



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT: FEDERAL ONSHORE OIL & GAS TRESPASS AND DRILLING WITHOUT APPROVAL

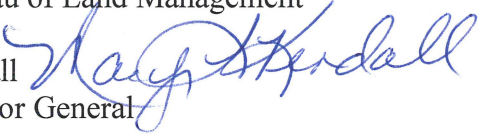


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SEP 29 2014

Memorandum

To: Neil Kornze
Director, Bureau of Land Management

From: Mary L. Kendall 
Deputy Inspector General

Subject: Inspection Report – BLM Federal Onshore Oil and Gas Trespass and Drilling
Without Approval
Report No. CR-IS-BLM-0004-2014

The Office of Inspector General (OIG) recently completed an inspection of the Bureau of Land Management's (BLM's) onshore oil and gas management program regarding trespass and drilling without approval (DWOA). Trespass of Federal oil and gas occurs when an operator drills into unleased Federal minerals, or into Federal minerals leased to another entity without permission from the lessee to operate the lease. DWOA occurs when a lessee or a company with rights to operate on the lease drills into the leased Federal lands without approval from BLM.

Our objective was to identify and evaluate BLM's policies and procedures to detect and deter trespass and DWOA into the Federal oil and gas mineral estate. We found that BLM does not have nationwide policies and procedures to detect trespass and DWOA. We also found that BLM has no nationwide policies to deter or process trespass. Lastly, we found that BLM has a weak policy for processing DWOA, which may not deter cases of DWOA appropriately.

Background

BLM manages 700 million subsurface acres of Federal mineral estate, including oil and gas. This includes areas where either BLM or other Federal agencies manage the surface, as well as areas where the surface is privately owned, but the Federal Government owns the minerals. BLM has statutory authority to regulate oil and gas production on federally owned lands under several legislative acts. These include a) the Mineral Leasing Act of 1920, as amended, b) the Energy Policy Act of 2005, c) the National Environmental Policy Act of 1970, d) the Federal Land Policy and Management Act of 1976, and e) the Federal Oil and Gas Royalty Management Act of 1982. Regulatory authority to implement these statutes is in Titles 40 and 43 of the Code of Federal Regulations (C.F.R.).

Oil and gas production in the United States has increased steadily from 2011 through 2013. This is due in large part to the combined use of horizontal drilling and hydraulic fracturing (fracking) technologies (see Figure 1). Horizontal drilling extends the well bore vertically, then horizontally into formations bearing oil and gas. Fracking is a process whereby a high-pressure

fluid (usually water mixed with sand and chemicals) is injected through a well bore to create small fractures in formations bearing oil and gas. This allows more oil and gas to migrate to the well, which increases production. The horizontal portion of a well bore can reach up to 3 miles.

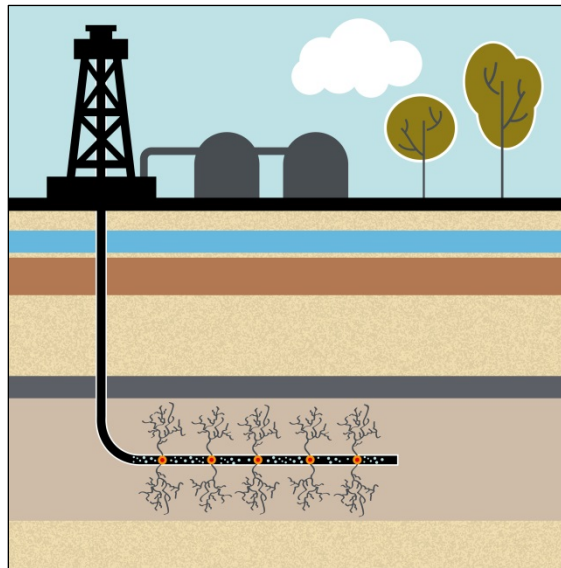


Figure 1. This diagram depicts horizontal drilling and hydraulic fracturing. Source: Shutterstock.

Although Federal onshore oil production did not increase at the same rate as total U.S. oil production, and Federal onshore natural gas production declined slightly, royalties generated from Federal onshore oil and gas remain a significant source of revenue, averaging \$2.4 billion per year over the last 3 years.

Given industry's expansion of horizontal drilling, the potential for trespass or DWOA into Federal minerals, either intentionally or unintentionally, has also increased. Since Federal lands frequently neighbor private lands, it is easier for operators of wells on private lands to drill into the Federal mineral estate. The Government is at risk, therefore, of not receiving royalty payments. This is particularly true for States with highly fragmented Federal mineral ownership such as North Dakota and Oklahoma.

Figure 2 below portrays a map of fragmented mineral ownership in a typical 36-section township where each section is 1 square mile. The yellow sections indicate Federal surface and mineral ownership and the white sections indicate private surface and mineral ownership. In this diagram, Well A has been drilled from private land in Section 31 and penetrated Federal minerals in Section 20. If the operator of Well A did not lease the Federal minerals, or if they are leased to another entity, then Well A is in trespass. If the operator of Well A has leased or has operating rights to the Federal minerals, but has not received approval to drill from BLM, the well is DWOA.

6	5	4	3	2	
7	8	9	10	11	12
18	17	16	15	14	13
19		21	22	23	24
30	29	28	27	26	25
31 ● A	32	33	34	35	36

Figure 2. This diagram portrays a horizontal well within a typical 36-section township, 6 miles by 6 miles. This township is an example of an area with fragmented mineral ownership.

In the last several years, BLM’s North Dakota Field Office identified about 10 cases of potential trespass and 70 cases of DWOA, and BLM’s Oklahoma Field Office identified about 40 cases of DWOA. The North Dakota Industrial Commission and BLM predict that trespass and DWOA will increase in North Dakota because the more easily leased and permitted private lands have mostly been developed. Although the extent and impact of such incidents is unknown, of the 80 cases of DWOA and trespass identified in North Dakota, the North Dakota State and Tribal Royalty Audit Committee estimates that approximately \$530,000 in royalties have not yet been paid.

Trespass and DWOA wells also pose environmental risks. Violators bypass Federal requirements to comply with environmental laws, including the National Environmental Policy Act. For example, in the Buffalo Field Office in Wyoming, a DWOA well did not comply with BLM’s standards for casing the well. The casing is designed to protect aquifers. In another example, the Oklahoma Field Office reported that a DWOA well was located in a wetland. The U.S. Army Corps of Engineers, which has jurisdiction over wetlands, has subsequently required the company to mitigate damages at a cost of \$4 million.

Findings

BLM Does Not Have Nationwide Policies and Procedures to Detect Trespass and DWOA

BLM learns of trespass or DWOA by happenstance. Methods of discovery include—

- when one company that acquired another company's wells and then reports to BLM that some of the wells may be in trespass or DWOA;
- when the Department of the Interior's Office of Natural Resources Revenue (ONRR) receives royalty payments for an oil or gas well that has no associated Federal file; or
- when BLM receives sundry notices¹ on wells with no Federal file.

All of the States included in our inspection have an oil and gas oversight agency requiring operators to submit an application for permit to drill regardless of mineral ownership. A critical piece of information collected by States is a well's directional survey. A directional survey identifies the surface hole, path, and bottom hole of a well. All of the State oil and gas commissions visited provide this information to the public and BLM with varying levels and periods of confidentiality. For instance, in North Dakota some well information is held confidential for 6 months.

BLM can use State-gathered information to determine if a well is in trespass or DWOA. The North Dakota Field Office uses directional survey information from the State to identify potential cases of trespass and DWOA. We consider this type of monitoring for DWOA and trespass to be a promising practice. The procedures currently used are labor intensive, however, and implementation has been sporadic due to workload requirements or the absence of qualified personnel.

BLM Has No Nationwide Policies to Deter or Process Trespass

Some regulations address oil and gas trespass, but they do not clearly identify or explain BLM's authority to process instances of trespass. In addition, some regulations place a considerable burden on BLM to demonstrate that the trespass occurred knowingly and willfully. DOI's Office of the Solicitor recently emailed several BLM offices to clarify BLM's responsibility in potential cases of trespass. During one of our site visits, we were told that BLM does not consider this email as formal BLM guidance.

Absent any specific national guidance, BLM State and field offices must develop their own internal procedures, which could adversely affect the Government's ability to recover full penalty payments. OIG's Office of Investigations is presently conducting an investigation where a BLM field office took action involving trespass prior to consulting with the OIG, the Office of the Solicitor, or the Department of Justice. This has negatively affected how the Government is proceeding in that investigation.

¹ Sundry notices are notices from an oil and gas company to BLM stating that various operations are being conducted.

BLM's Weak Policy Does Not Deter Cases of DWOA

We found that BLM has a weak policy that does not deter instances of DWOA, or provide guidance for processing these instances. We found only one nationwide policy in BLM's Handbook for oil and gas inspection and enforcement, which mostly reiterates 43 C.F.R. § 3163.1. This policy clarifies the regulation by distinguishing BLM's authority over surface disturbances for wells drilled on Federal and non-Federal lands.

The BLM Oklahoma Field Office addressed this lack of guidance by developing its own standard operating procedures (SOPs) for processing DWOA wells. Items addressed in its SOPs include ensuring adequate environmental and engineering reviews for DWOA wells and entering the DWOA wells into BLM's oil and gas database. Without this data entry, ONRR would not be aware that royalty payments are due, and the DWOA wells would not be subject to inspection and enforcement. The SOPs also describe a series of penalties and corrective measures that may culminate in a well shutdown and suspension of a lease. Oklahoma Field Office personnel stated that occurrences of DWOA are declining in its jurisdiction because of its SOPs, and because of its outreach with industry informing them of its policies on DWOA.

We also found that the two regulations that address DWOA are ineffective deterrents because one provides for a nominal fee assessment and the other is a costly penalty that BLM rarely uses. . For instance, 43 C.F.R. § 3163.1(b)(2) establishes a maximum assessment of \$5,000 for DWOA. BLM wrote the regulation in the mid-1980s, when the average cost of drilling a well in North Dakota was about \$500,000. Currently the cost of drilling and completing a well in North Dakota ranges from \$8 million to \$12 million. In some cases, companies consider paying a \$5,000 assessment a minor cost of doing business. BLM rarely enforces 43 C.F.R. § 3163.1(a)(3), which states that it may shut down a well if an operator "commences operations without approval [DWOA]." BLM rarely shuts down a well for DWOA because personnel deem this penalty as too excessive.

Recommendations

We recommend that BLM—

1. Develop nationwide policies and procedures to detect and deter trespass and DWOA to ensure uniform and appropriate handling of these violations. These policies should include reviewing State information for potential trespass or DWOA and notifying appropriate authorities, such as the Office of Inspector General or the Office of the Solicitor when potential trespass incidents occur.
2. Pursue formal agreements with its respective State oil and gas conservation commissions to obtain pertinent information that BLM can use to identify potential trespass or DWOA.
3. Develop and establish outreach with industry informing industry of its policies and procedures to detect and deter trespass and DWOA.

4. Pursue monetary fines for DWOA that are commensurate to the cost of drilling and completing a well.

Please provide us with your written response to this report within 30 days. The response should provide information on actions taken or planned to address the recommendations, as well as target dates and title(s) of the official(s) responsible for implementation. Please send your response to:

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Assistance Inspector General for Audits, Inspections, and Evaluations
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The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

If you have any questions regarding this report, please contact me at 202-208-5745.

Scope and Methodology

Our objective was to identify and evaluate BLM's policies and procedures to detect and deter trespass and DWOA into the Federal oil and gas mineral estate. The scope of our inspection did not include the Indian oil and gas mineral estate. To accomplish our objective, we—

- reviewed laws, regulations, and policies pertaining to BLM's management of Federal oil and gas;
- reviewed documents provided by BLM's State, district, and field offices related to processing potential trespass and DWOA; and
- visited or contacted by telephone, BLM offices in Montana, North Dakota, New Mexico, Oklahoma, and Wyoming;
- visited the North Dakota Industrial Commission, New Mexico Oil Conservation Division, and Wyoming Oil and Gas Conservation Commission; and
- visited offices of the State and Tribal Royalty Audit Committee in North Dakota and New Mexico.

We conducted our inspection in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

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