

2881 – MINERAL LEASING ACT – GENERAL

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.1 Purpose.

A. The Bureau of Land Management (BLM) 2880 Manual/Handbook/IM Series provides policy and program direction for issuing, administering, assigning, amending, renewing and terminating ROW grants pursuant to Section 28 of the Mineral Leasing Act (MLA), as amended (30 U.S.C. 185) in an environmentally, socially, and economically sound manner. The Manual/Handbook/IM series provides instructions to the program managers for ROW policy and program management.

B. Section 28 of the MLA has been amended a number of times since enactment in 1920. In 1973, in association with legislation authorizing the Trans-Alaska Pipeline, Congress enacted major changes to Sec. 28 – environmental standards, cost recovery, limited term with renewal, etc. The difference between pre- and post 1973 MLA ROW grants is significant and many holders of pre-1973 grants will seek new grants rather than amend the existing pre-1973 grant. Various sections of this Manual series address handling these differences.

.2 Objectives. The objectives of the ROW program are to:

A. Principal Use. Recognize that ROWs are a principle or major use of the public lands. As such, the ROW program must receive the level of management interest, priority, and attention commensurate to the other principal or major uses of the public lands and to the magnitude of the impacts associated with the various ROW proposals.

B. Guidance. Provide policy, procedures, and guidance for managing ROWs on public and Federal land so as to:

1. Coordinate the actions of individuals, governments, and businesses in using lands for ROW purposes.

2. Minimize the proliferation of separate ROWs.

3. Promote the sharing of ROWs with respect to engineering and technological compatibility, national security, and land use planning.

4. Provide a system of designated ROW corridors on public land to help meet future ROW needs as appropriate.

5. Promote efficiency in granting ROWs.

6. Promote uniform ROW application processing and granting requirements and procedures.

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7. Promote to the greatest extent practicable the use of applicant/holder-generated plans of development (PODs).

8. Protect the quality of natural resources and prevent unnecessary environmental damage to lands and resources.

9. Protect the ROW holder's investments in improvements on the ROW.

.3 Authorities. Authorities include:

A. The Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

B. 43 CFR Part 2800, Group 2880, Rights-of-Way under the Mineral Leasing Act.

C. Titles XI and XIII of the Alaska National Interest Lands Conservation Act of December 2, 1980 16 U.S.C. 3161 et seq. (ANILCA)

.4 Responsibility.

A. Director and Deputy Director are responsible for overall compliance with statutory authorities, Department policies, and ROW development and management programs affecting the public lands.

B. Assistant Director, Minerals, Realty and Resource Protection, through the Chief, Division of Lands, Realty and Cadastral Survey, is responsible for providing regulation, direction, policy, and procedural guidance for efficiently evaluating and processing ROW applications, issuing ROW authorizations, monitoring and terminating ROW grants, managing the Bureau's ROW program, and providing for future needs through designation of ROW corridors.

C. State Directors, District Managers and Field Managers, within their delegated areas of responsibility, are responsible for uniformly implementing and carrying out the guidance and instruction contained in this 2880 Manual/Handbook/IM series; implementing and managing the ROW program in their States, Districts or Areas; programming and budgeting ROW funds; issuing local instructions; maintaining program quality control; maintaining a cadre of personnel proficient in developing, evaluating and processing ROW applications; providing timely compliance and monitoring during construction, operation, maintenance, and termination; and designating and managing corridors as necessary to meet future ROW needs.

.5 Acronyms and Terms. See Glossary.

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.6 [Reserved]

.7 Scope.

A. Manual/Handbooks/IMs.

1. Manual sections within the 2880 series provide the basic source of permanent internal written policy and program direction.

2. Handbook sections provide detailed procedures or instructions needed to carry out the policy and program direction.

3. Instruction Memoranda (IM) provide new or interim policy and procedures. Although they may have an expiration date, IMs issued subsequent to this Manual series that add or modify policy for the 2880 series remain effective until specifically cancelled.

B. Manual/Handbook/IM series provides guidance needed to issue, administer, amend, assign, renew and terminate grants and TUPs for necessary transportation or other systems and facilities which are in the public interest and which require the use of public or Federal lands for the purposes identified in 30 U.S.C. 185.

C. Pre-1973 Grants. This Manual/Handbook/IM series applies grants issued on or before November 16, 1973, to the extent that it does not diminish or reduce any rights conferred by the grant or the statute. Where there is a reduction, the grant or statute will apply instead of the Manual guidance.

.8 Policy. It is the general policy of the BLM to:

A. Major or Principal Use. Give proper consideration to the major or principal ROW use on the public lands.

B. Land Use Plans. Before declining to grant a ROW on the basis of conflict with another major or principal use(s), the AO shall assure that the potential conflict between ROW use and the other major or principal use was considered in the land use plan.

C. Efficiency. Authorize all ROW uses on public lands in the most efficient and economical manner possible by a ROW grant.

D. Designated Corridors. Provide for ROW use of the public land through a system of designated ROW corridors. The use of ROW corridors will be actively encouraged by Bureau managers.

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E. Categorical Exclusions. Whenever applicable, apply NEPA categorical exclusion provisions for ROW applications.

F. Access. Allow owners of non-Federal lands surrounded by public land managed under FLPMA, a degree of access which will provide for the reasonable use and enjoyment of the non-Federal land. Such access must conform to rules and regulations governing the administration of the public land.

G. Public Service. Provide all applicants, holders, and interested parties timely and equitable consideration and the highest degree of public service.

H. Plans of Development (PODs). Maximize the use of PODs while allowing management discretion for the development of non-guide stipulations for special situations.

I. Impacts. Assure to the greatest extent possible that all identified impacts are mitigated and that there is compliance with the terms and conditions of the grant.

J. Survey Monuments. Require protection of land survey markers. This entails the rehabilitation of disturbed corner monuments and their accessories, and replacement of destroyed corner monuments and their accessories, in conformance to the Bureau of Land Management Manual of Instructions for the Survey of the Public Lands of the United States (Survey Manual).

.9 [Reserved]

.10 Review of Decisions.

A. Interlocutory Decisions. Interlocutory decisions are interim decisions and usually ask for additional information, offer an action, request a report, etc. There is no immediate penalty for lack of response. Parties to the interlocutory decision may seek relief by protest, discussion, etc.

1. Protests to interlocutory decisions are reviewed by the issuing officer or higher official. If an appeal is filed during the protest period, the BLM will treat it as a formal appeal and refer the case to the Interior Board of Land Appeals (IBLA). Depending on the issues, the BLM may want to request a remand to consider the appeal as a protest.

B. Final Decisions carry a penalty for lack of action or response. Failure to respond within the allowable time renders the decision final and no longer reviewable.

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1. Review by the IBLA. BLM Form 1842-001 shall be enclosed with every decision document. Since ROW decisions are in full force and effect, information on petitions for stay must also be included. See Illustration 2880-1 for standard appeal language to be included in all decisions.

C. Full Force and Effect of ROW Decisions. A BLM decision affecting a ROW application carries the “full force and effect” of the decision. Full force and effect means that the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. Immediate implementation is an option, not a requirement, of the decision.

1. Stay. The appellant has the opportunity to file a petition for a “stay” with the IBLA within 30 days. A stay is a request to prevent implementation of the decision until the appeal can be reviewed by the IBLA.

2. 45 Day Period. By regulation, the IBLA has 45 days to rule on a request for a stay.

a. No Action. If the IBLA fails to act on a petition for a stay within 45 days, the petition for a stay is considered to be denied, and the BLM ROW decision is in full force and effect.

D. BLM Reconsideration and Request for Remand. The BLM can reconsider a ROW decision before an appeal is filed. If the BLM wants to reconsider a ROW decision after an appeal is filed, the BLM must first request the IBLA to remand the case to the agency.

E. Request for IBLA Reconsideration. A decision by the IBLA constitutes the final agency action, but the IBLA may reconsider a decision in extraordinary circumstances for sufficient reason. An appellant or the BLM can request reconsideration from the IBLA.

F. Secretarial Jurisdiction. In a very unique situation the BLM could request the Secretary of the Interior to issue a ROW decision which would be reviewable only in Federal District Court.

G. Judicial Review. IBLA and Secretarial decisions are appealable to the Federal District Court where the land or property is situated, or to the Federal District Court for the District of Columbia.

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H. Action on Applications. If the applicant appeals a decision establishing a cost recovery category 6, further action on the application by the BLM will be suspended pending the outcome of the appeal.

.11 When to Issue a ROW Grant.

A. Issuance. The BLM will use a ROW grant to authorize the use of public or Federal lands for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

Note: Federal Agencies are not qualified applicants under the Mineral Leasing Act.

B. Authority. All grants shall be issued under the authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

C. Regulatory Agencies. Some uses, such as the interstate transmission of natural gas which may be subject to the applicable requirements of the FERC under the Natural Gas Act, 15 U.S.C. 717, require filings with Regulatory agencies. The BLM will cooperate fully with such agencies.

.12 Temporary Use Permits (TUPs).

A. Applicant. When the applicant requires temporary use of available lands to perfect the application a TUP is to be used as opposed to the use of a 43 CFR 2920 permit.

B. Holder. If the holder requires the use of available land outside the ROW grant, to construct, operate, maintain, or terminate the grant or to protect the environment or public safety consider:

1. Temporary Use. Issuance of a TUP.
2. Permanent Use. Amendment of the existing grant.

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Standard Appeal Language

[to be used in the body of the decision]

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-001. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Illustration 2

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[Form 1842-001]

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[Form 1842-002]