

4.0 ADDITIONAL FEDERAL LAND ACCESS ISSUES

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

These issues can directly or indirectly impact Federal land accessibility for oil and gas development. Tables 4-1 through 4-11 present office-specific issues that were recorded from discussions with BLM and USDA-FS staff during field visits. Average APD processing time was calculated for each office using input from the offices supplemented by an analysis of BLM's Automated Fluid Minerals Support System (AFMSS).¹

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

Table 4-2. Access Issues, Paradox/San Juan Study Area (Utah)

Table 4-3. Access Issues, Paradox/San Juan Study Area (New Mexico and Colorado)

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

Table 4-5. Access Issues, Powder River Basin Study Area

Table 4-6. Access Issues, Wyoming Thrust Belt Study Area

Table 4-7. Access Issues, Greater Green River Basin Study Area

Table 4-8. Access Issues, Denver Basin Study Area

Table 4-9. Access Issues, Florida Peninsula Study Area

Table 4-10. Access Issues, Black Warrior Basin Study Area

Table 4-11. Access Issues, Appalachian Basin Study Area

4.1 ISSUES DIRECTLY IMPACTING ACCESS

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

NEPA is embedded into the fabric of Federal land management decision-making and has become the most important procedural public land management statute because it requires agencies to comply with its processes in all situations where major actions are

¹ These tables include only offices that were visited or specifically contacted during EPCA Phase I and Phase II data collection. Not all offices responded.

contemplated. When an activity or action is proposed on Federal lands, an interdisciplinary review of the environmental effects of the proposal is conducted and made available to citizens and public officials. The review can take one of four forms:

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

In its 2003 report to the Council on Environmental Quality, the NEPA Task Force published an assessment of NEPA,² stating that “The term ‘analysis paralysis’ is used to address a broad range of concerns about inefficiencies such as agency specific procedural requirements, project priority setting, project management, and Federal consultation and coordination requirements. Many respondents are concerned that the development of these analyses and documents takes too long and results in documentation that is excessive in light of the significance of the actions evaluated.”

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

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

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

² See the website <http://ceq.eh.doe.gov/ntf/report/finalreport.pdf> for the “Modernizing NEPA Implementation” report.

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

Based on the NPC 2003 natural gas study, to conduct wildlife, cultural, and other surveys related to Federal oil and gas permitting costs between \$21,000 and \$330,000 and causes a delay of 3 to 26 months per exploration well. Per-well survey costs and delays for development wells range from \$18,000 to \$21,000 and 2 to 32 months respectively.

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

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

Federal agencies are responsible for managing wildlife habitat, while state governments manage the wildlife itself. In many areas, some habitat has not yet been mapped. This can become an added delay for oil and gas development, if habitat information is required before leasing and permitting can proceed. Habitat for candidate species has been generally withheld from oil and gas leasing by Federal agencies during a consideration period of up to 2½ years.

Inventoried Roadless Areas. A total of 8.4 million acres of National Forest Inventoried Roadless Areas (IRAs) exists within the boundaries of the Phase II study areas. Forest Service representatives recognize the complexity surrounding the issue of IRAs. In July 2004, the Forest Service published a proposed rule to revise the Roadless Area Conservation Rule published in January 2001, which had been struck down in July 2003 by the Federal District Court for the District of Wyoming.

The final roadless rule was published in May 2005. The rule allows governors to petition the Secretary of Agriculture to develop regulations to manage roadless areas in order to meet specific needs within each state. USDA-FS will accept state petitions from governors for 18 months after the effective date of the final rule. During the state-petitioning process, the Forest Service will continue to maintain interim measures to conserve inventoried roadless areas.

In spite of the controversy surrounding the issue, leasing is occurring in some roadless areas. Leases in various forests within IRAs are issued with the caveat to industry that

the disposition of roadless areas is unresolved and that the areas under lease may have to remain roadless.

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

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

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

4.2 ISSUES INDIRECTLY IMPACTING ACCESS

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

Air Quality. Air quality can be a contentious issue in Rocky Mountain basins such as the Greater Green River Basin. Increasingly, air quality issues are being raised, especially in Utah.

Staffing. Workload requirements are increasing and the BLM is facing challenges with respect to the timely processing of APDs, energy-related rights of ways, and monitoring compliance. The number of APDs received increased from nearly 4000 in FY 2000 to over 8000 in FY 2005. Recruitment and retention of professional oil and gas staff is challenging.

Section 365 of EPOA 2005 requires the Secretary of the Interior to establish a Federal Permit Streamlining Pilot Project to improve Federal oil and gas permit coordination. A Memorandum of Understanding establishing staffing needs and funding protocols for the pilot offices was signed on October 25, 2005, by the Department of Interior, Department of Agriculture, Environmental Protection Agency, and the Army Corps of

Engineers. The seven pilot offices (Rawlins and Buffalo, Wyoming; Miles City, Montana; Farmington and Carlsbad, New Mexico; Grand Junction/Glenwood Springs, Colorado; and Vernal, Utah) have been created.

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

Conflicts between Mineral and CBNG Developers. In the Powder River Basin, conflicts can occur between coal mining operators and coalbed natural gas producers. It is the policy of the BLM to encourage oil and gas and coal companies to resolve conflicts between themselves; when requested, the BLM will assist in facilitating agreements between the companies. The BLM will also exercise authority provided in the leases, applicable statutes, and regulations to manage federal mineral development in the public's best interest.

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

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

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

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