

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
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EMS TRANSMISSION 02/25/2009
Instruction Memorandum No. 2009-078
Expires: 09/30/2010

To: All Field Officials
From: Assistant Director, Minerals and Realty Management
Subject: Processing Oil and Gas Applications for Permit to Drill for Directional Drilling into Federal Mineral Estate from Multiple-Well Pads on Non-Federal Surface and Mineral Estate Locations

Program Areas: Oil and Gas Exploration and Operations.

Purpose: This Instruction Memorandum (IM) establishes policy and procedures for processing Federal Applications for Permit to Drill (APD) for directional drilling into Federal mineral estate from multiple-well pads on non-Federal locations.

Policy/Action: The following policy and procedures shall apply to the three situations (Attachment 1) described below for processing APDs for directionally or horizontally drilled well bores that extend into Federal mineral estate from multiple-well pads that are located entirely on non-Federal surface not subject to Federal mineral estate ownership. In each situation, at least one of the wells drilled from the same pad is intended to access oil or gas outside of the Federal mineral estate.

This policy does not apply to the management of split estate (Non-Federal Surface/Federal Minerals). Policy directives regarding management of split-estate lands do not apply to the situations discussed in this IM.

For the purpose of this IM, the term "Federal" includes Indian trust surface or minerals, and "non-Federal" does not include Indian trust surface or minerals. "Multiple-well pad" refers to well pads with at least two wells.

For All Three Situations Under This Instruction Memorandum:

Unlike the surface owner in the case of split estate, the non-Federal surface owner over private minerals is not under an obligation to allow access to its surface for the production of Federal minerals. Under the three situations described below, the BLM does not have an obligation to ensure that disturbances of the surface are reasonable and necessary. For purposes of Federal environmental law, when private and Federal wells are to be drilled on the same pad on non-Federal land, drilling the Federal well and producing from the Federal well is a Federal action; however, construction, operation, and reclamation of the infrastructure on non-Federal land, in this situation, is not a Federal action. The obligation for protecting the surface, environment, and the interests of the surface owner in these cases remains with the surface owner, the lessee/operator, and the state. However, the BLM may have a responsibility to consider the direct, indirect, and cumulative effects of construction and operation of the infrastructure. The circumstances that determine these analytical responsibilities are the subject of this IM.

The Bureau of Land Management (BLM) field office will require, at a minimum, the submission of an APD form, drilling plan, well plat, operator certification, and evidence of bond coverage. No other APD submission provisions of Onshore Order No. 1 or corresponding portions of 43 CFR 3162.3-1(c) will apply. (For example, there is no requirement for a bond to protect surface owner interests for operations on non-Federal surface/non-Federal mineral lands.) The APD will be posted for all three situations.

The Mineral Leasing Act does not require a Surface Use Plan of Operations or an onsite predrill inspection for wells drilled under situations 1, 2, and 3 described below. However, the BLM may require a pre-drilling onsite inspection and additional information similar to portions of a Surface Use Plan of Operations in order to complete its responsibilities under the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and the Endangered Species Act (ESA).

Compliance with Section 7 of the ESA will be required if the BLM determines that the Federal action "may affect" listed species or adversely modify critical habitat (for example, the noise from drilling the Federal well might interfere with nesting of a listed species). A conference under the ESA will be required if the BLM determines that the Federal action "may affect, likely to adversely affect" a proposed species or adversely modify proposed critical habitat. Further guidance on ESA section 7 compliance is provided in BLM Manual 6840. This manual also provides guidance for treatment of federally designated candidate species and BLM-sensitive species.

The approval of an APD is a Federal undertaking under Section 106 of the NHPA, even when the resulting impacts are on non-Federal land. Actions that intentionally, significantly, and adversely affect a historic property with the intent to avoid the requirements of NHPA Section 106 are in violation of NHPA Section 110(k) and require the field office to deny the APD. Further guidance is provided in BLM manual 8140.

Regarding inspection and enforcement and disposition of Federal production, the BLM retains full authority and responsibility for inspections, such as measurement and handling of production from a communitization agreement or for health and safety inspections. Inspection and enforcement is limited to the Federal portion of the action and would not apply to drilling non-Federal wells or handling and storage of non-Federal production off lease. The BLM's inspection and enforcement authority and responsibility would include compliance with any mitigation or other conditions established for approval of the APD as a result of the NHPA and ESA consultation process.

As a condition of approval of an APD in any of the three situations discussed in this IM, the operator must provide the BLM a true and complete copy of a document in which the owner of the surface or that owner's representative authorizes the operator to drill a Federal well from the non-Federal lands, and in which the surface owner or representative guarantees the Department of the Interior (Department), including BLM, access to the non-Federal lands to perform all necessary surveys and inspections. If access for any bureau of the Department to the operations and surrounding area for official business related to the approved operations is denied or impeded in any way, the BLM may order the federally approved operations halted and the Federal well or wells shut in.

The BLM may require and inspect for proper plugging and abandonment of a well into the Federal mineral estate to prevent the Federal minerals from migrating through the abandoned well or to prevent materials from migrating into or otherwise endangering the Federal land or resources. Interim reclamation, abandonment, and plugging beyond that required to protect the Federal land would be subject to state or local regulation and to any private contract of the operator with the surface owner or state law applicable to private surface estates.

The BLM does not have authority to issue an Incident of Noncompliance for cultural or environmental resource damage occurring on non-Federal lands prior to approval of a Federal APD but may, of course, penalize a party who drills or otherwise conducts activities on Federal lands without approval.

To determine how to comply with Federal laws such as the NEPA, NHPA, and ESA, the field office shall first determine which one of the following three situations apply:

Situation 1: Pre-existing Surface Well Pad and Access Road:

The following procedure will apply when the operator submits an APD for drilling a new Federal well bore or horizontal leg into Federal minerals from an existing multiple-well pad constructed entirely on non-Federal surface and minerals, where no additional surface disturbance is planned, and state and/or private wells have

already been permitted by the state for that well pad.

- The BLM's approval of drilling the well or wells into the Federal minerals is the Federal action that requires NEPA, NHPA, and ESA compliance, not the already existing well pad, access road, pipeline, power line, etc.
- Cultural, non-special status species, or other related surveys are typically not required unless the act of drilling, completing, and/or operating the Federal well(s) has the potential to have an impact on the protected resource.
- A NEPA analysis may be categorically excluded using the statutory Categorical Exclusion (CX) No. 2 *Drilling an oil or gas location or well pad at a site at which drilling has occurred within five (5) years prior to the date of spudding the well*, from Section 390 of the Energy Policy Act of 2005. If the action does not qualify for CX No. 2 due to the 5-year limitation, and if no other categorical exclusion applies, an environmental assessment (EA) or other NEPA document will ordinarily be required. The NEPA analysis may be limited to a discussion of environmental effects of the downhole operations to be approved, such as protection of aquifers and other subsurface resources; the potential for petroleum migration; and the effects related to drilling and operating the well, such as the effect of noise generated by the Federal well drilling. The NEPA analysis is not required to consider a range of alternatives in siting surface facilities because the actual location (and, therefore, more specific, site-determined effects), is not based on the Federal wells. This rationale must be explained in the environmental document. The analysis of the cumulative effects on the resources affected by the action (approving the APD) must include the environmental effects of the existing well pad (including operations related to non-Federal drilling in the vicinity), access roads, pipelines, or other infrastructure, as appropriate.
- Mitigation measures identified by the BLM will be limited to addressing the effects of the downhole operations and of drilling, completing, and operating the Federal well(s).
- In Situation 1, if field office personnel discover an existing or under construction pad or access road, the field office will not cite operators with an Incident of Noncompliance for initiating pad and road construction without approval of an APD. The field office will, however, cite an operator with an Incident of Noncompliance if Federal wells are drilled prior to APD approval (43 CFR 3162.3-1).

Situation 2: Proposed Surface Well Pad Where Surface Location is Not Determined by Access to the Federal Oil and Gas:

The following procedure will apply when the operator submits an APD for drilling a new Federal well bore or horizontal leg into Federal minerals from a proposed multiple-well pad to be constructed entirely on non-Federal surface and minerals and the location of the pad **is not** based on the downhole location of the Federal wells.

Situation 2 may apply if, for example:

- It is apparent that the well pad will be constructed close to the center of the private or state minerals reached by the multiple-wells on the pad. The pad will not be placed closer to the boundary of the Federal minerals to shorten the drilling distance to the Federal minerals.
- The well pad is selected to achieve the most efficient development of the targeted reservoir in accordance with applicable spacing unit(s).
- The operator has not stated that the well location was selected to improve access to the Federal minerals.

In Situation 2, the field manager will apply the same process as described under Situation 1, except as follows:

Drilling on a proposed private well pad is not covered by Section 390 CX No. 2. If another CX is not applicable, an EA or other NEPA documentation will be required. The NEPA analysis will be limited to a discussion of the environmental effects of the downhole operations to be approved, such as protection of aquifers and other subsurface resources; the potential for petroleum migration; and effects related to drilling and operation of the Federal well or wells, such as the effect of noise or air emissions generated by drilling and operating those wells. The NEPA analysis will consider the effects of the siting and construction of the private well pad and infrastructure, drilling and operation of the private wells, and other activities related to the private well pad as those are connected actions under NEPA. The NEPA document will include an explanation of why it contains only a general description of the effects of those actions (i.e., that while siting and construction of the private well pad and infrastructure is necessary for drilling the Federal well, the decision of where and how to construct and

operate the well pad and infrastructure is beyond the BLM's control). The cumulative impacts analysis for the proposed action will also include analysis of the effects of those connected actions.

Situation 3: Proposed Surface Well Pad Where Surface Location is Determined by Downhole Location of Proposed Federal Wells:

The following procedure will apply when the operator submits an APD for drilling a new Federal well bore or horizontal leg into Federal minerals from a proposed multiple-well pad to be constructed entirely on non-Federal surface and minerals and the location of the pad **is** based on the downhole location of the Federal wells.

Situation 3 may apply if, for example:

- The Federal lease contains a No Surface Occupancy lease stipulation for the adjoining BLM land.
- It is apparent that the well pad will be constructed close to the boundary of the Federal minerals to shorten the drilling distance to the Federal minerals.
- The operator has stated that the well location was selected to improve access to the Federal minerals.

If the field manager concludes that the location of the proposed well pad is based on the proposed downhole location of the proposed Federal wells,[1] the following requirements will apply:

- The NEPA, ESA, and NHPA analyses must consider the direct, indirect, and cumulative effects of siting and construction of the well pad and adjacent access road, utilities, pipelines, and other related activities, such as drilling, operation, and plugging of the wells, as well as reclamation of the site. Unlike in situations 1 and 2, above, in this situation the location of the well pad is an indirect effect of the approval of the Federal APD.
- For NEPA compliance, while all of the effects in the preceding bullet must be considered, the only adjacent infrastructure to be fully analyzed are those facilities that differ in type, size, or location from those that would have been constructed to service a well pad in a location that a reasonable operator would have chosen to reach only non-Federal minerals because the effects of the infrastructure are only analyzed as an indirect effect of the Federal wells. Note that the NEPA does not give the BLM substantive authority, and the BLM lacks authority under the Federal Land Policy and Management Act and the Mineral Leasing Act to require mitigation of surface impacts on non-Federal land or to enforce agreements between the surface owner and the operator. An operator could, however, voluntarily commit to undertake mitigation of impacts on non-Federal lands, in which case BLM could inspect for compliance with the terms of the approved permit. Mitigation required in state or local permits would be considered an obligation of the operator enforceable by the government involved.
- For the NHPA analysis, the field manager would apply the rule of reason principles described in BLM Manual 8140.06D to determine the scope of the BLM's responsibility for inventory, evaluation, and protection. If there might be an effect on a listed or eligible property, the field manager must comply with the consultation requirements of Section 106 of the NHPA, including resolution of adverse effects through mitigation, as appropriate.
- For the ESA analysis, the field manager will determine whether additional information is required, such as a wildlife survey, or whether the ESA analysis can proceed with the existing information. If approving the Federal APD may affect a listed species or critical habitat, the field manager will comply with the ESA section 7 regulations and may address any adverse effects through avoidance or minimization procedures, such as seasonal restrictions on drilling activity. (See BLM Manual section 6840).

Timeframe: Implement immediately.

Background: Application of directional/horizontal drilling technology is increasing. The BLM strongly supports this environmental Best Management Practice as a means of providing substantial reductions in surface disturbance and overall impacts from oil and gas development.

These policy clarifications do not reflect a change in overall policy but are designed to eliminate unnecessary permitting and review requirements and inconsistencies where the BLM has a limited authority. These clarifications also reduce the cumulative environmental impacts within oil or gas fields by encouraging the use of

multi-well pads and directional and horizontal drilling.

Budget Impact: This IM may result in minor cost savings when processing APDs for drilling into Federal minerals from non-Federal surface and non-Federal minerals.

Manual/Handbook Sections Affected: None. The BLM shall continue to follow existing policy on compliance with NEPA, NHPA, and ESA, including the 8100 manual series, H-8120-1 General Procedural Guidance for Native American Consultation, and H-1790-1 National Environmental Policy Act.

Coordination: This IM was coordinated with the Department of the Interior; Office of the Solicitor; BLM State Offices; and the BLM Washington Office Divisions of Fluid Minerals; Fish, Wildlife, and Plant Conservation; **Decision Support, Planning and NEPA**; and Cultural, Paleontological Resources, and Tribal Consultation.

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Signed by:
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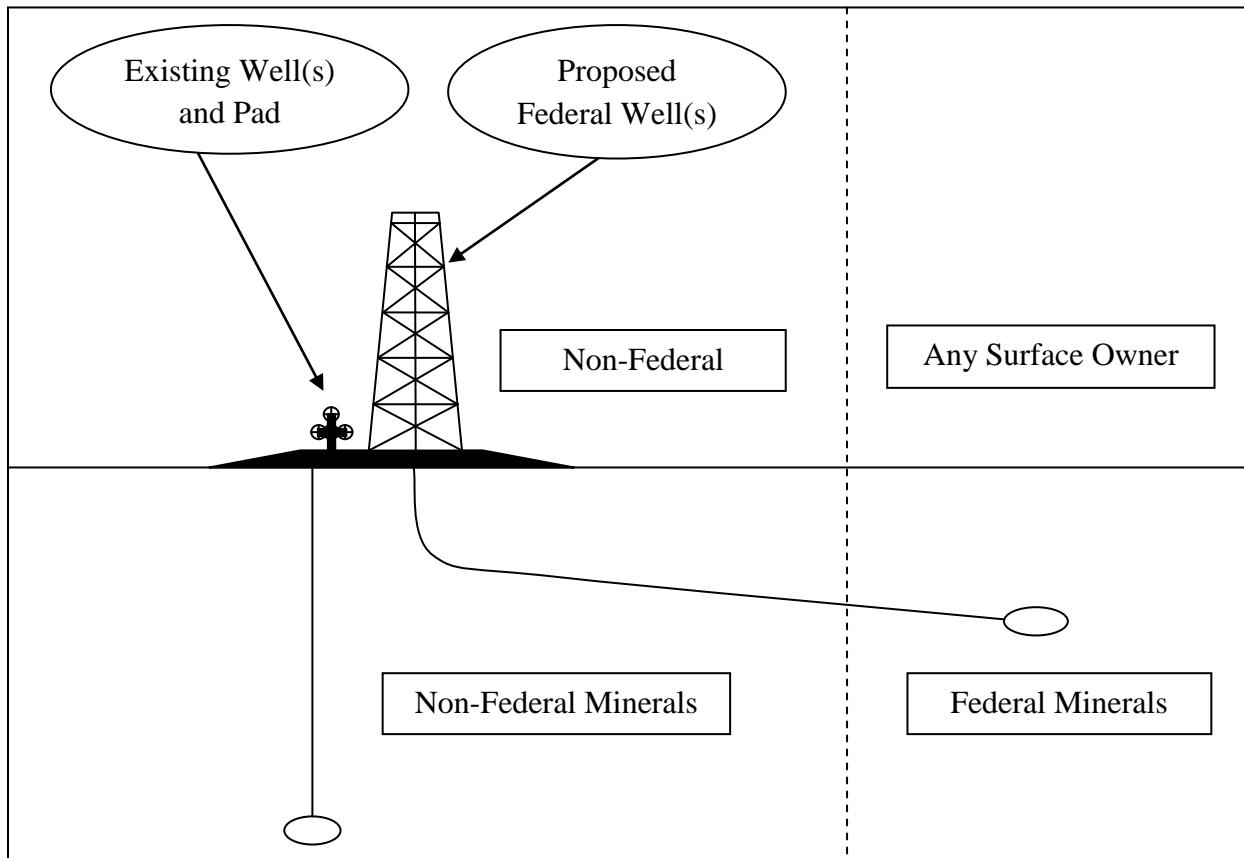
1 Attachment

[1 - Drilling Situations \(3 pp\)](#)

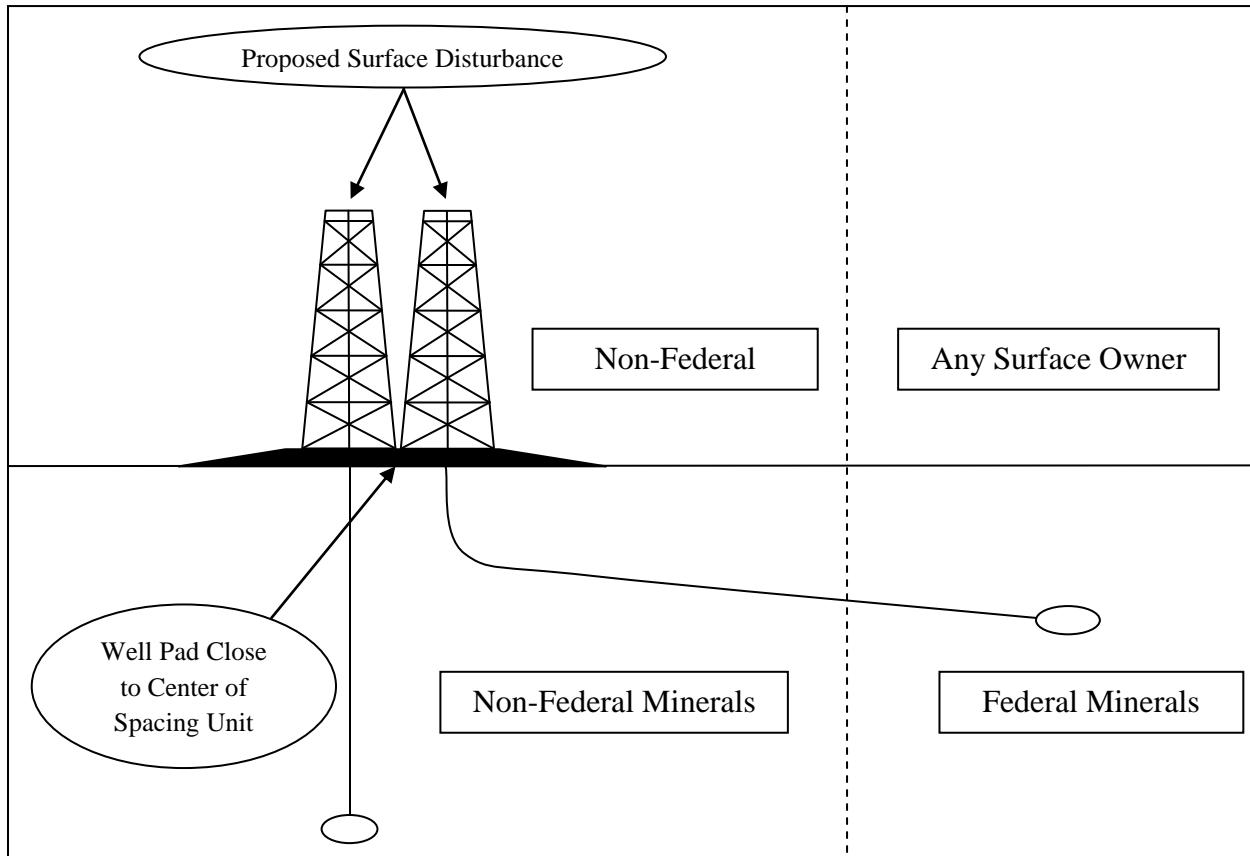
[1] The analysis in situation 3 would apply in large part to a single-well pad on non-Federal surface/non-Federal minerals proposed to drill into Federal minerals, or to a multiple-well pad from which all wells were to drill into Federal minerals. The difference would be that the effects of approving the APD would not be measured against those of a hypothetical non-Federal well pad and infrastructure.

Drilling Situations 1 – 3

Situation 1: Pre-existing Surface Well Pad and Access Road



Situation 2: Proposed Surface Well Pad Where Surface Location is Not Determined by Access to the Federal Oil and Gas



Situation 3: Proposed Surface Well Pad Where Surface Location is Determined by Downhole Location of Proposed Federal Wells

