

Amended Memorandum of Understanding
between
the Colorado and New Mexico
Bureau of Land Management
and
the New Mexico Oil Conservation Division regarding

WELL SPACING ON INDIAN LANDS

A. Purpose and Objectives

The federal courts and the Interior Board of Land Appeals have held that the Bureau of Land Management (BLM) has jurisdiction and must make independent decisions in setting oil and gas well spacing on lands which are held in trust by the United States for Tribes, individual members of a Tribe, or Pueblos. In these matters, the BLM will make the final decision governing operations on Indian lands within the exterior boundaries of New Mexico. The New Mexico Oil Conservation Division (NMOCD) of the State of New Mexico Energy, Minerals and Natural Resources Department is also granted regulatory authority over certain lands within New Mexico. Oil and gas operations occur on adjacent Indian and non-Indian lands and it is important that both agencies provide Indian landowners, lessees, and operators with clear policy and procedures consistent with their respective regulatory responsibilities. We believe it is important to formalize our working relationship, as well as define each agency's role and responsibilities.

This Memorandum of Understanding (MOU) will establish a procedure where the BLM utilizes the existing oil and gas hearing processes of the NMOCD for the purposes of notification, public hearing, and receiving recommendations from all appropriate parties for matters related to spacing of Indian lands. An interested Tribe or Pueblo may appear at a hearing conducted by NMOCD relating to its land, but nothing in this MOU shall be construed to require the Tribe or Pueblo to appear at the hearing in order to present the Tribe's or Pueblo's views on the matter. NMOCD has declined reimbursement for the services provided above.

The objectives of the MOU are to 1) avoid duplication of effort by the responsible agencies, 2) clearly define jurisdictional authority, 3) provide the lessees and operators with a familiar and effective method of obtaining necessary orders in a timely manner, and 4) carry out the trust obligations of the BLM to Indian landowners.

B. Authorities

The authorities for this MOU are the Mineral Leasing Act of 1920; the Indian Mineral Development Act of 1982; the Allotted Indian Land Leasing Act of 1909, the Unallotted Indian Land Leasing Act of 1938; the Interior Department Secretarial Order No. 3087, as amended; the New Mexico Revised Statutes, including the New Mexico Oil and Gas Act; and parts 25 CFR

211, 212 and 225, and 43 CFR 3160. This MOU shall not require commitments of manpower or funds beyond the legal authority or appropriation of either party.

C. Definitions

1. For purposes of this MOU, the term "Indian lands" shall mean any mineral estate or mineral resources of an Indian Tribe or Pueblo or an Indian allottee, which are held in Trust by the United States or which are subject to Federal restrictions against alienation.
2. The "administrative record" will include all pleadings, papers, documents or testimony, any input from the Tribe or allottee, and BLM's own technical reviews, presented or submitted at a hearing before the NMOCD.
3. "Mixed jurisdictional lands" shall mean those lands, under a single application, including Indian and non-Indian lands, where both the NMOCD and the New Mexico or Colorado BLM would have jurisdiction over their respective areas.
4. "Oil and gas spacing matters" shall mean the setting of oil and gas well spacing, approval of exception locations for wells, approval of non-standard spacing units and compulsory pooling.
5. "BLM" shall mean the Colorado or New Mexico Bureau of Land Management.

D. Responsibilities

The Colorado BLM, New Mexico BLM and the NMOCD agree as follows:

1. Designated Official

Each party shall appoint a designated official to receive notices hereunder and to facilitate communication and coordination in implementing this agreement.

CO BLM contact: Area Manager
 San Juan Resource Area
 15 Burnett Court
 Durango, Colorado 81301
 (970) 247-4082

For all Ute Mountain Ute Indian Tribal lands located in New Mexico, excluding the Horseshoe Gallup and La Plata Mancos Units.

NM BLM Contact: Deputy State Director
Resource Planning, Use and Protection
New Mexico State Office
P.O. Box 27115
Santa Fe, New Mexico 87502-0115
(505) 438-7450

For all Navajo and Jicarilla Apache Tribal lands located in New Mexico; the Horseshoe Gallup and La Plata Mancos Units; all Navajo allottee land; or any Pueblo lands within the boundaries of the State of New Mexico.

NMOCD contact: Director
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505
(505) 827-7132

2. Coordination Meetings

Coordination meetings will be held as needed to discuss orders, policies, and procedures. This MOU will be reviewed and updated, if necessary, at each coordination meeting. Prior to the meeting, each agency's respective staffs will identify issues that will be discussed/resolved at the meeting. An agenda will be prepared and distributed prior to the meeting. Other agency staff and/or interested parties may be included in these meetings as agreed upon by the agencies. Any decisions and agreements reached as a result of these discussions will be addenda to this MOU, as appropriate.

3. Procedural Format

a. BLM Adoption of Certain NMOCD Rules and Regulations

Because of its familiarity to the oil and gas industry, the existing NMOCD hearing process will be utilized as a convenience to the industry and to avoid duplication of effort. The BLM will adopt, as standard practice for Indian lands, the state-wide well spacing and set-back requirements set forth in the NMOCD's Rules and Regulations, as amended.

b. Notification

In the interest of customer service, it is agreed that all matters that require a hearing involving Indian lands shall initially be submitted to the NMOCD. Operators shall be strongly encouraged to provide information on a proposed hearing to the BLM, tribes and allottees prior to the hearing. This information should include as much supporting information evidence as possible and will allow the BLM to have a meaningful consultation with the Tribe or allottee prior to the hearing. At a minimum, this information should include the hearing notice and supporting technical evidence. Operators shall be also encouraged to meet and discuss the matter directly with the Tribe or allottees. Submission of this information will reduce the time it takes for BLM to issue its final order. The NMOCD shall furnish the designated officials referred to in D.1. with notices of all requests for hearings. If the BLM does not concur with a proposed application, it will notify the NMOCD in writing at least three working days prior to the hearing or by appearance at the hearing. Failure to notify NMOCD in advance of a hearing or failure to appear at a hearing shall not relieve BLM from its obligation and authority to make an independent evaluation and order on the application.

c. Hearing Process

The NMOCD shall conduct hearings involving Indian lands, and will receive evidence and hear testimony relating to the applications. The NMOCD will continue its customary role of presiding over the hearing and asking questions of the witnesses. The BLM may attend the hearing and actively participate in the hearing process by asking questions of the witnesses, when applicable, as well as initiating motions. Pleadings, papers, documents, or testimony from any hearing before the NMOCD shall constitute the administrative record upon which BLM will base its orders. The Tribe or allottee will be granted an opportunity to participate as a party at the hearing, submit evidence and information for consideration, and express its views. Input from the Tribe or allottee as well as BLM's own technical work presented or submitted to the NMOCD will become a part of the administrative record. The complete administrative record of the hearing before the OCD will be the basis for approval or disapproval of an application involving Indian lands.

d. Orders

The NMOCD will not issue final binding orders relating to matters on Indian lands. The NMOCD will issue a draft order, within 45 days of the hearing, for the purpose of consideration by the BLM in making its decision. The BLM will review the draft order and make an independent evaluation of the evidence presented at the hearing and all other information in the administrative record. The BLM will issue an order within 30 days after issuance of the NMOCD draft order. However, this may be delayed up to an additional 60 days if Tribal or

allottee consultations do not occur prior to the hearing. The BLM will notify the applicant, the NMOCD, and the Tribe whose Indian land is at issue of the BLM's orders and decisions. BLM's Orders will be consecutively numbered by state.

i. Consensus

Should the BLM concur with the draft NMOCD decision, it will issue a concurrence letter and enclose a separate signature page to be attached to the NMOCD Order.

ii. Non-consensus

Should the BLM not concur with the draft NMOCD decision, it will notify the NMOCD of its concerns and BLM and NMOCD will try to reach consensus. If the two agencies cannot reach consensus on a decision, BLM will take the NMOCD decision under advisement and issue its own Order with respect to Indian lands. In addition to the decision, the BLM Order will set forth: (1) the differences between the BLM and NMOCD orders, (2) the reasoning behind those differences, and (3) why the decision is consistent with the BLM's trust responsibilities.

e. Administrative Approvals

Any application involving oil and gas spacing matters which is subject to administrative approval by NMOCD will follow the Order issuance process outlined above in D.3.d.

f. Pre-existing Orders

Consistent with the terms of this MOU, all existing decisions of the NMOCD involving Indian lands (excluding those orders dealt with by BLM in Ute Mountain Ute Order No.1 and Ute Mountain Ute Order No. 2), will be relied on by the BLM and will remain in effect. This is subject to the right of the Colorado or New Mexico BLM to request that any specific orders be reviewed, rescinded or modified, or unless modified or superseded by a later BLM order, and subject to the right of an Indian landowner to challenge such decisions.

4. Appeals

Any interested party shall have the same opportunity to appeal or challenge the BLM Order to the Colorado or New Mexico State Director, as appropriate, through the State Director Review (SDR) process outlined in 43 CFR 3165.3.

Any party adversely affected by the SDR decision may then appeal to the Interior Board of Land Appeals (IBLA) as provided in 43 CFR 3165.4.

a. Solely Indian Lands

Matters where only Indian lands are involved will be reviewed in accordance with BLM's established SDR procedures. The NMOCD would not conduct a hearing de novo in recognition of BLM's jurisdiction.

b. Mixed Jurisdictional Lands

Any adversely affected party may request a review:

1) Where BLM will use the NMOCD hearing de novo process as the forum for the SDR review. This option may be preferred where the adversely affected party wants a review of both the NMOCD and BLM Orders, if differing orders have been issued; or

2) Where review will be in accordance with established SDR procedures. This SDR will only address Indian lands.

E. Special Provisions

1. Records

Each agency will provide public access in accordance with its own rules. For its purposes, BLM will keep a copy of the administrative record.

2. Information Sharing

Each agency will provide the other with courtesy copies of all rule and regulation changes and Instruction Memoranda that deal with common or pertinent issues.

F. Administration

This MOU shall become effective upon the date of execution by the last signatory party.

This MOU may be amended by mutual consent of all parties.

This MOU will expire 5 years from the date of execution by the last signatory party.

Withdrawal from this MOU may be effected by any party upon 180 days written notice to the other parties. Withdrawal by either the Colorado or New Mexico BLM will not terminate the agreement with respect to the remaining parties. Termination of this MOU may be effected at any time by mutual written consent of the parties.

State of New Mexico
New Mexico Energy Minerals and
Natural Resources Department

United States Department of Interior
Bureau of Land Management
Colorado State Office

By
Department Secretary
Title

Date

By

Title

Date

United States Department of Interior
Bureau of Land Management
New Mexico State Office

By

Title

Date