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**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 2, 2005.

**Wayne Eddins,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

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**BILLING CODE 4210-72-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT-030-05-1610-PH-241A]

#### Notice of Resource Advisory Committee Meeting

**AGENCY:** Grand Staircase-Escalante National Monument (GSENM), Bureau of Land Management (BLM), Department of the Interior.

**ACTION:** Notice of Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) meeting.

**SUMMARY:** Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) will meet as indicated below.

**DATES:** Two days of meetings are scheduled for June 28-29, 2005, at the Escalante Interagency Visitor Center, Conference Room, 755 W. Main Street, Escalante, UT.

**FOR FURTHER INFORMATION CONTACT:** Contact Larry Crutchfield, Public Affairs Officer, GSENM Headquarters Office, 190 East Center, Kanab, Utah 84741; phone (435) 644-4310, or e-mail [larry\\_crutchfield@blm.gov](mailto:larry_crutchfield@blm.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the GSENMAC will meet on June 28 and 29, 2005, in Escalante, Utah. The meetings will be held at the Escalante Interagency Visitor Center, 755 W. Main Street, Escalante, Utah. The meeting on June 28 will begin at 9:30 a.m. and conclude at 6:30 p.m.; the meeting on June 29 will begin at 8 a.m. and conclude at 4 p.m.

The Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) was appointed by the Secretary of Interior on September 26, 2003, pursuant to the Monument Management Plan, the

Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA). As specified in the Monument Management Plan, the GSENMAC will have several primary tasks (1) Review evaluation reports produced by the Management Science Team and make recommendations on protocols and projects to meet overall objectives. (2) Review appropriate research proposals and make recommendations on project necessity and validity. (3) Make recommendations regarding allocation of research funds through review of research and project proposals as well as needs identified through the evaluation process above. (4) Could be consulted on issues such as protocols for specific projects.

Topics to be presented and discussed by the GSENMAC include: GSENMAC consultation requirements under the Monument Management Plan; Subcommittee reports (Rangeland Health, Science, and Marketing/Partnerships/Revenue); and 2006 Science Symposium.

Members of the public are welcome to address the council from 5:30 p.m. to 6:30 p.m., local time on June 28, 2005, in Escalante, Utah at the Escalante Interagency Visitor Center. Depending on the number of persons wishing to speak, a time limit could be established. Interested persons may make oral statements to the GSENMAC during this time or written statements may be submitted for the GSENMAC's consideration. Written statements can be sent to: Grand Staircase-Escalante National Monument, Attn.: Larry Crutchfield, 190 E. Center Street, Kanab, UT 84741. Information to be distributed to the GSENMAC is requested 10 days prior to the start of the GSENMAC meeting.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: June 3, 2005.

**Dave Hunsaker,**

*Grand Staircase-Escalante National Monument Manager.*

[FR Doc. 05-11451 Filed 6-8-05; 8:45 am]

**BILLING CODE 4310-DQ-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### Potential for Oil Shale Development; Call for Nominations—Oil Shale Research, Development and Demonstration (R, D & D) Program

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice.

**SUMMARY:** The BLM solicits the nomination of parcels to be leased for research, development and demonstration of oil shale recovery technologies in Colorado, Utah, and Wyoming.

**DATES:** Nominations for oil shale research, development and demonstration (R, D & D) leases can be made June 9, 2005 through September 7, 2005.

**ADDRESSES:** Please send nominations to the BLM state director for the state in which the parcel you are nominating is located: Ron Wenker, State Director, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, 80215-7076; Sally Wisely, State Director, BLM, Utah State Office, 324 South State Street, Suite 301, P.O. Box 45155, Salt Lake City, Utah, 84145-0155; Bob Bennett, State Director, BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003.

**FOR FURTHER INFORMATION CONTACT:** Jim Edwards, BLM, Colorado State Office, 303-239-3773; Jim Kohler, BLM, Utah State Office, 801-539-4037; Phil Perlewitz, BLM, Wyoming State Office, 307-775-6144.

**SUPPLEMENTARY INFORMATION:** BLM is initiating a demonstration project under which small tracts may be leased for oil shale research, development and demonstration, pursuant to BLM's authority to lease Federal lands for oil shale development under section 21 of the Mineral Leasing Act, 30 U.S.C. 241.

The United States holds significant oil shale resources, primarily within the Green River Formation in Colorado, Utah and Wyoming. These oil shale resources underlie a total area of 16,000 square miles, which represents the largest known concentration of oil shale in the world. Federal lands comprise roughly 72% of the total surface oil shale acreage and 82% of the oil shale resources in the Green River Formation.

For a considerable time, some have believed that oil shale has the potential to be a major source of domestic energy production. BLM has considered the merits of working to promote the

development of oil shale resources on public lands.

In 2003, BLM established its own Oil Shale Task Force. The Oil Shale Task Force was established to address: (1) Access to unconventional energy resources (such as oil shale) on public lands; (2) impediments to oil shale development on public lands; and (3) industry interest in research and development and commercial opportunities on public lands; and (4) Secretarial options to capitalize on the opportunities.

By **Federal Register** notice, 69 FR 67935–67938 (November 22, 2004), the Bureau of Land Management requested comments on a proposed draft oil shale research and development lease form. The comment period was initially to end December 22, 2004, but was extended to January 31, 2005. Comments were received from 32 entities, and BLM has reviewed the comments it received. The comments were incorporated, as appropriate, into the final oil shale research and development lease form which is attached as Appendix A. The comments and BLM's responses are summarized in Appendix B.

The BLM is soliciting for nomination parcels to be leased for research, development and demonstration of oil shale recovery technologies. The BLM has concluded that initiating steps to help facilitate oil shale research and development efforts is worthwhile.

The BLM intends to initiate a phased or staged approach to oil shale development. The first step, which BLM is taking today, is to develop a research, development and demonstration leasing program. BLM believes this effort will significantly enhance the collective knowledge regarding the viability of innovative technologies for oil shale development on a commercial scale. The second step BLM intends to initiate is to develop a regulatory framework for a commercial oil shale leasing program to ensure that any commercial development of oil shale on BLM lands is both environmentally and fiscally responsible.

The BLM intends to ensure that a commercial oil shale development program demands rigorous technological and environmental oversight, requires the best available practices to minimize impacts, and ensures that states and local communities have the opportunity to be involved in the development of a commercial program.

By initiating a research, development and demonstration leasing process, the BLM can provide itself, state and local governments, and the public, with

important information that can be utilized as BLM works with communities, states and other Federal agencies to develop strategies for managing any environmental effects and enhancing community infrastructure needed to support the orderly development of this vast resource. This will be valuable information for a rulemaking addressing commercial oil shale leasing.

The BLM opted for a staged program to ensure that lessons learned during the 1973/74 Oil Shale Prototype program are diligently applied to achieve desirable results. The Oil Shale Prototype program initiated a full commercial operation before the economic viability of the technologies of the time could be determined. The approach created expectations of an economic boom which never materialized. The Prototype Program impacted the communities in which the projects were located and left the Department with the responsibility for reclamation.

This initiative is designed to build on the experience of the 1973/74 Oil Shale Prototype. This program will be carefully staged, or phased, to ensure that the current oil shale extractive technologies are perfected to operate at economic and environmentally acceptable levels before expansion to commercial operations can be authorized on public lands. The BLM oil shale program design allows tracts of land up to 160 acres to be used to demonstrate the economic feasibility of today's technologies over a period of ten years. Given the capital intensive nature of the technologies involved, the timeline of development is very sensitive to variations in the price outlook for conventional oil. Furthermore, BLM believes that the time required is uncertain enough that it should entertain requests for an extension of time for up to five years where obvious significant progress has been made towards perfecting the technology during the primary period of ten years.

BLM believes that if the research and development efforts are sub-economic, the small research, development and demonstration projects will be more easily dismantled. Lands may be reclaimed with minimal adverse environmental impact. For states and local communities, a staged process can minimize social impact, because the projects would be small in size and scope.

By this notice, BLM is soliciting the nomination of parcels, not to exceed 160 acres, for the conduct of oil shale research, development and

demonstration. Applicants may also identify up to an additional contiguous 4960 acres which the applicant requests BLM to reserve for a preference right lease to be awarded following: (1) The demonstration that the applicant's technology tested in the original lease of up to 160 acres has the ability to produce shale oil in commercial quantities; (2) evaluation pursuant to the National Environmental Policy Act that concludes that commercial scale operations of the applicant's technology at that site does not pose environmental or social risks unacceptable to BLM; (3) provision of adequate bond to cover all costs associated with reclamation and abandonment of the expanded lease area; and (4) consultation with state and local governments on a strategy to mitigate socio-economic impacts, including but not limited to, the infrastructure to accommodate the required workforce.

Nominations will be reviewed by an interdisciplinary team. BLM will request the participation of a representative of each of the states of Colorado, Utah and Wyoming, as appropriate, as well as the Departments of Defense and Energy. The review will consider the potential of proposals to advance knowledge of effective technology, economic viability and the means of managing the environmental effects of oil shale development. BLM also would conduct NEPA analysis of the environmental effects of a proposal prior to the award of a research, development and demonstration lease. Depending on the quality of applications, and the potential environmental, social and economic conditions on the site or in the region associated with the proposal, BLM may award one or more leases in each of the states.

Lease nominations must at a minimum contain the following information:

(1) Name, address, and telephone number of the applicant, and the representative of the applicant who will be responsible for conducting the operational activities.

(2) Statement of qualifications to hold a mineral lease under the Mineral Leasing Act (MLA) of 1920. Qualification requirements can be found in 43 CFR Subpart 3502.

(3) Description of the lands, not to exceed 160 acres, in accordance with the instructions in 43 CFR 3110.5–2, together with any rights-of-way required to support the development of the oil shale research, development and demonstration lease.

(4) If requesting additional lands be reserved for a preference right lease,

such lands must be described, and must not (together with the lands described in paragraph 3 above) exceed 5120 acres.

(5) A narrative description of the proposed methodology for recovering oil from oil shale, including a description of all equipment and facilities needed to support the proposed technology.

(6) A narrative description of the results of laboratory and/or field tests of the proposed technology.

(7) A schedule of operations for the life of the project and proposed plan for processing, marketing and the delivery of the shale oil to the market.

(8) A map of existing land use authorizations on the nominated acreage.

(9) Estimated oil and/or oil shale resources within the nominated acreage boundary.

(10) The method of oil storage and/or spent oil shale disposal.

(11) A description of any interim environmental mitigation and reclamation.

(12) The method of final reclamation and abandonment and associated projected costs .

(13) Proof of investment capacity, and a description of the commitments of partners, if any.

(14) A statement from a surety qualified to furnish bonds to the United States government of the bond amount for which the applicant qualifies under the surety's underwriting criteria.

(15) A non-refundable application fee of \$2000.00

Applicants should prominently note any information submitted with their application that contains proprietary trade secrets the disclosure of which to the public would cause commercial or financial injury to its competitive position. BLM will protect the confidentiality of the information to the extent permitted by the Freedom of Information Act (FOIA). Any FOIA requests for such information will be handled in accordance with the regulations at 43 CFR 2.23.

The time required for NEPA analysis may differ depending on whether the application is for a tract that has previously been the subject of NEPA analysis, the method of oil shale or shale extraction and whether the application involves mining or in-place shale oil recovery. Accordingly some research, development and demonstration leases may be awarded prior to others.

Dated: May 19, 2005.

**Thomas P. Lonnie,**  
*Assistant Director, Minerals, Realty and Resource Protection.*

### **Appendix A—United States Department of the Interior, Bureau of Land Management, Oil Shale Research, Development and Demonstration (R, D & D) Lease**

This lease is entered into on \_\_\_\_\_, to be effective on \_\_\_\_\_ (the "Effective Date"), by the United States of America (the "Lessor"), acting through the Bureau of Land Management (hereinafter called the "Bureau"), of the Department of the Interior (the "Department"), and \_\_\_\_\_ (the "Lessee"), pursuant and subject to the provisions of the Mineral Leasing Act of February 25, 1920 as amended (30 U.S.C. 181–287), hereinafter called the "Act", more specifically section 21 of the Act (30 U.S.C. 241), and to the terms, conditions, and requirements (1) of all regulations promulgated by the Secretary of the Interior (the "Secretary") in 43 CFR Part 3160, including Onshore Oil and Gas Orders, and 43 CFR Part 3590, including revisions thereof hereafter promulgated by the Secretary (and not inconsistent with any specific provisions of this lease), all of which shall be, upon their effective date, incorporated in and, by reference, made a part of this lease. To the extent the provisions of this lease are inconsistent with the requirements of any regulation or order, the lease terms govern.

#### **Section 1. Definitions**

As used in this lease:

(a) "Authorized Officer" means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(b) "Commercial Quantities" means quantities sufficient to provide a positive return after all costs of production have been met, including the amortized costs of capital investment.

(c) "Leased Lands" means the lands described as follows: \_\_\_\_\_

(d) "Oil shale" means a fine-grained sedimentary rock containing: (1) organic matter which was derived chiefly from aquatic organisms or waxy spores or pollen grains, which is only slightly soluble in ordinary petroleum solvents, and of which a large proportion is distillable into synthetic petroleum, and (2) inorganic matter, which may contain other minerals. This term is applicable to any argillaceous, carbonate, or siliceous sedimentary rock which, through destructive distillation, will yield synthetic petroleum.

(e) "Preference lease area" means the area reserved for leasing during the term of this lease to which Lessee may earn a preference lease right. The preference lease area for this lease is described as follows: \_\_\_\_\_

(f) "Shale oil" means synthetic petroleum derived from the destructive distillation of oil shale.

#### **Section 2. Grant to Lessee**

The Lessee is hereby granted, subject to the terms of this lease, the exclusive right and

privilege to prospect for, drill, mine, extract, remove, beneficiate, concentrate, process and dispose of the oil shale and the products of oil shale contained within the Leased Lands. In accordance with plans of operation approved pursuant to section 8, the Lessee may utilize or dispose of all oil shale and oil shale products, together with the right to construct on the Leased Lands all such works, buildings, plants, structures, roads, power lines, and additional facilities as may be necessary or reasonably convenient for the mining, extraction, processing, and preparation of oil shale and oil shale products for market. The Lessee has the right to use so much of the surface of the Leased Lands as may reasonably be required in the exercise of the rights and privileges herein granted.

#### **Section 3. Lessor's Reserved Interests in the Leased Lands**

The Lessor reserves:

(a) The right to continue existing uses of the leased lands and the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands for uses that do not unreasonably interfere with operations of the Lessee under this lease.

(b) The right to permit for joint or several use, such easements or rights-of-way, including easements in tunnels or shafts upon, through, or in the Leased Lands, as may be necessary or appropriate to the working of the Leased Lands or other lands containing mineral deposits subject to the Act, and the treatment and shipment of the products thereof by or under authority of the Lessor, its lessees, or permittees, and for other public purposes. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of the Lessee.

#### **Section 4. Lease Term**

The lease is issued for a term of ten years with the option for an extension not to exceed five years upon demonstration to the satisfaction of the authorized officer that a process leading to production in commercial quantities is being diligently pursued, consistent with the schedule specified in the approved plan of operations. The lease is subject to conversion to a twenty-year lease under the conditions specified in section 23.

#### **Section 5. Rentals: Non-commercial Production**

The Lessee shall pay the Lessor the statutorily established annual rental in advance for each acre or fraction thereof during the continuance of the lease of \$.50. Rental is payable annually on or before the anniversary date of the lease. Rentals for any lease year shall be credited by the Lessor against any royalty payments for that lease year.

The failure to pay rental by the anniversary date shall be grounds for termination of the lease. Should the Lessee fail to pay the full amount by the anniversary date, BLM will notify the Lessee of this failure and provide you with a grace period of 15 days from the day you receive notice to make payment in full. Should no payments be received during the grace period, the lease shall terminate

without the need for further administrative proceedings.

#### **Section 6. Royalties**

(a) As long as the Lessee is not producing commercial quantities from the leasehold, as determined by the Lessor, the Lessor waives the requirement for royalty on any production.

(b) Lessee shall file with the proper office of Lessor, no later than 30 days after the effective date thereof, any contract or evidence of other arrangement for sale or disposal of production. At such times and in such form as Lessor may prescribe, Lessee shall furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

(c) Payments under this lease shall be subject to the regulations in 30 CFR Part 218, Subpart E.

#### **Section 7. Bonds**

(a) Prior to conducting operations on this lease, the Lessee shall provide a bond payable to the Secretary in the amount determined by the authorized officer, conditioned upon compliance with all terms and conditions of the lease and the plan of operations. This bond shall be of a type authorized by 43 CFR 3104.1 and must be sufficient to cover all costs associated with reclamation and abandonment activities. The authorized officer may require additional bond upon determining that it is necessary to assure full compliance for the operations conducted under this lease. The Lessee shall have the right to submit information to demonstrate that a lesser amount would be sufficient to remedy noncompliance and appeal the determination to the State Director.

(b) Upon request of the Lessee, the bond may be released as to all or any portion of the Leased Lands affected by exploration or mining operations, when the Lessor has determined that the Lessee has successfully met the reclamation requirements of the approved development plan and that operations have been carried out and completed with respect to these lands in accordance with the approved plan.

#### **Section 8. Plan of Operations**

(a) Prior to conducting operations on the Leased Lands, including exploration, the Lessee shall submit a plan of operations for review and approval by the authorized officer. This plan shall be submitted in accordance with the requirements of 43 CFR Part 3160 or 43 CFR Part 3590, depending on the nature of the proposed activity. It shall include a description of best management practices for interim environmental mitigation and reclamation.

(b) The authorized officer shall make the final determinations as to which regulations govern the proposed activity and notify the Lessee of any additional requirements. The authorized officer may condition the approval on reasonable modifications of the plan to assure protection of the environment.

(c) After plan approval, the Lessee must obtain the written approval of the authorized

officer for any change in the plan approved under subsection (a).

(d) The Lessee shall file annual reports describing progress toward the achievement of the goals of the demonstration project.

#### **Section 9. Operations on the Leased Lands**

(a) The Lessee shall conduct all operations under this lease in compliance with all applicable Federal, State and local statutes, regulations, and standards, including those pertaining to water quality, air quality, noise control, threatened and endangered species, historic preservation, and land reclamation, and orders of the authorized officer (written, or if oral, reduced to writing within ten days). The Lessee shall employ best management practices to minimize impacts to other resource values.

(b) The Lessee shall avoid, or, where avoidance is impracticable, minimize, and where practicable correct, hazards to the public health and safety related to its operations on the Leased Lands.

(c) Lessee shall carry on all operations in accordance with approved methods and practices as provided in the operating regulations designated as applicable under section 8 above and approved operations plan. Activities will be conducted in a manner that minimizes adverse impacts to the land, air, water, cultural, biological, visual, and other resources, including mineral deposits not leased herein, and other land uses and users.

(d) The Lessee shall comply with all applicable state and Federal laws.

#### **Section 10. Water Rights**

All water rights developed on the lease by the Lessee through operations on the Leased Lands shall immediately become the property of the Lessor. As long as the lease continues, the Lessee shall have the right to use those water rights free of charge for activities under the lease.

#### **Section 11. Development by In Situ Methods**

Where in situ methods are used for the production of shale oil, the Lessee shall not place any entry, well, or opening for such operations within 500 feet of the boundary line of the Leased Lands without the permission of, or unless directed by the authorized officer.

#### **Section 12. Inspection**

The Lessee shall permit any authorized officer or representative of the Lessor at any reasonable time:

(a) To inspect the Leased Lands and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to operations and surveys or investigations under this lease; and

(b) To copy and make extracts from any books and records pertaining to operations under this lease.

#### **Section 13. Monitoring, Reports, Maps, etc.**

(a) The Lessee shall submit to the Lessor in such form as the latter may prescribe, not more than 60 days after the end of each quarter of the lease year, a report covering that quarter which shall show the amount produced from the Lease by each method of

production used during the quarter, the character and quality thereof, the amount of products and by-products disposed of and price received therefor, and the amount in storage or held for sale, and such information concerning the generation of waste products or impacts to the environment specified in the Addendum to this lease. This report shall be certified by an agent(s) having personal knowledge of the facts who has been designated by the Lessee for that purpose.

(b) The Lessee shall prepare and furnish at such times and in such form as the Lessor may prescribe, maps, photographs, reports, statements and other documents required by 43 CFR Part 3160 or 3590, as appropriate.

(c) The Lessee shall conduct surveys and monitor environmental effects as specified in the Addendum to this lease.

#### **Section 14. Assignment**

The Lessee may assign any interest in this lease with the approval of the authorized officer, subject to the Assignor retaining liability for all obligations that accrued prior to the assignment and the provision of bond by the Assignee for all liabilities arising after the assignment. The Assignor shall maintain bond for liabilities arising in the period prior to the assignment, unless the assignee provides bond for the entire period of the lease.

#### **Section 15. Heirs and Successors in Interest**

Each obligation of this lease shall extend to and be binding upon, and every benefit shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

#### **Section 16. Relinquishment of lease**

The Lessee may relinquish in writing at any time all rights under this lease. Upon Lessor's acceptance of the relinquishment, Lessee shall be relieved of all future obligations under the lease. The Lessee shall promptly pay all royalties due and reclaim the relinquished acreage in accordance with the plan of operations.

#### **Section 17. Remedies in Case of Default**

If the Lessee fails to comply with applicable laws, regulations, or the terms, conditions, and stipulations of this lease and the noncompliance continues for a period of 30 days after service of notice thereof, this lease shall be subject to cancellation. The Lessor may (1) suspend operations until the required action is taken to correct noncompliance, or (2) institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in Section 31 of the Act (30 U.S.C. 188) and for forfeiture of any applicable bond. If the Lessee fails to take prompt and necessary steps to (a) prevent loss or damage to the mine, property, or premises, (b) prevent danger to the employees, or (c) avoid, minimize or, repair damage to the environment, the Lessor may enter the premises and take such measures as he may deem necessary to prevent, or correct the damaging, dangerous, or unsafe condition of the mine or any other facilities upon the Leased Lands. Those measures shall be at the expense of the Lessee.

**Section 18. Delivery of Premises in Case of Forfeiture**

(a) At such time as all or portions of this lease are returned to Lessor, the Lessee shall deliver to the Lessor the land leased, wells, underground support structures, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings and wells in condition for suspension or abandonment. Within 180 days thereof, Lessee shall remove from the premises all other structures, machinery, equipment, tools, and materials as required by the authorized officer. Any such structures remaining on the Leased Lands beyond the 180 days, or approved extension thereof, shall become the property of the Lessor. Lessee shall either remove all such property or shall continue to be liable for the cost of removal and disposal in the amount actually incurred by the Lessor.

(b) Lessee shall reclaim all lands which have been disturbed and dispose of all debris or solid wastes in an approved manner in accordance with the schedule established in the plan of operations and maintain bond coverage until such reclamation is complete.

**Section 19. Protection of Proprietary Information**

(a) This lease, and any activities thereunder, shall not be construed to grant a license, permit or other right of use or ownership to the Lessor, or any other person, of the patented processes, trade secrets, or other confidential or privileged technical information (hereafter in this section called "technical processes") of the Lessee or any other party whose technical processes are embodied in improvements on the Leased Lands or used in connection with the lease.

(b) Notwithstanding any other provision of this lease, the Lessor agrees that any technical processes obtained from the Lessee which are designated by the Lessee as confidential shall: (1) Not be disclosed to persons other than employees of the Federal Government having a need for such disclosures and (2) not be copied or reproduced in any manner. The Lessor further agrees this material may not be used in any manner that will violate their proprietary nature.

(c) Prior to any disclosure pursuant to a Freedom of Information Act (FOIA) request, the Bureau will notify the submitter of the specific information which it has initially determined to release and give it thirty (30) days to provide a justification for the nondisclosure of the information under exemption 4 or other relevant exemptions of FOIA. The submitter's justification should address in detail, pursuant to the procedures in 43 CFR 2.23, whether the information:

(1) Was submitted voluntarily and falls in a category of information that the submitter does not customarily release to the public; or  
(2) If the information was required to be submitted, how substantial competitive or other business harm would likely result from release.

If after reviewing the submitted information, BLM decides to release the information over the submitter's objections, it will notify the submitter that it intends to

release the information 10 workdays after the submitter's receipt of the notice.

**Section 20. Lessee's Liability to the Lessor**

(a) The Lessee shall be liable to the United States for any damage suffered by the United States in any way arising from or connected with Lessee's activities and operations conducted pursuant to this lease, except where damage is caused by employees or contractors of the United States acting within the scope of their authority or contract.

(b) The Lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with Lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the Lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

**Section 21. State Director Review and Appeals**

The Lessee shall have the right to request State Director Review and to appeal orders or decisions of the BLM under 43 CFR Subpart 3165.

**Section 22. Special Stipulations**

The special stipulations that are attached to and made a part of this lease are imposed upon the Lessee, and the Lessee's employees and agents. The failure or refusal to comply with these stipulations shall be deemed a failure of the Lessee to comply with the terms of the lease. The special stipulations may be revised or amended, in writing, by mutual consent of the Lessee and Lessor following appropriate notice to the public.

**Section 23. Conversion Rights.**

(a) Upon documenting to the satisfaction of the authorized officer that it has produced commercial quantities of shale oil from the lease, the Lessee has the exclusive right to convert the research and development lease acreage to a commercial lease and acquire any or all portions of the remaining preference lease area up to a total of 5,120 contiguous acres upon:

(1) Payment of a bonus based on the Fair Market Value of the lease, to be determined by the Lessor utilizing criteria to be developed through the rulemaking described in subsection (b) or other process for obtaining public input;

(2) Documentation of the Lessee's consultation with State and local officials to develop a plan for mitigating the socio-economic impacts of commercial development on communities and infrastructure;

(3) Provision of adequate bond to cover all costs associated with reclamation and abandonment of the expanded lease area; and

(4) BLM's determination, following analysis pursuant to the National Environmental Policy Act (NEPA), that commercial scale operations can be conducted, subject to mitigation measures to be specified in stipulations or regulations, without unacceptable environmental consequences.

(b) Such commercial lease shall contain terms consistent with regulations to be developed by the Secretary pursuant to section 21 of the Act and stipulations developed through appropriate NEPA analysis.

(c) Such commercial lease may be issued for a term of 20 years and so long thereafter as shale oil is produced from the Leased Lands in commercial quantities. Such commercial lease shall be subject to payment of rents and royalties to the Lessor at the established rates at the time of lease conversion, or at such reduced rate that the Lessee demonstrates is necessary to permit the economic development of the oil shale resource. The royalty shall be subject to the readjustment of lease terms at the end of the 20th lease year and each 20 year period thereafter.

**Section 24. Reimbursable Costs**

In applying for required approvals, the lessee under the oil shale research, development and demonstration, lease shall reimburse BLM for those costs itemized in Addendum B to this lease.

**Appendix B—Summary and Analysis of Comments on Oil Shale R&D Lease**

The BLM sought and received comments on the following issues related to a proposed lease form for oil shale R&D.

(1) What terms (duration, royalty, rental, acreage, diligence, option for additional acreage) should BLM include in the R&D lease to provide short-term incentives, and also encourage long-term commercial development;

(2) The adequacy of a 40-acre lease for a successful demonstration of oil shale technology;

(3) The methodology for conversion of an R&D lease to a commercial lease;

(4) The criteria to qualify a company or individual to acquire an R&D lease and what documentation should be required;

(5) The level of National Environmental Policy Act (NEPA) documentation that would be appropriate for R&D leasing; and

(6) The appropriate methodology for determining fair market value for conversion to a commercial lease.

A discussion of the comments and resultant changes in this republished final R&D form is as follows:

One of the major changes is that the acreage has been increased from 40 acres to 160 acres, as many of those submitting comments indicated that the 40 acres were not sufficient for successful R&D. The following section-by-section discussion follows the original format, which was published in the **Federal Register** on November 22, 2004. In addition, the R&D lease form contains clarifications and other minor changes mentioned in the comments.

**Lease Terms**

Comments were received on the various lease terms as follows:

**Duration**

Comments were received recommending an initial lease term ranging from 30 months to 20 years. Several comments recommended

that a term of 10 years would be appropriate. In light of the sensitivity of the necessary investment to fluctuations in projections of conventional oil prices, the BLM has determined that R&D leases will be issued for an initial term of 10 years with an option to extend for up to 5 additional years upon demonstration that a process leading to commercial production is being diligently pursued.

#### *Rental*

Comments received ranged from no rental to \$5.00 per acre for an R&D lease. Comments were also received regarding rental rates for commercial leases ranging from 50 cents to \$1000 per acre. However, the statute, 30 U.S.C. 241, specifically requires that rental be paid at the rate of 50 cents per acre per annum.

#### *Royalty*

Several comments stated that requiring royalty during the R&D phase would be counter-productive to the development of viable recovery technologies. Some comments suggested that royalty assessment during the R&D phase is a disincentive to research and development. Other comments suggested royalties be paid based on tons of rock mined or equivalent barrels of oil produced. After considering the potential capital and labor intensive nature of developing oil shale technology, it was concluded that royalty during the R, D & D phase could be a disincentive to the R, D and D efforts. As a result, it was decided that the R, D & D lease form waive the requirement for payment of royalty on any production until such time as the lessee is producing in commercial quantities.

#### *Diligence*

One comment suggested that the R&D lease should contain certain diligence requirements agreed to in the plan of operations but did not specify what these diligence requirements might be. Another comment stated that the diligence requirement should be very clear, requiring development in 10 years, similar to coal leases. Other comments suggested that R&D leases should not be held for speculation and one comment suggested that a lessee be required to submit a plan of operations to the BLM within 2 years of lease issuance and to commence onsite operations within 5 years of lease issuance.

BLM agrees that a plan of operations is needed. In addressing this issue, the revised lease form requires the applicant/lessee to submit a plan of operation. A plan of operation should clearly state what the lessee plans to do on the lease, a scheduling (timing) of activities, and describe the methodology for such activities. The submitted plan will be approved by the authorized officer, who will review the plan on an annual basis to ensure that the lessee is diligently executing the approved plan.

#### *Adequacy of the 40 Acre Lease*

Numerous comments stated that the 40 acre lease tract was too small, especially considering the provision requiring a 500 foot buffer from the lease line. Recommended lease acreage ranged from 40 acres to 1280

acres. In response to these comments, BLM has determined that the R&D lease acreage should be increased to 160 acres because this acreage is large enough to accommodate any R&D activity that can be envisioned, including the construction of ancillary surface facilities. The BLM also received comments concerning the need for defining specific acreage to be held available for award upon a successful demonstration. BLM has concluded that a successful R, D & D lease may be converted to a commercial lease of up to 5,120 acres, subject to the outcome of further NEPA review. To allow for efficient conversion to commercial operation, the BLM has determined that an R, D & D lease will include a reservation of additional acreage not to exceed 5,120 acres (preference rights area) to which the lease could be expanded if the R, D & D lease is successful and the environmental effects are acceptable.

#### *Methodology for Converting to a Commercial Lease*

A few comments suggested that R&D leases should not be converted to commercial leases, rather commercial leasing should be a new program based on competitive leasing. Some comments suggested that conversion should be based on nominations (by potential lessees), who should have the exclusive right to convert to a 5,120 acre commercial lease with bonus payments at the time of the lease conversion. Some comments asked that BLM specifically identify the "perimeter outline for a potential commercial lease" at the front end of the lease application process. One comment went on to say that failure to delineate a potential commercial lease "will unavoidably subject the R&D lease to unacceptable risk." A few comments suggested that lease conversion be done based on preferential rights without competitive bidding or assessments for fair market value.

After careful analyses of the comments, it was concluded that conversion should be based on the ability of the lessee to produce commercial quantities of shale oil from the lease, documentation of consultation with state and local governments on the mitigation of socio-economic impacts and BLM's determination, following NEPA analysis, that the environmental consequences of developing the preference right area are acceptable. Then, the lessee would have the exclusive right to convert the R, D & D lease acreage to a commercial lease and acquire any or all portions of the remaining preference lease area up to a total of 5,120 acres, as allowed under the Mineral Leasing Act (30 U.S.C. 241), upon payment of a bonus to be determined by the BLM using criteria developed through rulemaking or other means of securing public input. The definition of the term "preference lease area" has been added to the final lease form.

#### *Criteria To Qualify a Company or an Individual To Acquire an R&D Lease*

Some comments asked that the R&D leasing program not be used as a license for (land) speculation. One comment urged that the intent of the R&D program be made very clear by moving the last sentence on page A-2 of the **Federal Register** Notice to the top

of the page. The sentence reads as follows: "The intent of the leases is to further the development of technologies for the economic production of oil shale." Several comments suggested that a potential lessee should demonstrate or possess technological experience, research capability, financial strength, and the ability to satisfy bonding requirements. Some suggested that among the above requirements, that BLM should not issue leases to companies or individuals that cannot clean up their mess or that have a history of regulatory non-compliance. A few comments suggested that only applicants with environmentally friendly projects be considered.

BLM maintains that the essence of the oil shale R, D & D lease is to further the development of technologies for the economic production of oil shale, while minimizing negative impacts on the environment. Therefore, to address the issues raised in comments, the criteria for lessee qualification will be based on possession of technology and the experience to advance such technology, while protecting the environment (land, air, water, cultural, biological, visual, and other resources) and utilizing best management practices to minimize impacts during the life of the project.

Supporting documentation for applicant qualification should include but is not limited to the description of the technology to be used including the results of laboratory and/or field tests, a plan of operations, proof of investment capacity, and partnership(s).

#### *The Appropriate Level of the National Environmental Policy Act (NEPA) Analysis for R, D & D Leases*

A majority of the comments suggested that a regional programmatic environmental impact statement be completed before initiating a leasing action. Some comments expressed concerns that oil shale development may pose much greater impact to plants and wildlife than conventional oil and gas drilling. One comment suggested that the proposed R&D could negatively impact National Park lands in Colorado, Utah and Wyoming. Another comment suggested that "unlimited water use for leasing activities" could result in water depletion, which could affect four endangered Colorado River fish. A few comments suggested that the existing Resource Management Plans (RMPs) should be sufficient for R&D leasing.

BLM has determined that, given the small scale of the leases to be awarded, site-specific NEPA analyses would be more appropriate than a regional programmatic environmental impact statement (EIS) document. One of the principal reasons to offer small research and development leases before issuing commercial leases for oil shale is to obtain a better understanding of the environmental effects of the new technologies and the effectiveness of various mitigation measures. The complexity of the analysis required for the R&D lease will depend on the location, the type of project proposed and the type of technology to be used. The impacts to ground water and fisheries would certainly be among the issues to be analyzed. More intensive NEPA analysis will be performed before the

award of a preference right lease, using information generated during the R&D phase. Approval of conversion to a commercial lease will depend upon the Secretary's determination that a commercial operation on the acreage selected could be conducted in an environmentally acceptable manner. BLM is prepared to ensure adequate compliance with NEPA and the Endangered Species Act (ESA).

#### *Methodology for Determining Fair Market Value*

There were three comments relating to fair market value. One comment suggested that the BLM should determine fair market value by using the valuation system used by the Utah State Tax Commission. The second comment suggested that it could be counter productive to require payment of market value in transitioning from R&D to commercial lease. This comment went on to state that a fixed conversion fee should be set at the greater of \$1,000/acre or \$1.00 per barrel of oil equivalent produced and removed from the R&D site. The last comment suggested that the BLM "examine the carrying costs of comparable private oil shale lands and strive for parity with private land holders."

The issue of determining the Fair Market Value to be paid at conversion is a complex one. Accordingly, BLM has decided it should be addressed later in a rulemaking or other public process.

#### *Other Comments*

#### **Section 10—Water Rights**

Several comments suggested that the section (Section 10) on water rights should be rewritten for clarity. Some expressed concern that the language on water rights could be construed to mean that water rights development off the Leased Lands will automatically become the property of the lessor upon termination of the lease. One comment suggested that the lessor should reimburse the lessee, at a fair market value, for costs associated with the development of the water rights.

The language on water rights has been rewritten to clarify that only water rights developed on the lease will be relinquished by the lessee upon termination of the lease.

#### *Research Parks*

A few comments suggested the idea of research parks, which "would be best operated on the Ua/Ub in Utah or the Anvil Points in Colorado." A comment suggested that rather than conventional leasing, a better approach may be to utilize "government land as a technology proof test center." One of the comments suggested that BLM make Ua/Ub and Anvil Points sites available as "research parks," because some level of infrastructure exist on these sites. However, these comments did not elaborate on the idea or give a framework under which the idea could be feasible in advancing the course of oil shale extraction, associated technology and subsequent commercial operation. One of the comments cites the relationship between the Canadian oil sands industry and the provincial and federal governments as a possible model. Again, the comment did not

explain how the relationship informs the BLM project.

Some comments were in opposition to the idea of Research Parks. They believe that it is an idea that offers no protection to proprietary trade data, and lacks equitable accountability for environmental responsibilities.

Anvil Point is currently undergoing reclamation at great expense. The Utah facility is currently under a closure order while issues relating to the buildup of methane are resolved. Accordingly, at this time, BLM is unwilling to assume the liability for any additional reclamation costs or environmental risks which would be associated with its operation of these sites as public facilities. Any further use should be dependent on the willingness of bonded private entities to accept the responsibility for any additional liabilities.

#### *Bonding*

A majority of the comments suggested that the criteria for awarding leases should include a requirement for a potential lessee to demonstrate, in advance, the ability to obtain a sufficient reclamation bond. One comment suggested that the bond amount be set at \$20,000,000. A comment suggested that oil shale bonding should be structured like the oil and gas bonds. Another suggested that any bond posted for "reclamation performance" should be made payable to the state regulatory authority where the project is located in addition to the lessor, BLM.

After a thorough review of the bonding comments, BLM determined that the existing language in the draft form (under Section 7—Bonds) is an appropriate mechanism to ensure adequate bonding for the R, D & D leases. The draft language states that the "bond shall be of a type authorized by 43 CFR 3104.1 and must be sufficient to cover all costs associated with reclamation and abandonment activities." It was concluded that the sufficiency of a bond will be best determined by an authorized officer.

#### **Section 11—Development by In Situ Methods**

##### *Fracture Length*

One comment questioned "how to either prove or enforce the limits of fracturing." In response to this issue, the phrase "nor shall induced fracture extend to within 100 feet from the boundary line" has been deleted.

##### *500 Feet Perimeter Limit*

Some comments suggested that the requirement that "the lessee shall not place any entry, well, or opening for such operations within 500 feet of the boundary line of the Leased Lands" be modified. One comment stated that the limitation should be eliminated, because it reduces the effective R & D area to approximately 2.35 acres. This requirement has been addressed by increasing the size of the R, D & D lease to 160 acres, while retaining the 500 foot perimeter to protect against removal of resources associated with other properties.

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## **INTERNATIONAL TRADE COMMISSION**

[Investigation No. 337-TA-518]

### **In the Matter of Certain Ear Protection Devices; Notice of Commission Issuance of a Limited Exclusion Order and a Cease and Desist Order Against a Respondent Found in Default; Termination of Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order against a respondent found in default in the above-captioned investigation, and has terminated the investigation.

#### **FOR FURTHER INFORMATION CONTACT:**

Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3041. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on August 6, 2004, based on an amended complaint filed by 180s, Inc. and 180s, LLC of Baltimore, Maryland, 69 FR 47955-56. The amended complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ear protection devices by reason of infringement of claims 1, 3, 13, 17-19, and 21-22 of U.S. Patent No. 5,835,609. The complaint named nine respondents: Ningbo Electric and Consumer Goods, Import & Export Corp. (Ningbo) of China; Vollmacht Enterprise Co., Ltd. (Vollmacht) of Taiwan; March Trading of New York, NY; Alicia International,