

## 4.0 ADDITIONAL FEDERAL LAND ACCESS ISSUES

Additional statutory and discretionary requirements beyond lease stipulations impact Federal land access for oil and gas development. Many of these impacts were not quantified because GIS data do not exist, or they are issues that are not amenable to quantitative analysis. Many of these requirements can be considered restrictions on drilling because they have effects similar to stipulations on oil and gas development activities.

These issues can directly or indirectly impact Federal land accessibility for oil and gas development. Tables 4-1 through 4-16 present office-specific issues that were recorded from discussions with BLM and FS staff during field visits. Average APD processing time was calculated for each office using input from the offices supplemented by an analysis of BLM's Automated Fluid Minerals Support System (AFMSS).<sup>1</sup>

**Table 4-1. Access Issues, Northern Alaska Study Area**

**Table 4-2. Access Issues, Southern Alaska Study Area**

**Table 4-3. Access Issues, Eastern Oregon-Washington Study Area**

**Table 4-4. Access Issues, Ventura Basin Study Area**

**Table 4-5. Access Issues, Eastern Great Basin Study Area**

**Table 4-6. Access Issues, Paradox Basin Study Area**

**Table 4-7. Access Issues, San Juan Basin Study Area**

**Table 4-8. Access Issues, Montana Thrust Belt Study Area**

**Table 4-9. Access Issues, Williston Basin Study Area**

**Table 4-10. Access Issues, Powder River Basin Study Area**

**Table 4-11. Access Issues, Wyoming Thrust Belt Study Area**

**Table 4-12. Access Issues, Southwestern Wyoming Study Area**

**Table 4-13. Access Issues, Denver Basin Study Area**

**Table 4-14. Access Issues, Florida Peninsula Study Area**

**Table 4-15. Access Issues, Black Warrior Basin Study Area**

**Table 4-16. Access Issues, Appalachian Basin Study Area**

## 4.1 ISSUES DIRECTLY IMPACTING ACCESS

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<sup>1</sup> These tables include only offices that were visited or specifically contacted during EPCA Phase I, Phase II, and Phase III data collection. Not all offices responded. In addition, areas for which an extrapolation was conducted to determine land and resource access categorization (see Appendices 4 and 9) are not included in this section.

**The National Environmental Policy Act of 1969.** The NEPA is the nation's central environmental statute. It requires Federal agencies to consider environmental impacts before an action is taken. The NEPA process is intended to help public officials make better decisions based on an understanding of their environmental consequences.

The NEPA is embedded into the fabric of Federal land management decision-making and has become the most important procedural public land management statute because it requires agencies to comply with its processes in all situations where major actions are contemplated. When an activity or action is proposed on Federal lands, an interdisciplinary review of the environmental effects of the proposal is conducted and made available to citizens and public officials. The review can take one of four forms:

- a categorical exclusion (CX)
- documentation of NEPA adequacy (DNA)
- an environmental assessment (EA)
- an environmental impact statement (EIS)

The NEPA process can impact oil and gas development in terms of cost and time delays. Typically an EIS or EA is drafted in consultation with the cooperating agencies, presented for public comment, and reviewed by multiple agencies. A simple EIS can take 24 to 36 months to complete, while those with more complex issues may require three to six years to complete. The land use planning process as a whole takes in excess of 36 months, particularly if there is oil and gas involved. The NEPA documents analyze alternatives to the proposed action and must include a "no action" alternative. Impacts are classified as direct, indirect, and cumulative, and include the evaluation of economic impacts to counties and states to be considered, as well as impacts on resources.

When considering oil and gas leasing, the BLM has identified the need to obtain additional data on such issues as air quality and clean water as a part of the cumulative impact analysis required by the NEPA and land use planning processes. This has been cited as an overarching issue that affects oil and gas lease parcel nominations. This lack of data can result in leasing delays when existing documents are deemed inadequate. The net result is that potential applicants are often aware of the problem and make decisions not to develop in areas that will be or could be held up by the NEPA process.

With respect to the NEPA process itself, concern was expressed by some government officials that individual documents provide "piecemeal" information and that better environmental decisions could be made based on larger scale studies that look at the "bigger picture." For example, wildlife habitat fragmentation is better characterized when it is examined in the context of larger rather than smaller areas.

Delays can increase costs for oil and gas operations because, rather than waiting for the Federal agency to complete the work, operators frequently pay a third-party contractor to perform the necessary work.

Section 366 of Energy Policy Act of 2005 (EPA 2005) sets a deadline for the consideration of applications for permits. The permit must be issued within 30 days (if NEPA and other legal requirements have been met), or defer the decision and provide a notice to the applicant.

**The Endangered Species Act of 1973.** The ESA requires Federal agencies to conserve listed species. Under the ESA, species are treated as either listed, proposed, or candidate species. In BLM and FS jurisdictions, listed and proposed species are treated similarly. Candidate species are generally handled in a discretionary manner. All BLM administrative offices treat sensitive species as defined by the BLM and state governments the same as endangered species.

Federal agencies are responsible for managing wildlife habitat, while state governments manage the wildlife itself. In many areas habitat has not yet been mapped. If habitat information is required before leasing and permitting then additional delays are possible. Habitat for candidate species has been generally withheld from oil and gas leasing by Federal agencies during a consideration period of up to 2½ years.

**Inventoried Roadless Areas.** A total of over 18 million acres of National Forest Inventoried Roadless Areas (IRAs) exists within the boundaries of the Inventory's study areas. The FS representatives recognize the complexity surrounding the issue of IRAs. In July 2004, the FS published a proposed rule to revise the Roadless Area Conservation Rule published in January 2001, which was reversed in July 2003 by the Federal District Court for the District of Wyoming.

The final roadless rule was published in May 2005. The rule allows governors to petition the Secretary of Agriculture to develop regulations to manage roadless areas in order to meet specific needs within each state. The FS was to accept state petitions from governors for 18 months after the effective date of the final rule. In January 2006, the interim ruling from July 2004 was extended for another 18 months.<sup>2</sup> During the state-petitioning process, the FS will continue to maintain interim measures to conserve inventoried roadless areas.

Despite the controversy surrounding the issue, leasing does occur in a limited number of roadless areas. In such cases, leases are issued with the caveat to industry that the disposition of roadless areas is unresolved and that the areas under lease may have to remain roadless.

**Visual Impacts.** Concern over visual impacts is affecting oil and gas development in some areas. For example, field developments can be delayed until impacts and other issues are assessed. Visual impacts were raised as a potential issue by many BLM and FS offices.

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<sup>2</sup> USDA-Forest Service Interim Directive #1920-2006-1. [http://www.fs.fed.us/im/directives/fsm/1900/id\\_1920-2006-1.doc](http://www.fs.fed.us/im/directives/fsm/1900/id_1920-2006-1.doc)

**Suburban Encroachment.** Opposition to oil and gas activities is increasing as residential construction spreads into previously undeveloped areas. This has not been a significant issue until recently and has not generally been incorporated into oil and gas planning activities. Some offices are considering NSO stipulations to maintain open space near housing developments.

**Seasonal Restrictions in Alaska.** The primary constraint to access in the National Petroleum Reserve-Alaska is the restriction that limits exploratory drilling activities to the winter season, which lasts approximately 5 months. During that time, ice roads need to be built, a task that can take one or 2 months and may be limited to 25-30 miles due to technology and weather. Coupled with timing limitations for threatened and endangered species, the cumulative effects of these limitations make drilling operations difficult and may significantly impact project economics.

## 4.2 ISSUES INDIRECTLY IMPACTING ACCESS

**Clean Water.** In the UPB, the issue of clean water has been raised in the context of the need for examining entire watersheds rather than just the local area. It is increasingly recognized that an entire watershed (rather than administrative jurisdictions) must be examined in instances where activity within one jurisdiction may affect another downstream. Often in the western U.S., states and counties object to drilling in municipal watersheds, often resulting in added stipulations and/or conditions of approval for protection. In addition, localized clean water issues include mitigating increased selenium concentrations, salinity, and sedimentation.

**Air Quality.** Air quality can be a contentious issue in Rocky Mountain basins, such as the SWW. Increasingly, air quality issues are being raised as a concern, especially in Utah.

**Staffing.** Workload requirements are increasing and the BLM is facing challenges with respect to the timely processing of APDs, energy-related rights of ways, and monitoring compliance. The number of APDs received has increased significantly. Recruitment and retention of professional oil and gas staff is challenging, in part because of competition with industry for qualified personnel. Other specialties, such as archeology, biology, and environmental protection are severely understaffed in some areas and have high turnover rates as well. These positions are needed for coordinating required clearances (e.g., ESA, NHPA) and participating on interdisciplinary teams. Inadequate staffing can create bottlenecks and high turnover often necessitates retraining new hires to perform the unique and complex tasks associated with the oil and gas program.

Section 365 of EPOA 2005 requires the Secretary of the Interior to establish a Federal Permit Streamlining Pilot Project to improve Federal oil and gas permit coordination. The Department of the Interior, Department of Agriculture, Environmental Protection Agency, and the Army Corps of Engineers signed a Memorandum of Understanding establishing staffing needs and funding protocols for the pilot offices on October 25, 2005. The seven pilot offices (Rawlins and Buffalo, Wyoming; Miles City, Montana;

Farmington and Carlsbad, New Mexico; Grand Junction/Glenwood Springs, Colorado; and Vernal, Utah) have been created.

In 2006, the BLM pilot offices processed more permits, and lowered their average turnaround time for individual permits. In the Farmington field office for example, the total number of permits processed increased from 817 in 2005 to 993 in 2006.

**Native American Consultation.** The large number of APDs and leases impacts the timeliness of completing the consultation requirements of the NHPA. Consultation with Tribes is increasing and can extend the time required to obtain leases and drilling permits.

**Conflicts between Mineral and Coalbed Natural Gas (CBNG) Developers.** In the PRB, conflicts can occur between coal mining operators and coalbed natural gas producers. It is BLM policy to encourage oil and gas and coal companies to resolve conflicts between themselves. When requested, the BLM will assist in facilitating agreements between the companies. The BLM will also exercise authority provided in the leases, applicable statutes, and regulations to manage Federal mineral development in the public's best interest.

**Infrastructure.** The physical infrastructure to support oil and gas development and production is often strained. Existing pipelines may be at capacity and new pipeline construction is often a lengthy process. County roads are typically not designed for the volume of truck traffic that they can experience during oil and gas field development. Infrastructure issues can act to constrain future marketing capacity, although new pipeline construction can relieve this bottleneck.

The BLM's energy-related rights-of-way processing workload has increased along with the increase in APDs. These authorizations are required for such infrastructure as pipelines, roads, and power lines that are located outside of a lease or unit boundary.

**Snow Delays.** In the higher elevation areas of the Rocky Mountains, snow depths can be so great as to preclude drilling even if there are no winter drilling stipulations. This situation potentially makes for a short drilling window, especially if there are timing limitations during non-snow months.

**Industry Understanding of the Leasing and Permitting Process.** There is often less-than-optimal understanding and planning within some companies with respect to these processes. The BLM encourages oil and gas operators to inform and work with the permitting agencies as early in the planned development process as possible. The issuance of the recently updated *Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development* (the "Gold Book," 4<sup>th</sup> edition, 2006, available at <http://www.blm.gov/bmp/goldbook.htm>) should enhance operators' understanding and expectations.