



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

# **THE BUREAU OF LAND MANAGEMENT'S PROCEDURES FOR ADDRESSING FORCED-POOLING REQUESTS AND MINERAL TRESPASS**




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

Memorandum

DEC 09 2019

To: Casey Hammond  
Acting Assistant Secretary for Land and Minerals Management

From: Mark L. Greenblatt   
Inspector General

Subject: Management Advisory – The Bureau of Land Management’s Procedures for  
Addressing Forced-Pooling Requests and Mineral Trespass  
Case Nos. OI-OG-14-0290-I and OI-OG-17-1004-I

We recently conducted two investigations into allegations of private companies (producers) accessing and producing Federal minerals without a properly executed mineral lease. We coordinated our findings with the Bureau of Land Management (BLM) and referred the violations to the U.S. Department of Justice (DOJ). One investigation is pending resolution, and another resulted in a civil settlement. During our investigations, we uncovered programmatic vulnerabilities that undermine the BLM’s oversight of Federal mineral production and limit the U.S. Government’s ability to address mineral trespass violations.

We understand that the BLM’s administrative burden increases as new areas for mineral development emerge and drilling activities increase. We also understand that horizontal drilling activities add to the BLM’s challenge of managing mineral resources on behalf of multiple mineral interest owners. As a result of this dynamic and demanding environment, mineral trespass violations can be difficult to detect. These violations also circumvent requirements for environmental review and public comment, which are critical to the BLM’s ability to make sound land use decisions.

This management advisory summarizes vulnerabilities and provides recommendations to address the need for the BLM to respond to forced-pooling<sup>1</sup> requests and reiterate our previous guidance regarding the referral of mineral trespass violations to our office. Acting on this management advisory will help the BLM avert future mineral trespass violations, improve compliance with the BLM’s mineral leasing process, and improve the Government’s ability to recover lost revenues that result from mineral trespass violations.

### **The BLM Did Not Respond to Forced-Pooling Requests**

In two investigations, we discovered that producers used State statutes compelling mineral interest owners to force-pool for purposes of oil and gas exploration and drilling. The producers notified the BLM of their intent to drill wells into proposed units containing unleased

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<sup>1</sup> Forced-pooling is the combining of mixed ownership land parcels to meet State acreage requirements for a drilling permit with the agreement to share the production cost and profits among the interest owners.

Federal tracts and requested the BLM's participation in accordance with State forced-pooling statutes. We found that the BLM did not respond to the producers' proposed drilling plans based on the interpretation<sup>2</sup> that Federal lands are not subject to State forced-pooling statutes. Subsequently, the producers improperly proceeded with drilling operations and initiated production from the wells without first obtaining Federal leases, resulting in mineral trespasses.

We consulted with the U.S. Department of the Interior (DOI) Office of the Solicitor (SOL). The SOL agreed with the BLM's long-standing position that State forced-pooling statutes do not apply to Federal minerals, which contributed to the BLM's decision not to respond to the producers' participation requests. The BLM also told us that it did not have a process for tracking and responding to such participation requests.

If the BLM had taken regulatory, or other action to address forced-pooling requests, or had the BLM responded to the notice of intent to drill and provided guidance on how to properly lease Federal minerals and the penalties associated with mineral trespass, the producers' trespasses may have been averted. Additionally, the BLM's decision not to respond to forced-pooling requests may impact the Government's ability to successfully resolve mineral trespass violations.

### **The BLM Did Not Consistently Refer Mineral Trespass Events to the OIG**

During our investigations, we learned that one BLM office waited years to refer mineral trespass matters to our office. Additionally, we learned that in a separate matter DOI personnel addressed trespass violations without a referral to our office. Mineral trespasses include complex legal and technical issues; a series of multiple events that may have occurred over long periods of time; and typically involve multiple parties external to the Government whose actions or inaction may have contributed to the violation. Timely referrals of mineral trespass violations to the OIG result in increased coordination with the DOI and provide an opportunity for early consultation with the DOJ when appropriate. Additionally, when the BLM, the SOL, and the OIG coordinate efforts to address mineral trespass violations, the DOI significantly improves its chances for successfully resolving the violations and recovering lost revenue.

On July 15, 2014, we issued a management advisory to the BLM that explained the impact of the bureau's administrative actions on the Government's ability to recover trespass damages absent a referral to our office. The management advisory included a recommendation to inform the OIG and the SOL about suspected trespass violations so the DOI can consider all potential remedies. As a result, on July 24, 2014, the BLM sent an email providing interim guidance that required BLM offices to consult with the SOL on potential trespass issues but was silent on referrals to the OIG. The BLM's reply also indicated that it would issue a formal Instruction Memorandum (IM) with guidance "consistent with the BLM's prior interim direction and the OIG's Management Advisory." Even though the BLM said it would issue such a directive more than 5 years ago, we have not seen any evidence that the BLM issued a formal IM

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<sup>2</sup> *Kirkpatrick Oil & Gas v. United States*, 675 F.2 1122 (10th Cir. 1982) "Congress must have intended that the Secretary have approval authority over any communitization of federal lands, and that no state-ordered forced pooling would bind the government without the Secretary's consent."

on a mandatory referral of mineral trespass violations to the OIG, consistent with Departmental policy.

Further, in September 2014, our Office of Audits, Inspections, and Evaluations published an inspection report<sup>3</sup> on this same issue, recommending that the BLM develop nationwide policies and procedures to detect, deter, and report Federal mineral trespass violations. The BLM concurred with all four inspection recommendations in December 2014.

Nevertheless, the guidance the BLM has issued to date, including the drainage manual, has not clearly directed that potential mineral trespass violations must be reported to the OIG. The DOI's Departmental Manual section addressing OIG investigations, 355 DM 2, mandates that agencies report potential fraud and theft to the OIG. This directive is included in previous Secretarial memoranda directing compliance with 355 DM 2. Additionally, a July 22, 2015 memorandum from the Inspector General states that alleged or suspected energy and mineral-related fraud violations occurring within DOI should be reported to our office for review and possible investigation.

### **Recommendations for Improvement**

To help the BLM improve its oversight of mineral production on Federal lands; improve compliance with its mineral leasing process; and improve the Government's ability to recover lost revenues as a result of mineral trespass violations, we recommend that the BLM:

1. Consult with the SOL to develop guidance on addressing forced-pooling requests for Federal and Indian tracts. This guidance should include procedures to notify operators of the DOI's official position on State forced-pooling statutes and provide producers guidance on the proper development of unleased Federal minerals in response to participation requests.
2. Incorporate the guidance on responding to inquiries about unleased Federal tracts into its published reference materials and distributed handbooks, such as *The Gold Book*<sup>4</sup>.
3. Implement previous recommendations included in the July 2014 management advisory and September 2014 inspection report, specifically related to referrals of potential mineral trespass matters to the OIG upon detection.

We, in conjunction with the DOJ, possess investigative tools that can facilitate the collection of information and evidence that may establish whether producers intentionally trespassed into Federal minerals. Timely notification and consultation with us before the BLM initiates administrative action enhances the DOI's ability to recover damages from mineral trespass violations, and our investigation of mineral trespass violations will serve as a deterrence to future violators. To complement the BLM's training programs in this area, we can provide

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<sup>3</sup> Bureau of Land Management: Federal Onshore Oil & Gas Trespass and Drilling Without Approval  
<https://www.doioig.gov/sites/doioig.gov/files/CR-IS-BLM-0004-2014Public1.pdf>

<sup>4</sup> Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development  
<https://www.blm.gov/sites/blm.gov/files/Gold%20Book%202007%20Revised.pdf>

BLM field staff with training on mineral trespass violations and general fraud awareness upon request.

Please provide us with a written response to this memorandum within 90 days describing the actions you have taken, or plan to take, to address the issue and our recommendations. You may either email your response to [doioigreferrals@doioig.gov](mailto:doioigreferrals@doioig.gov), or mail it to:

Office of Inspector General  
U.S. Department of the Interior  
381 Elden Street, Suite 3000  
Herndon, VA 20170

In accordance with the IG Empowerment Act of 2016, we intend to publish this memorandum on our website, in redacted form, no later than 3 days from the date we issue it to you. If you have any questions or would like further information concerning this matter, please contact Matthew Elliott at 202-208-5745.

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