

H-3109-1 - Leasing Under Special Acts

1. Explanation of Material Transmitted: This release transmits a revised Handbook 3109-1 that contains guidance and procedures for processing Federal oil and gas leases and compensatory royalty agreements under the Act of May 21, 1930, involving the leasing on certain rights-of-way and easements, and for the leasing of the oil and gas mineral rights under other special Acts. This guidance incorporates directives concerning the appropriate escalating rental rates for leases issued in accordance with the 1930 Act for a 20-year term and the policy issued in 1993 to extend the 1930 Act oil and gas right-of-way leases and compensatory royalty agreements beyond 20 years when such lands are in producing status.

2. Reports Required: None

3. Materials Superseded: The Handbook pages superseded are listed under "REMOVE" below. All directives under the Subject Function Code 3109 concerning oil and gas leasing under the Act of May 21, 1930, and other special Acts that have been issued since the final leasing regulations in 1988, including Instruction Memorandum 93-148, issued in February 1993, and Instruction Memorandum 93-317, issued in August 1993, have been appropriately incorporated into this Handbook. No other directives are superseded. This Handbook Section also incorporates appropriate requirements of the final regulations in Title 43 Code of Federal Regulations Part 3109 published in 1988.

4. Filing Instructions: File as directed below.

REMOVE: INSERT:

All of H-3109-1 (Rel. 3-112, 6/11/85) H-3109-1

(Total: 16 Sheets) (Total: 33 Sheets)

Assistant Director

Resource Use and Protection

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Right-of-Way Act Oil and Gas Lease

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2. Solicitor's Memorandum (BLM.ER.0683), Dated June 9, 1987, "Extensions under the Act of May 21, 1930"

3. Regional Solicitor's Memorandum (BLM.RM.1144), Dated April 11, 1990,

"Assignability of Oil and Gas Leases Issued Pursuant to the Act of

May 21, 1930, 30 U.S.C. 301-306 (1982)"

4. [Listing of ALMRS \(Case Recordation\) Data Element \(DE\) 1775 and 2910 Action Codes Applicable to Case Types 310911 and 318130 For Handbook 3109-1](#)

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I. Rights-of-Way Lease Processing

A. Introduction

This Handbook is to be used in conjunction with Manual Section 3109 that provides the Bureau of Land Management (BLM) policy guidance concerning oil and gas leasing under the provisions of 43 CFR Subpart 3109. The Act of May 21, 1930, is the exclusive leasing authority for oil and gas underlying a right-of-way or easement issued pursuant to the general railroad right-of-way statute, the Act of March 3, 1875, and to rights-of-way issued pursuant to the Act of March 3, 1891. (See Champlin Petroleum Co., 68 IBLA 142 (1982).) The Department of the Interior has reviewed past decisions and opinions related to right-of-way leasing statutes and found that leasing in accordance with the 1930 Act is applicable to the 1875 law, to pre-1875 railroad grants, and to rights-of-way issued pursuant to the Act of March 3, 1891, for reservoirs and canals. No decision or opinion has clearly expanded the Act of May 21, 1930, to other types of rights-of-way or easements. The right-of-way statutes described above were all construed by the Supreme Court as granting base, or limited, fee title in the right-of-way holder, thus causing the Department to seek special oil and gas leasing authority. No other right-of-way statute has been so construed, and the need for special leasing authority never existed for any other type of right-of-way. The regulations in 43 CFR 3109.1, therefore, limit leasing under the Act of May 21, 1930, to rights-of-way that, in 1930, were considered to be a base, or limited, fee. Only rights-of-way or easements issued under the Act of March 3, 1875, and earlier railroad acts, or the Act of March 3, 1891, are to be processed under this section (see Solicitor's Memorandum in Appendix 1).

Keywords

B. Right-of-Way Lease Application

No special application form is required to apply for the RIGHT-OF-WAY

right to lease oil and gas under a right-of-way or LEASE

easement covered by the 1930 Act. However, applicants APPLICATION

should be encouraged to use the standard BLM-approved lease

Form 3100-11. The application must be filed in the proper

BLM office by the owner of the right-of-way or the

transferee of the right-of-way owner. A \$75 filing fee

must accompany the application. If the transferee files

the application, a duly executed transfer/assignment must

accompany the application (see example transfer in Illustration 1). The standard BLM-approved assignment Form 3000-3 normally should **not** be used or required for such a private party transfer/assignment between the right-of-way owner and the transferee. The application for a lease under the 1930 Act need not describe the lands involved by metes and bounds. Instead, the application for the applied-for lands needs to describe each legal subdivision through which the right-of-way or easement extends. (See Manual Section 3109.12A and 43 CFR 3109.1-2 for the specific application requirements.)

C. Receipt of Application

Responsible

Official Step Action Keywords

Receiving 1. Receive the application and date/time APPLICATION

Official stamp. FILED

2. Assign a serial number and validate the \$75 filing fee.

3. Prepare an accounting advice and attach the copies to the case file. Route the case file through Docket for ALMRS Entry.

ALMRS Entry 4. Enter the application into ALMRS Case AUTOMATED Recordation. Since there is a separate NOTATION case type in the DE 2912/2961 for a compensatory royalty agreement (CRA) under the 1930 Act, ensure that the

correct case type is entered, i.e.,
310911 for a 1930 Right-of-Way Act
lease, or 318130 for a 1930 Act CRA.

4a. For a 1930 Act lease application -

Enter Action Date (MANDATORY
ACTION CODE): Date application

received; DE 1775 Action Code

001/DE 2910 Action Code 124;

Action Remarks: Time application

was received; General Remarks:

Lands not subject to lease under

the Mineral Leasing Act of 1920.

4b. For 1930 Right-of-Way Act CRA -

Enter Action Date (MANDATORY
ACTION CODES): Date case

established; DE 1775 Action Code

001/DE 2910 Action Code 387, **and**

Date proposal received/case

established; DE 1775 Action Code

344/DE 2910 Action Code 580;

Action Remarks: CRA RECD.

5. Send the case file to Title Records

through Docket.

Responsible

Official Step Action Keywords

Title 6. Draft the lease application on oil and RECORDS NOTED -

Records gas plats. Copy the oil and gas plats RIGHT-OF-WAY

and place in the case file. Send the LEASE
case file to Adjudication through APPLICATION
Docket.

Adjudication 7. Check the lease application for the RIGHT-OF-WAY
following: LEASE
APPLICATION

7a. Check that the law under which the REQUIREMENTS
right-of-way was granted was the REVIEW
Act of March 3, 1875, or an
earlier railroad act, or was the
Act of March 3, 1891.

7b. Check whether the right-of-way is ABANDONED
abandoned. If the right-of-way RIGHT-OF-WAY
was issued under one of the acts
cited above, was patented without
a reservation of the minerals and
has been abandoned, the United
States did **not** retain the minerals.

(See Appendix 1 and Amerada Hess
Corporation, 24 IBLA 360, 83 I.D.
194 (1976).)

7c. Was the application filed by the TRANSFEREE OF
right-of-way owner or the owner's RIGHT-OF-WAY
transferee? If it was filed by OWNER FILES
the owner's transferee, check that APPLICATION
an executed transfer of the right
to lease from the owner of the

right-of-way is attached (see example in Illustration I).

NOTE: The filing of a transfer/assignment that has been executed between the right-of-way owner and a transferee that is not accompanied by all the documents required under 43 CFR 3109.1-2 must be returned. The transfer/assignment is **not** to be filed in the case file in anticipation of a future 1930 Right-of-Way Act lease application being filed by the transferee.

Responsible

Official Step Action Keywords

7d. Check that the application details RIGHT-OF-WAY the facts of the ownership of the OWNERSHIP right-of-way and of the transfer/ DETAILED FACTS assignment (if the application is filed by a transferee); the development of oil and gas in OIL AND GAS adjacent or nearby lands; the DEVELOPMENT location and depth of the wells; INFORMATION and the production and probability PROVIDED of drainage of the deposits in the right-of-way.

7e. Check for any defects in the DEFECTS/
application, including defects in ADDITIONAL
the legal land descriptions. Are REQUIREMENTS
any additional requirements FOR RIGHT-OF-WAY
needed? If so, prepare a notice APPLICATION
of the additional requirements
(see Illustration 2). If a
transfer/assignment between the
owner of the right-of-way and a
transferee is filed, but is not
accompanied by an application to
lease, the transfer/assignment
must be returned.

7f. After the application has been
determined to be properly filed
and leasing of the lands is
determined to be in the public
interest, request a Field Office
fluid mineral operations report
(see Illustration 3).

ALMRS Entry 8. Enter Action Date: Date report
requested; DE 1775 Action Code 152/DE
2910 Action Code 910; Action Remarks:
Type of report and from whom.

Field Office 9. Submit all the stipulations that need FIELD OFFICE
Operations to be attached to the lease when it is REPORT
issued.

10. Furnish a report to the State Office (SO) Adjudication as to any oil and gas development of adjacent lands, including unit and communitization agreements, and any special bonding requirements that are required.

Responsible

Official Step Action Keywords

Adjudication 11. Receive report from Field Office fluid minerals operations staff.

ALMRS Entry 12. Enter Action Date: Date report

received; DE 1775 Action Code 153/DE

2910 Action Code 911; Action Remarks:

Type of report and from whom.

Adjudication 13. Notify the owner or lessee of the INVITATION

adjoining lands, and the owner/ TO BID

transferee of the right-of-way that

filed the application, and allow them

at least 30 days to submit a sealed

bid for the amount or percent of

compensatory royalty, or actual

royalty, that each is willing to pay

for the right to extract the oil and

gas underlying the right-of-way (see

Illustrations 4 and 5).

NOTE: For the purposes of this step, ADJOINING

the owner/lessee of the lands LANDOWNERS

adjoining the railroad
right-of-way includes all
those landowners adjoining
the sidelines of the railroad
right-of-way as depicted by the
BLM and/or railroad company
maps. The term "adjoining
landowners" means the holder of
the oil and gas rights in the
adjoining lands.

ALMRS Entry 14. Update case to indicate bid invitation AUTOMATED
and bid receipt using the current data NOTATION
standards.

14a. Enter Action Date (MANDATORY
ACTION CODE): Date invitation to
bid requested; DE 1775 Action
Code 190/DE 2910 Action Code 195;
Action Remarks: Optional.

Responsible

Official Step Action Keywords

14b. Enter Action Date (MANDATORY
ACTION CODE): Date bid received;
DE 1775 Action Code 191/DE 2910
Action Code 267; Action Remarks:
Total amount of high bid; General
Remarks: Name of bidder
(optional).

Adjudication 15. After receipt, send the bid(s) to the

Fluid Mineral Resource Operations

authorized officer for a recommendation

to accept or reject each bid (see

Illustration 6).

Fluid Mineral 16. Evaluate all bids and determine which BID

Resource bid is most advantageous to the United EVALUATION

Operations States.

17. Send a report on the bid determinations

to the SO Adjudication within 5 working

days.

ALMRS Entry 18. Enter Action Date (MANDATORY ACTION AUTOMATED

CODE): Date bid accepted; DE 1775 NOTATION

Action Code 192; DE 2910 Action Code

196.

D. Issuance of Lease or Approval of Compensatory Royalty Agreement

Responsible

Official Step Action Keywords

Adjudication 1. Upon receipt of the recommendation from

the Fluid Mineral Resource Operations

authorized officer, prepare the

appropriate forms for transmittal to

the lease applicant or the adjoining

landowner, as appropriate.

2. If a recommendation is made to enter

into a CRA in lieu of leasing, reject

the lease application (see Illustration

7).

ALMRS Entry 3. Enter Action Date (MANDATORY ACTION CODE): Date bid rejected; DE 1775

Action Code 193; DE 2910 Action Code

944; Action Remarks: Reason.

Adjudication 4. Lease issued to the right-of-way owner LEASE or right-of-way owner transferee. ISSUANCE

Prepare the BLM-approved lease Form

3100-11, describing the legal

subdivisions through which the

right-of-way or easement extends,

limiting the acreage in the lease to

those lands in the right-of-way or

easement.

4a. Specify that, in accordance with

43 CFR 3103.2-2(a), the rental

rate is \$1.50 per acre or fraction

thereof for the first 5 years of

the lease term and \$2 per acre

or fraction thereof for all

subsequent lease years (see

Illustrations 8 and 9).

NOTE: The automatic termination AUTOMATIC

statement on lease Form 3100-11 TERMINATION

does **not** apply to a 1930 Act PROVISION

lease and must be crossed out NOT APPLICABLE

(see Illustration 9).

Responsible

Official Step Action Keywords

5. Agreement with the owner or lessee of COMPENSATORY

adjoining lands to pay compensatory ROYALTY

royalty. Prepare the CRA document or AGREEMENT

request the Field Office fluid mineral

operations staff to prepare the CRA

document and forward it to the

SO Adjudication.

5a. The royalty will be the amount bid

and accepted by the BLM. No bid

for less than 12 percent shall be

accepted. Thus, if the highest

bid is less than 12 percent, all

the bids must be rejected. The

bid evaluation may result in a

determination that the United

States will be better served by

a lower bid (but at least 12

percent) made by an adjoining

lessee/landowner than a higher

bid that was made by another

adjoining lessee/landowner that

is not in as good a position to

extract the maximum amount of oil

or gas reasonably feasible.

6. Send the CRA forms, in triplicate, to

the successful bidder for signature,
indicating the amount or percentage of
compensatory royalty that is due (see
Illustration 8).

7. If a bond is deemed necessary with the BOND
CRA, include a statement in the CRA REQUIREMENT
that a bond is required (see Illustration 10).

8. Check that the required bond for the
lease or CRA is submitted on the
current BLM-approved bond Form 3000-4.

9. Prepare the lease or CRA for signature LEASE TERM
by the authorized officer. The lease OF 20 YEARS
term or CRA will be for a period of
20 years in accordance with the
1930 Act. However, when unique
circumstances are involved, a lease or
CRA may be issued for a lesser period
of time.

Responsible

Official Step Action Keywords

9a. Add an additional term to the CRA LEASE OR CRA
or lease Form 3100-11 as follows: IN EFFECT AS
"This lease [CRA] shall be in LONG AS OIL OR
effect for a period of 20 years GAS IS PRODUCED
and so long thereafter as oil or IN PAYING
gas is produced in paying QUANTITIES

quantities, subject to any unit
or communitization agreement
heretofore or hereafter approved
by the BLM authorized officer, the
provisions of said agreement to
govern the lands subject thereto
where inconsistencies with the
terms of this lease [CRA] occur."

NOTE: Although a maximum 20-year
limitation is imposed by the
statute, the BLM policy is to
continue and extend such a lease
or CRA at the end of its 20-year
term for as long as actual or
allocated production is being
received and as long as the
lease or CRA is capable of
producing oil or gas in paying
quantities. These 1930 Act LEASE OR CRA
leases or CRA's are often SUBJECT TO
subject to a unit or communiti- UNIT OR
zation agreement and the terms COMMUNITIZATION
of such agreement are to govern AGREEMENT
where inconsistencies with the
terms of the lease occur. Thus,
the lease or CRA may continue in
force and its term will remain

co-extensive with the life of

the unit or CRA.

10. Neither the Act of May 21, 1930, nor LEASE

BLM policy allow extensions of a lease EXTENSIONS

or CRA for diligent drilling, communi- NOT ALLOWED

tization or unit terminations, or for

discontinuance of compensatory royalty

payments (see Appendix 2).

11. A 1930 Right-of-way Act lease may be RECORD TITLE

assigned or transferred to a party ASSIGNMENTS

other than one originally eligible to ALLOWED TO

be issued a right-of-way lease (see OTHER ENTITIES

Appendix 3).

Responsible

Official Step Action Keywords

12. The effective date of the lease or CRA EFFECTIVE

is the first day of the month following DATE

signature by the authorized officer.

However, if actual drainage has been

documented, the effective date of the

CRA would be the determinative date of

such drainage.

13. Complete the accounting advice when the ACCOUNTING ADVICE

lease is issued, and send a copy to TO MMS-DMD

Accounts (see Illustrations 11 and 12).

An accounting advice is **not** necessary

for CRA's when drainage occurs.

Instead, the Minerals Management

Service (MMS), Data Management Division

(DMD) is to be notified of the CRA in

writing (see Illustration 13).

Accounts 14. Send the accounting advice for the

lease to the MMS-DMD.

Adjudication 15. After the lease or CRA is signed,

ensure that copies are sent to all

interested parties.

16. Send case file through ALMRS Entry to

Title Records, then to Docket.

NOTE: The case file and ALMRS Entry

are to be noted that upon

expiration of lease, these lands

are **not** available for

competitive or noncompetitive

leasing under the Mineral

Leasing Act of 1920.

ALMRS Entry 17. Update case to indicate issuance of AUTOMATED

lease or CRA using the current data NOTATION

standards (see Illustration 14).

NOTE: Appendix 4 contains a listing of key

action codes from the data standards

that are to be used in ALMRS Case

Recordation for 1930 Right-of-Way Act

leasing actions.

Responsible

Official Step Action Keywords

17a. Enter Action Date (MANDATORY ACTION CODE): Date lease signed/ CRA approved; DE 1775 Action Code 176/DE 2910 Action Code 237 (for lease); OR DE 1775 Action Code 176/DE 2910 Action Code 334 (for CRA).

17b. Enter Action Date (MANDATORY ACTION CODE): Effective date of lease/CRA; DE 1775 Action Code 225/DE 2910 Action Code 868.

17c. Enter Action Date (MANDATORY ACTION CODE): Enter appropriate royalty rate for lease or CRA; DE 1775 Action Code 102, 103, or 108/DE 2910 Action Code 530, 531, or 536; Action Remarks: If DE 1775 Action Code 108/DE 2910 Action Code 536, indicate specific royalty rate.

17d. Enter Action Date (MANDATORY ACTION CODE): Date lease/CRA expires; DE 1775/2910 Action Code 763; Action Remarks: Optional.

NOTE: If lease/CRA is in production status, do **not** enter DE

1775/2910 Action Code 763.

Title 18. Note on oil and gas plats and RECORDS

Records historical index. Return case file NOTATION
to Docket.

Docket 19. File case file with active cases.

Adjudication 20. If the lease/CRA is not in producing
status at the end of its 20-year term,
the application process must be
initiated for any new lease or CRA to
be issued to a qualified party
according to these procedures in
Sections IC and ID.

E. Leases Issued Under the Mineral Leasing Act of 1920
on Lands Available Only Under the 1930 Right-of-Way Act
Responsible

Official Step Action Keywords

Adjudication 1. If a lease describing lands available LEASE
for leasing only under the 1930 Act has CANCELLATION
been issued under the Mineral Leasing
Act of 1920, it is a nullity. Cancel
the 1920 lease. (See William L. Ahls,
85 IBLA 66 (1985).)

2. A lease issued under the Mineral
Leasing Act of 1920 Act does not
include the oil and gas deposits
underlying a railroad right-of-way
that crosses the leased area (if the

right-of-way was granted under the Act of March 3, 1875, or an earlier railroad act, or was granted under the Act of March 3, 1891) even though the 1920 lease does not expressly except such deposits from its coverage. (See Champlin Petroleum Co., 68 IBLA 142 (1982), and Oil and Gas Leasing on Federal Lands, Chapter 18, "Leasing Under Rights-of-Way," by Lewis Edwin Hoffman (1957).)

Keywords

II. Units of the National Park System

Oil and gas leasing in certain units of the National Park LEASING IN System that are available for leasing shall be governed by NATIONAL PARK the regulations in 43 CFR Group 3100, and all operations SYSTEM UNITS conducted on a lease or permit in such areas shall be governed by the regulations in 43 CFR Parts 3150, 3160, and 3180. (See Manual Section 3109.21D for a description of the specific areas available for leasing.) In accordance with Section 206 of Public Law 100-668, enacted on November 16, 1988, Ross Lake and Chelan National Recreation Areas in the State of Washington are now closed in their entirety to all mineral leasing.

III. Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area

See Manual Section 3109.3 and the regulations at 43 CFR 3109.3.

TRANSFER OF RIGHT TO APPLY FOR A FEDERAL OIL AND GAS LEASE

UNDER THE AUTHORITY OF THE ACT OF MAY 21, 1930

THIS TRANSFER OF RIGHT TO APPLY FOR A FEDERAL OIL AND GAS LEASE, is executed this day of , 19_.

WITNESSETH:

Whereas, the following public lands of the United States of America are within the survey of (Name)

to wit:

(LEGAL LAND DESCRIPTION)

WHEREAS, the undersigned (Name) is the owner of a right-of-way or easement covering said lands above described;

Whereas, under the provisions of the Act of May 21, 1930 (46 Stat. 373, et seq.), said lands above described may be leased for oil and gas purposes by the Secretary of the Interior to (Name) or its assigns;

Whereas, the (Name) has no legal authority

to explore or drill said lands for oil and gas development purposes; and

Whereas, the (Name) desires to transfer its right to apply for said lease to (Name) pursuant to its right of transfer contained in said Act hereinabove cited.

NOW, THEREFORE, for and in consideration of the sum of Dollars (\$) in hand paid by (Name) to

(Name) and for good and valuable consideration,

(Name) does hereby sell, transfer, assign and set over unto (Name) of (Address), subject to the approval of the Secretary of the Interior, all of the rights conferred upon it by the Act of May 21, 1930 (46 Stat. 373, et seq.), insofar as said Act related to the rights and privileges of the (Name) in applying for and obtaining an oil and gas lease covering the lands hereinabove described.

ATTEST (Name of Company)

By

Secretary President

described ACKNOWLEDGEMENT

STATE OF)ss

COUNTY OF)

The foregoing instrument was acknowledged before me

this day of 19_,

by as President and

as Secretary of the (Company)

WITNESS my hand and official seal.

Notary Public

My Commission expires

3109 (Office Code)

Serial No.

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

NOTICE

Applicant/Address:

:

:

Oil and Gas

:

Right-of-Way

:

Lease Application

:

Additional Requirement

We received your oil and gas lease application filed in accordance with the Act of May 21, 1930, that includes the area under a right-of-way owned by

(Name).

Before we continue processing your application, the information checked below must be filed in this office:

// Facts as to the development of oil and gas in adjacent, or nearby lands, the location and depth of the wells, and the production and the probability of drainage of the deposits in the right-of-way.

// The transfer of the right to apply for the lease executed by the owner of the right-of-way. If a railroad right-of-way, please include a copy of the plat showing the exact location and acreage (if available from railroad).

// A description of the legal subdivisions through which the portion of the right-of-way desired to be leased extends.

// The names and addresses of the owners or lessees of the oil and gas rights in the lands adjoining the right-of-way.

Thirty (30) days from receipt of this Notice are allowed to furnish the information identified above. Failure to comply within the time allowed will result in the issuance of a decision rejecting your application.

Authorized Officer

Distribution:

3109 (Office Code)

Serial No.

Memorandum

To: Authorized Officer (Field Office Fluid Mineral Operations)

From: State Director (Fluid Leasing Adjudication Code)

Subject: Report Request for Application to Lease Oil and Gas Under Right-of-Way

Enclosed is an application to lease the oil and gas under a right-of-way pursuant to the Act of May 21, 1930, and the regulations under 43 CFR 3109.1.

Please submit a report and recommendation as to the following:

1. Any stipulations that must be included in a lease, if issued.
2. The status of oil and gas development on lands adjacent to the right-of-way.
3. Any special bonding requirements that may be appropriate, including the written justification therefor.

Enclosure:

Lease Application

Distribution:

SO Fluid Mineral Resources

3109 (Office Code)

Serial No.

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

NOTICE

Applicant:

Adjoining Owner(s):

Invitation to Bid

Notice is hereby given that an application for lands underlying a right-of-way owned by (Name) has been filed pursuant to the Act of May 21, 1930 (46 Stat. 373; 30 U.S.C. 301-306). The Act authorizes the issuance of a lease to only the owner of the right-of-way or the owner's assignee/transferee. Section 3 of the Act provides, however, that prior to the issuance of a lease, the owner or lessee of the lands adjoining the right-of-way shall be given an opportunity to submit a bid for the amount or percentage of royalty such adjoining owner or lessee is willing to pay the United States Government for the extraction of oil and gas deposits from the right-of-way through wells on adjoining lands. The same opportunity is given to the owner or transferee/assignee of the right-of-way as to the amount or percentage of royalty to be paid to the United States if a lease is awarded. Award of a lease to the right-of-way owner/transferee, or a contract for the payment of compensatory royalty with the adjoining owner or lessee, will be made to the bidder whose offer is determined to be in the best interest of the United States. A determination will be made based on the amount of royalty to be received and the maximum economic development of the oil and gas deposits underlying the right-of-way that may be obtained through the respective means of production and operation.

The application to lease was filed by (Name) and includes the area under the right-of-way that crosses the following-described lands:

The names of the adjoining owners or lessees of the oil and gas rights, identified above, were furnished by the applicant. In accordance with 43 CFR 3109.1, they are being allowed the opportunity to submit an offer or bid for the amount or percentage of royalty they will pay for extraction of the oil and gas resources from the right-of-way through wells on their adjoining lands.

The lease applicant is also given the opportunity to submit a bid as to the amount of royalty to be paid under a lease, if issued. Annual rental on a lease will be at the rate of \$1.50 per acre or fraction thereof for the first 5 years and \$2 per acre or fraction thereof for each subsequent lease year.

Appropriate stipulations will be attached to and made a part of any lease or agreement that issues as a result of this invitation.

You are hereby allowed an opportunity to submit a bid. A sample bid form is attached. Bids must be received in this office on or before (Date). Bids received after that time will not be considered. The envelope should be clearly marked "**BID ENCLOSED - DO NOT OPEN BEFORE (DATE)**". If the bid is mailed, it should be addressed to: Cashier, (Name) State Office, Bureau of Land Management, (Address). If hand delivered, bids may be submitted to the Cashier at the address shown on the letterhead above.

All bids received will be evaluated by the Bureau of Land Management and recommendations made as to whether a lease should be issued or a compensatory royalty agreement entered into with the adjoining owners or lessees.

Authorized Officer

Enclosure

Bid Form

Distribution:

SO Fluid Mineral Resources

SO Cashier

Serial No. -

Type of Right-of-Way -

ROYALTY BID Under the Act of May 21, 1930

(46 Stat. 373, U.S.C. 301-306)

In response to the invitation to submit a royalty bid for the privilege of extracting the oil and gas deposits from the lands underlying the above identified right-of-way, the undersigned makes the following bid:

(Check one)

// As owner or lessee of all or part of the lands adjoining the right-of-way, bidder agrees to pay compensatory royalty at the rate of percent for extraction of the oil and gas deposits from the right-of-way through wells located on said adjoining lands.

// As owner of the right-of-way, or transferee/assignee of said owner, bidder agrees to pay royalty at the rate of percent on production of oil and gas from the lands underlying the right-of-way.

(Signature of Bidder)

(Title)

(Company)

(Date) (Address)

3109 (Office Code)

Serial No.

Memorandum

To: Authorized Officer (Field Office Fluid Mineral Operations)

From: State Director (Fluid Leasing Adjudication Code)

Subject: Compensatory Royalty Bids, Oil and Gas Lease on Right-of-Way

(Serial number)

Enclosed are the results of our (Date) Invitation to Bid for compensatory royalty payable for extraction of the oil and gas deposits on the subject right-of-way pursuant to the Act of May 21, 1930.

Please furnish your report concerning the adequacy of the bids, considering the amount of royalty to be received and the most efficient development of the oil and gas deposits underlying the right-of-way.

We request that your report be completed within 5 working days and returned to our office no later than (Date).

Enclosure

Bid Results

Distribution:

3109 (Office Code)

Serial No.

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

DECISION

:

:

Oil and Gas

:

Right-of-way

:

Application

:

Application Rejected

On (Date), you filed in this office the above-identified application

to lease the oil and gas under a railroad right-of-way owned by

(Name) that crosses the lands identified below:

(LEGAL LAND DESCRIPTION)

In accordance with 43 CFR 3109.1-3, the adjoining landowners or lessees shown on your application were allowed 30 days in which to submit a bid for the amount or percent of compensatory royalty they would pay to the United States for the extraction of the oil and gas underlying the right-of-way through wells on adjoining lands, and you, as transferee of the right-of-way, were invited to submit a bid for the lease. We received your bid in the amount of 18% of 8/8ths.

(Name of adjoining landowner/lessee) has agreed to pay 25% compensatory royalty for the extraction of the oil and gas under the right-of-way in the application.

Regulation 43 CFR 3109.1-4 states, "Award of lease to the owner of the right-of-way, or a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands shall be made to the bidder whose offer is determined by the authorized officer to be to the best advantage of the United States, considering the amount of royalty to be received and the better development under the respective means of production and operation." The Fluid Mineral Operations Section of this State Office has furnished recommendations to accept the highest compensatory royalty bid for the tract in lieu of the leasing alternative.

Based on the enclosed recommendations, your application to lease is hereby rejected.

Standard appeal paragraph (see Handbook 3100-1, Chapter 1).

Authorized Officer

2 Enclosures

1 - Fluid Mineral Resources Recommendation Memorandum

2 - Form 1842 - Information Sheet

Distribution:

SO Fluid Mineral Resources

Field Office Fluid Mineral Operations

Adjoining Owner/Lessee

3109 (Office Code)

Serial No.

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

NOTICE

:

:

Oil and Gas

:

Right-of-way

:

Lease

:

Additional Requirements

Your application to lease the oil and gas rights pursuant to the provisions of the Act of May 21, 1930, for lands underlying a railroad right-of-way located in (Legal land description), has been accepted.

Before a lease may be issued, the following requirements must be met:

1. Sign and return all copies of the enclosed Lease Form 3100-11 as modified to conform to the provisions of the Act and applicable regulations.
2. Sign and return the enclosed stipulations that are a part of the lease as terms and conditions.
3. Submit the first year's rental in the amount of \$

(_ acres at \$1.50 per acre or fraction thereof).

Thirty days from receipt of this Notice are allowed to comply with the above requirements.

Authorized Officer

2 Enclosures

1 - Lease Forms (in triplicate)

2 - Stipulations (in triplicate)

Distribution:

3109 (Office Code)

Serial No.

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

NOTICE

:

:

Oil and Gas

:

Right-of-way

:

Lease

:

Additional Requirements

Unit Joinder Required

Your application to lease the oil and gas rights pursuant to the provisions of the Act of May 21, 1930, for lands underlying a railroad right-of-way located in (Legal land description), has been accepted.

Before a lease may be issued, the following requirements must be met:

1. Sign and return all copies of the enclosed Lease Form 3100-11 as modified to conform to the provisions of the Act and applicable regulations.
2. Sign and return the enclosed stipulations that are a part of the lease as terms and conditions.
3. Submit the first year's rental in the amount of \$

(_ acres at \$1.50 per acre or fraction thereof).

Thirty days from receipt of this Notice are allowed to comply with the above requirements.

All of the lands in the lease area are within the (Name) Unit Agreement. Under the provisions of 43 CFR 3101.3-1, you are required to file evidence with this office that an agreement has been entered into with the unit operator, (Name and address), for the development and operation of the approved unit agreement. The joinder must be submitted through the unit operator to this office, at the address indicated above, with a statement by the unit operator as to compliance with the terms of the unit agreement. You are hereby allowed 60 days from receipt of this notice to submit evidence of unit joinder, or sufficient reasons for not joining the unit agreement. If additional time is required, a request for additional time must be filed within the 60-day compliance period. Failure to submit evidence of unit joinder, of sufficient reasons for not joining the unit agreement within the time allowed will result in the rejection of your lease application.

Authorized Officer

2 Enclosures

1 - Lease Forms (in triplicate)

2 - Stipulations (in triplicate)

Distribution:

3109 (Office Code)

Serial No.

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

NOTICE

Oil and Gas :

Right-of-way :

Compensatory Royalty :

Agreement :

Additional Requirements

Your bid for a contract to pay compensatory royalty for the oil and gas rights pursuant to the provisions of the Act of May 21, 1930, for lands underlying a railroad right-of-way located in (Legal land description), has been accepted.

Before the compensatory royalty agreement may be issued, the following requirements must be met:

1. Sign and return all copies of the enclosed compensatory royalty agreement that conforms to the provisions of the

Act and applicable regulations.

2. Sign and return the enclosed stipulations that are a part of the agreement as terms and conditions.

Thirty days from receipt of this Notice are allowed to comply with the above requirements.

Authorized Officer

2 Enclosures

1 - Compensatory Royalty Agreement (in triplicate)

2 - Stipulations (in triplicate)

Distribution:

AGREEMENT TO PAY COMPENSATORY ROYALTY

Pursuant to Act of May 21, 1930, Sec. 3, (46 Stat. 373, 30 U.S.C. 301-306)

This agreement, serial number (Serial number), effective (Date), by and between the United States of America, through the Bureau of Land Management, Department of the Interior, Grantor, and (Right-of-way owner/lessee), Grantee, witnesseth:

Whereas, Grantor is the owner of the minerals underlying

(Legal Land Description)

through which the right-of-way of (Owner) extends, and for which Grantee submitted to Grantor a bid of the amount or percentage of royalty or compensatory royalty agreed to be paid to the United States for the exclusive right to extract the oil and gas under and from said lands through a well or wells on or adjacent to the above-described lands; and

Whereas, said bid or offer has been accepted by Grantor, and the right to extract the oil and gas from and under said lands has been herein awarded to Grantee subject to applicable laws, the terms, conditions, and attached stipulations, and regulations and orders in effect as of the date of this agreement, and to the regulations and formal orders hereafter promulgated when not inconsistent with the rights granted or specific provisions of this agreement;

Now, therefore, in consideration of the foregoing, Grantee hereby agrees:

1. To furnish and maintain a bond in an amount of not less than \$10,000.

NOTE: Use this paragraph only if a bond is required.

2. To pay to the United States a royalty of percent of the amount or value of all oil and gas produced and taken from the above-described lands, payments to be made to the Minerals Management Service (MMS) monthly before the 15th day of each month for the production during the preceding month, and when paid in kind to be delivered in the field where produced at such time and in such manner as may be required by the duly authorized officer of the Department of the Interior. Minimum royalty of \$1.50 per acre or fraction thereof shall be due for any year after granting of this agreement in which royalty payments aggregate less than \$1.50 per acre or fraction thereof during the first 5 years, and less than \$2 per acre or fraction thereof during the sixth or any subsequent year of this agreement. Grantee shall pay the difference at the end of the agreement year. An interest charge shall be

assessed on late royalty payments or underpayments in accordance with the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA)(96 Stat. 2447). Grantee shall be liable for royalty payments on oil and gas lost or wasted from the agreement lands when such loss or waste is due to negligence on the part of the operator, or due to the failure to comply with any law, regulation, order, or citation issued under FOGRMA or other applicable law.

3. To file with the MMS any contract or evidence of other arrangement for the sale or disposal of oil and gas produced from said lands, except for production purposes thereon.

2

4. To furnish monthly statements in detail in such form as may be prescribed by the MMS showing the amount, quality, and value of all oil and gas produced and sold, and the proceeds therefrom, as the basis of computing the royalty due hereunder, and the amount used for production purposes or unavoidably lost during the preceding calendar month. The said premises and all wells, improvements, machinery, and fixtures thereon or connected therewith, and all books and accounts of Grantee shall be open at all times for the inspection of any duly authorized officer of the Grantor. All such records shall be maintained by the Grantee for future audit by the Grantor. Grantee shall maintain required records for 6 years after they are generated or, if an audit or investigation is underway, until released of the obligation to maintain such records by the Grantor.

5. To furnish annually and at such times as Grantor requires, in the manner and form prescribed, a plat showing all development and improvements on said lands, and reports with respect to parties in interest, expenditures, and depreciation costs, and other related information.

6. To keep a daily drilling record, a log, information on well surveys and tests, and a record of subsurface investigations and furnish copies thereof to Grantor for all wells drilled on said lands, showing the strata and the character of the ground passed through by the drill, which log, or a copy thereof, shall be furnished on demand.

7. To drill such additional wells as reasonably may be required by the Grantor to protect against drainage and at such sites as may be designated for the purpose of and to reasonably extract all oil and gas from and under said right-of-way, and to operate all wells in accordance with approved methods and practices and so long as commercially productive.

8. To subscribe to and operate under such reasonable cooperative or unit plan for the development and operation of the area, field, or pool, or parts thereof, embracing the lands included herein as the Grantor may determine to be practicable and necessary or advisable. Such cooperative or unit plan will adhere to a well spacing unit consisting of either; (a) a field spacing order issued by the State Government which includes all or part of this right-of-way, or if there is no field spacing order; (b) the well spacing unit based upon actual development in the immediate area, or if there is no well development pattern; (c) a -acre well spacing unit. It is also understood that there may be a different size well spacing unit for a well completed in different zones which will require establishment of separate cooperative or unit plans. Such plans will in all cases adequately protect the rights of all parties in interest including the Grantor.

9. That the term of this agreement shall be for 20 years, and so long thereafter as compensatory royalty is being paid for oil and gas that is produced in paying quantities, subject to any unit or communitization agreement heretofore or hereafter approved by the Grantor, the provisions of said agreement to govern the lands subject thereto where inconsistencies with the terms of this agreement occur.

3

10. That inasmuch as Grantee holds only leasehold rights to oil and gas in lands adjoining the subject right-of-way, the rights and obligations under this agreement shall cease and terminate concurrently to the same extent that rights under such adjoining leasehold are released, surrendered, cancelled, or otherwise terminated prior to the expiration of the term hereof. That Grantee shall file with Grantor any transfer of interest in this agreement to the same entity

and to the same extent as a transfer of interest is made in any adjoining lands.

11. To notify Grantor if leasehold rights in adjoining lands cease or terminate, effecting the termination of this agreement. Until such notification is received, Grantee shall continue to be obligated to pay minimum royalty.

12. That if Grantee fails to comply with any provisions of this agreement, and the noncompliance continues for 30 days after written notice thereof, this agreement shall be subject to cancellation. Grantee shall also be subject to applicable provisions and penalties of FOGRMA. However, if the agreement includes lands known to contain valuable deposits of oil and gas, it may be canceled only by judicial proceedings. This provision shall not be construed to prevent the exercise by Grantor of any other legal or equitable remedy, including waiver of the default. Any such waiver or remedy shall not prevent later cancellation for the same default occurring at any other time.

13. That each obligation of this agreement shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors, beneficiaries, or transferees of the respective parties hereto.

14. That grantor reserves the option of extracting, or having extracted, helium from gas production in a manner specified and by means provided by Grantor at no expense or loss to Grantee or owner of the gas. Grantee shall include in any contact or sale of gas the provisions of this section.

IN WITNESS WHEREOF:

THE UNITED STATES OF AMERICA

Date

Witness Party of the Second Part

3109 (Office Code)

Serial No.

NOTICE

:

:

Oil and Gas

:

Right-of-way

:

Compensatory Royalty

:

Agreement

Compensatory Royalty Agreement Account Established

The Bureau of Land Management has notified the Minerals Management Service (MMS) Royalty Management Program that it will be necessary to establish an account for the compensatory royalty agreement identified above. Upon issuance of the agreement, the account will be established in a minimum royalty status of \$1.50 per acre or

fraction thereof during the first 5 years of the agreement, and in a minimum royalty status of \$2 per acre or fraction thereof for the sixth and subsequent years of the agreement. Minimum royalty will be due for any year after issuance of the agreement in which royalty payments aggregate less than the amount indicated per acre. The account will be established under the MMS Business Information System effective (Date).

If you have any questions concerning payments or reports, you may contact the MMS at (303) 231-3288 or at the following address.

Minerals Management Service

Royalty Management Program

P.O. Box 5760

Denver, Colorado 80217

Authorized Officer

Distribution:

MMS-DMD, Mail Stop 3112

OFFICE OF THE SOLICITOR

DENVER REGION

P.O. BOX 25007

DENVER FEDERAL CENTER

DENVER, COLORADO 80225

November 15, 1976

Memorandum

To: Lands and Minerals Division, Regional Solicitor's Office

Field Solicitor, Billings

Field Solicitor, Cheyenne

Field Solicitor, Aberdeen

From: Assistant Regional Solicitor

Subject: Railroad Rights-of-Way; Mineral Leasing

In order that advice from this office be uniform regarding questions concerning the leasing of minerals covered by railroad rights-of-way, the following guidelines should be followed:

I. PRE-1875 ACT RAILROAD RIGHTS-OF-WAY

A. The mineral estate covered by pre-1875 Act railroad rights-of-way remain in the United States. United States v. Union Pacific R. Co., 353 U.S. 112 (1957).

The nature of the interest granted is a limited fee made on implied condition of reverter in event the company ceases to use or retain the land for the purpose granted.

The Leasing Act minerals are subject to lease by the United States, even though the lands upon which the right-of-way is situated have been granted as school lands (U.P.R.Co., 72 I.D. 76, 1965; aff'd Wyoming v. Udall, 379 F.2d 635, 10th Cir., cert. den. 389 U.S. 985, 1967); have been patented under the homestead laws (George W. Zarak, 4 IBLA 82, 1971, aff. Rice v. United States, 479 F.2d 58, 8th Cir., cert. den. U.S. 858, 1973); or where the right-of-way traverses an alternate section patented under Sec. 3 of the Act of July 1, 1862. (Brown W. Cannon, Jr., 24 IBLA 166, 83 I.D. 80, 1976).

2

1. Oil and gas is leased under the provisions of the Act of May 21, 1930, 46 Stat. 373.

2. All other Leasing Act minerals are leased under the provisions of the Act of February 25, 1920.

II. 1875 ACT RIGHTS-OF-WAY

A. The mineral estate in lands covered by a right-of-way granted under the Act of March 3, 1875 remains in the United States. The interest granted is an easement only. (Great No. Ry. Co. v. United States, 315 U.S. 262, 1942.)

B. If the United States patents the lands covering the right-of-way and does not reserve the minerals, the mineral estate passes to the patentee. C&NW Ry. Co. v. Cont. Oil Co., 253 F.2d 468 (10th Cir., 1958); Amerada Hess Corp., 24 IBLA 360, 83 I.D. 194 (1976).

C. Under II.A., oil and gas is leased under the 1930 Act; all others under the 1920 Act. Under B, the United States has no authority to lease the mineral estate. Phillips Pet. Co., 61 I.D. 93, 1953; Sol. Op., 67 I.D. 225 (1960); Amerada Hess Corp., supra.

11/22/76 - To State Director, Attn: Technical Services, BLM

Appendix 4

(I.D.17)

Listing of ALMRS Case Recordation Data Element (DE)

1775 and 2910 Action Codes Applicable to Case Types

310911 and 318130 for Handbook 3109-1*

DE 1775 DE 2910

001 Apln Recd/Case Establish@# 124 Apln Recd@#

001 Apln Recd/Case Establish@# 387 Case Established@#

006 Apln Rej/Denied# 125 Apln Rej/Denied#

007 Apln Rej/Den in Part# 126 Apln Rej/Den in Part#

009 Apln Withdrawn# 130 Apln Withdrawn#
010 Apln Withdrawn in Part# 131 Apln Withdrawn in Part#
057 Notice Sent-Prod Status# 102 Notice Sent-Prod Status#
084 Rental Received by MMS 084 Rental Received by MMS
094 Rental Received 111 Rental Received
102 Rlty Rate - 12 1/2%# 530 Rlty Rate - 12 1/2%#
103 Rlty Rate - 16 2/3%# 531 Rlty Rate - 16 2/3%#
108 Rlty Rate - Other# 536 Rlty Rate - Other
112 Addtl Info Rqstd@ 104 Addtl Info Rqstd
113 Addtl Info Recd 103 Addtl Info Recd
152 Report Requested@ 910 Report Requested@
153 Report Received 911 Report Received
176 Authorization Issued# 237 Lease Issued#
176 Authorization Issued# 334 Agrmt Approved#
190 Bids Requested@# 195 Bids Requested@#
191 Bid Received@# 267 Bid Received@#
192 Bid Accepted# 196 Bid Accepted#
193 Bid Rejected# 944 Bid Rejected#
194 Bid Not Received# 268 Bid Not Received#
225 Effective Date# 868 Effective Date#
256 Lease Committed to CA# 246 Lease Committed to CA#
257 Lease Committed to Unit# 232 Lease Committed to Unit#
344 Proposal Received@# 580 Proposal Received@#
417 Acres - County## 523 Acres - County##
562 Asgn Filed# 140 Asgn Filed#
563 Asgn Approved# 139 Asgn Approved#
763 Expires# 763 Expires#

970 Case Closed# 970 Case Closed#

* See official fluid leasing data standards for complete listing.

@ Pending action required.

Mandatory use of action code required.

Mandatory use of action code required when lands are located in more than one county.

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