 - COOPERATIVE CONSERVATION PROVISIONS

KeywordsVIII. Consolidation of LeasesA. General

No specific provisions of the Mineral Leasing Act authorize the consolidation of leases. Nevertheless, the Department of the Interior has long considered the broad, general authority of the Secretary of the Interior to promote conservation of oil and gas resources to serve as a justification to consolidate leases where the basic goals of conservation of the resources will be furthered. Neither convenience nor efficiency for either the lessee or the Department provides adequate rationale for consolidating leases. However, many lease consolidations might result in easier administration for both the United States and the lessee/operator after the process has been completed.

CONSOLIDATION  
OF LEASES

Historically, applications for lease consolidation were formally filed in a Land or State Office. However, the decision to approve or disapprove the consolidation of leases was based upon the recommendations of the U.S. Geological Survey (USGS) Conservation Division. Numerous prior decisions of the Department and the IBLA have clarified the general principle that applications for lease consolidation are generally treated with disfavor, and the burden to overcome this general proposition lies with the applicant. (See Marathon Oil Co. et al., 97 IBLA 102 (1987)).

Four main principles were considered by the USGS and the BLM before approval of any application for lease consolidation. These remain valid today:

GUIDELINES  
FOR LEASE  
CONSOLIDATION

1. The application must demonstrate that the consolidated lease will promote a valid conservation purpose, such as eliminating the problem of commingling production from several leases and the associated accounting complexity placed on the BLM and the MMS; elimination of some production-related facilities, such as pipelines, treating vessels, storage tanks, and meters, thereby resulting in increased safety, possibly less spillage, and reduced operating costs; or achieving a greater ultimate recovery of the resource by operating the leases as one. Additionally, the applicant must demonstrate that the benefits of consolidation cannot be accomplished through either unitization or communitization. Lease consolidation cannot be used as an attempt to hold nonproductive acreage or avoid additional development on leased lands.

PROMOTE  
CONSERVATION  
OF RESOURCE

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2. All nonproducing acreage within the leases to be consolidated must be relinquished as a condition of approval. If an operator has established plans for further development of adjacent undeveloped acreage in any of the leases to be consolidated and such development also would be logically part of the consolidated lease, those lands need not be relinquished, provided that the AO for fluid mineral operations is satisfied that the operator will most likely carry out the development. Otherwise, approval of lease consolidation is to be deferred until all drilling has been completed. Any relinquishment of acreage is to be accomplished concurrently with the approval of lease consolidation by the AO (e.g., by submittal of the relinquishment documents just prior to approval of the lease consolidation, after the BLM and the applicant have had an opportunity to examine both documents) to avoid the following scenarios:

RELINQUISH  
NONPRODUCING  
ACREAGE IN  
LEASES

a. Failure of the lessee to execute and file the relinquishment after approval of the lease consolidation; OR

b. An eventual determination to disapprove the consolidation after the lessee has lost acreage that might otherwise have been retained if the lessee had known that consolidation would not be approved.

The primary purpose of requiring relinquishment of acreage is to force the lessee or operator to maximize development on the leased lands or to allow other interested parties to acquire any undeveloped portion.

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3. Basic record title interest within the consolidated lease must be identical in all the lands. If part of the leases to be consolidated will be relinquished, the record title interest in such relinquished lands does not need to match that of the lands to be consolidated. When relinquishment is appropriate, all lessees for all lands in the leases to be consolidated will have to either join in the application for lease consolidation or positively concur by formal relinquishment of that acreage in which they hold an interest. Working interest holdings, i.e., operating rights (subleases), ideally and normally also are to be identical. Such uniformity is not required, however, provided that the applicant for consolidation provides adequate concurrence to the consolidation from operating rights holders of the involved leases together with proof that such holders do not have an objection to any required relinquishment of lease acreage. Since the BLM case files no longer provide an abstract of the precise working interest holdings in leases, information from the applicant as to such holdings is acceptable in the absence of an indication that a purported working interest owner, or its predecessor by death, merger, or name change, has never had an interest in the lease either as lessee or approved assignee/transferee. Any review of lease case files in this regard needs to be only cursory; where the lease ownership is complex, the applicant for lease consolidation is to be required to provide a breakdown of the chain of title so that the BLM can easily compare the holdings with those documents contained in the case files.

RECORD TITLE  
INTEREST MUST  
BE IDENTICAL  
IN LANDS TO BE  
CONSOLIDATED

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4. Upon approval of a lease consolidation, the resulting lease is to be given the serial number of the oldest lease consolidated. The consolidated lease shall carry the anniversary date (issuance date) of the oldest lease. If all the leases to be consolidated carry the same anniversary date, the lowest serial number is to be assigned to the newly consolidated lease. To the extent that the leases being consolidated contain lease stipulations, the stipulations shall be retained in the consolidated lease as to the specific lands in each original lease to which the stipulations applied. The rental rate for the consolidated lease shall be that of the consolidated lease carrying the highest rental rate; the minimum royalty rate also shall be similarly calculated. The production royalty rate on the consolidated lease normally also is to be that of the individual lease with the highest royalty rate. In some instances, with older leases having a variable royalty, i.e., step-scale or sliding-scale royalty, an economic evaluation by the Field Office fluid mineral operations must be made to determine the royalty rate most appropriate. In such cases, ensure that the lease consolidation will not reduced the royalty rate. That royalty rate which will provide the greatest return to the United States, considering discounted cash flow principles and the eventual decline in production rates, is to be selected in complex cases. Extreme care is to be taken when a proposal is made to consolidate leases with different royalty rates, since the effect of the consolidation may be to increase the number of marginally producing wells on a fixed royalty with high producers on a variable royalty, thus lowering the average production below the threshold for a higher royalty return to the United States. If such a result is at all probable, the consolidation is not to be approved; commingling is preferable as long as a reasonable agreement can be reached on the percentage of production to be attributed to each well and/or producing zone. If the applicant for lease consolidation is willing to agree to a royalty rate that will result in a royalty return determined to be at least equal to that which the United States would otherwise receive without consolidation, consolidation may be approved. In such unusual cases, the Office of the Solicitor is to be consulted prior to approval to ensure that the resulting royalty rate is compatible with the provisions of the mineral leasing laws.

Keywords

SERIAL NUMBER  
AND ANNIVERSARY  
DATE OF THE  
OLDEST LEASE

RETAIN LEASE  
STIPULATIONS  
FOR LANDS IN  
CONSOLIDATED  
LEASE

RENTAL AND  
ROYALTY RATE

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As indicated above, lease consolidation normally will be approved only when all of the leases to be consolidated are already in a producing status. Favorable recommendations for consolidation shall be limited to adjacent productive leases; the leases are to be adjoining, not merely cornering. Requests for lease consolidation based upon proposed drilling plans can normally accomplish the lessee's aim of lease preservation through communitization or unitization instead. Lease consolidation shall not be approved when communitization or unitization provides an acceptable alternative, even if the paperwork burden on the proposing operator is greater.

LEASE  
CONSOLIDATION  
FOR PRODUCING  
AND ADJACENT  
LEASES

There have been, however, a few cases where assignees of either producing or nonproducing leases have been able to demonstrate that an approved assignment unintentionally failed to embrace all the leased lands because of some typographical error by company personnel. In such cases, the assignee may desire to consolidate leases that were originally planned or requested as one lease in order to retain the original rights and benefits of the lease as issued. In such cases, the AO may approve consolidation of the assigned and retained portions of the lease (once the record title is the same for both leases), provided that the approved unintentional partial assignment did not in any manner effect the terms of either the assigned or retained leases (e.g., when a partial assignment out of a lease extended by production causes a 2-year extension of the nonproducing retained or assigned lease). (See Handbook 3107-1.)

CONSOLIDATION OF  
UNINTENTIONAL  
ASSIGNED AND  
RETAINED PARTS  
OF LEASE

Because of the proliferation of small-acreage lease assignments in the mid-1980's that were filed and approved by the BLM prior to passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, some lease developers that have obtained holdings in a relatively compact form in some of these small leases may seek consolidation of such leases. Consolidation of these small-acreage leases normally is not to be approved, since the carving up of the original larger lease was a deliberate, intentional act. Instead, communitization would ordinarily be adequate to allow lease development and conservation of the resources.

Leases segregated as a result of a unit approval, when the unit agreement is later deemed invalid for not having met the public interest requirement, are required to be consolidated into the original lease as if no segregation occurred (see Section III.B, above).

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B. Action on Application to Consolidate

Responsible Official	Step	Action	Keywords
Field Office Operations or Adjudication	1.	Receive written or oral inquiry about the possibility of consolidating leases. Respond using the guidance contained above, by either discussing with the potential applicant the principles indicated, or preparing a written response. If a written response is made, as appropriate, enclose a copy of the above general discussion, as may be amended by any supplemental directives.	INFORMAL INQUIRY - LEASE CONSOLIDATION
Receiving Official	2.	Receive formal application for lease consolidation. Date-time stamp and send to Docket.	APPLICATION FOR LEASE CONSOLIDATION
Docket	3.	Pull lease case files and send to Adjudication.	
Adjudication	4.	Review application and the affected case files for conformance with the principles discussed under Section VIII.A, above. Ensure that the leases are producing, the record title of the consolidated lease will be uniform, and that the lease terms, rental rates, and royalty rates, and any other provisions required by law can be reconciled. For instance, the minimum royalty rate of a lease issued prior to enactment of the Reform Act is set by law at \$1 per acre, whereas the minimum royalty rate for a Reform Act lease is not less than the rental which otherwise would be required for the lease year (not less than \$1.50 per acre per year for the first through fifth lease years, and not less than \$2 per acre for each year thereafter). Such minimum royalty rates cannot be reconciled, thus, leases issued prior to the Reform Act cannot be consolidated with leases issued under the Reform Act. Also, the acreage in the consolidated lease cannot exceed the maximum acreage required by law or regulation.	INITIAL REVIEW OF APPLICATION TO CONSOLIDATE LEASES

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Responsible Official	Step	Action	Keywords
	5.	If the leases are producing and the differences can be reconciled, request a report from the Field Office fluid mineral operations on whether the consolidation would promote conservation of the resources, based on the principles discussed in Section VIII.A, above.	REQUEST FIELD OFFICE REPORT
	6.	If the Field Office report is favorable, prepare a decision approving the consolidation (see Illustration 24).	LEASE CONSOLIDATION APPROVAL
	7.	Combine the leases in the case file of the oldest lease consolidated. If reconciliation of lease terms and stipulations or rental and royalty rates was required, ensure appropriate adjustments as discussed in Step VIII.A.4, above, are made in the ALMRS Entry.	
	8.	Route decision for signing, mailing, Records notation, ALMRS Entry, and to Docket.	
Signing Official	9.	Check and sign decision.	
Title Records	10.	Adjust lease lines and remove all serial numbers except the consolidated lease serial number from the oil and gas plat or other appropriate status records.	
Adjudication	11.	If the record title is not identical, or differences in terms of the leases, etc., cannot be reconciled, or Field Office fluid mineral operations report is not favorable, reject the application (see Illustration 25).	LEASE CONSOLIDATION REJECTION
	12.	Route decision for signing, mailing, ALMRS Entry, and to Docket.	

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Responsible Official	Step	Action	Keywords
ALMRS Entry	13.	<p>Make the appropriate entry for each lease covered by the application for lease consolidation using the current data standards:</p> <p>Enter Action Date: Date lease consolidation application rejected; DE 1775 Action Code 718/DE 2910 Action Code 393 (decision issued); Action/General Remarks: Reason for rejection of application to consolidate leases.</p> <p>Enter Action Date (MANDATORY ACTION CODE): Date leases consolidated; DE 1775 Action Code 199/DE 2910 Action Code 972; Action Remarks: Serial number of lease consolidated into this lease (see Illustration 26).</p> <p>13c. Enter Action Date (MANDATORY ACTION CODE): Date lease case closed due to approval of lease consolidation; DE 1775/2910 Action Code 970; Action Remarks: <u>"INTO (Serial number of lease into which this lease was consolidated).</u></p>	AUTOMATED NOTATION
Docket	14.	File case files.	