

U.S. Department of the Interior
Bureau of Land Management

Tribal Consultations for Oil and Gas Leasing Pocket Guide

Colorado State Office

September 2020



Cover photo by BLM, Bob Wick

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Acronyms and Abbreviations

APD	Application for permit to drill
APE	Area of potential effects
BLM	Bureau of Land Management
EA	Environmental assessment
EIS	Environmental impact statement
EOI	Expression of interest
FLPMA	Federal Land Policy and Management Act of 1976
FM	Field manager
FOA	Field office archaeologist
FONSI	Finding of no significant impact
MDP	Master development plan
NAGPRA	Native American Graves Protection and Repatriation Act (1990)
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOS	Notice of staking
NRHP	National Register of Historic Places
Onsite	Onsite visit
RMP	Resource management plan
ROW	Right-of-way
SHPO	State Historic Preservation Office (or Officer)
SMA	Surface management agency
SUPO	Surface use plan of operations
THPO	Tribal Historic Preservation Office (or Officer)

A true definition of Indian spirituality and religion and ceremony is “a way of life.”

*—Clifford Duncan, Ute Elder Deseret News,
11/24/2004*

The Ute Tribes culture, traditions, language, values and world-views are born from their homelands. The water and the lands it flows through created an innate identity for the Ute people that it is essential to conserving their cultural patrimony. This in turn produces an intimate and insightful connection between Ute people and the cultural landscape they lived in and live on. The landscapes are a complex of interrelated and essential places of religious and cultural significances. All the lands and elements of the environment within the Ute Tribe’s milieu are aligned.

—Betsy Chappoose, 2019

Introduction

Trust and respect are the foundation of a successful relationship. The Ute Tribes, including the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and the Ute Indian Tribe of the Uintah and Ouray Reservation, have worked with the Colorado Bureau of Land Management (BLM) field offices over many years to create a dynamic partnership that has fostered greater understanding of each parties' culture. The Ute Tribes and BLM understand the complexity of building and maintaining this relationship and recognize that collaboration is key to meaningful consultation.

Government-to-government consultation is a large component of an interactive and evolving process between the Ute Tribes and Colorado BLM to identify, evaluate, assess, and resolve effects on cultural properties during federal undertakings. All parties must develop effective approaches to protect or otherwise account for impacts on all aspects of historic and cultural properties throughout the Section 106 process. Consultation is defined in federal regulations as "required and meaningful," but in order for it to be "meaningful," a relationship between the agency and the tribes must succeed. *Tribal Consultations for Oil and Gas Leasing Pocket Guide* and the accompanying [Tribal Consultations for Oil and Gas Leasing Handbook](#) stem from the relationship developed between the Ute Tribes and Colorado BLM over more than 20 years.

This pocket guide is intended to be a practical summary of topics covered in more detail in the *Handbook* or elsewhere. It is a tool for the Ute Tribes and Colorado BLM staff to use during the BLM oil and gas lease sale process, but it is not to be used in place of consultation, which is still required. It can assist consultation by providing insight when implementing protective measures in specific areas that the Ute Tribes may want protected from oil and gas development.

Colorado BLM needs to recognize that requests for closure or deferment are supported by a strong tribal position and are of high priority. Tribes must critically review requests for closures of lands to oil and gas leasing. Overusing closure requests could render the option ineffective.

The Ute Tribes define cultural resources comprehensively. Cultural resources include, among other things, cultural sites, plants, animals, minerals, viewsheds, aesthetics, water, land formations, and night skies. When evaluating impacts, the imperceptible as well as the tangible aspects of these elements should be incorporated.

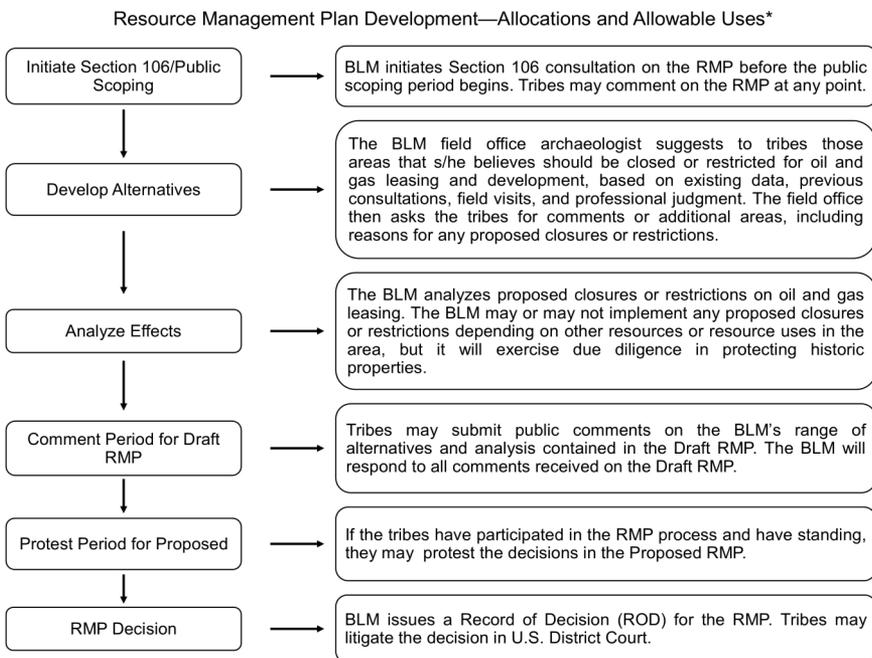
1.0 Land Use Planning

1.1 Resource Management Plans

In the developmental stage, resource management plans (RMPs) are a key tool for federally recognized tribes (tribes) to participate in decision-making regarding oil and gas development on public lands. RMPs are intended to ensure that public lands are managed for oil and gas leasing in accordance with the intent of Congress as stated in the [Federal Land Policy and Management Act of 1976 \(FLPMA\) \(43 U.S.C. 1701 et seq.\)](#), under the principles of multiple use and sustained yield (Sec. 102 (a)(7)).

RMPs identify lands where oil and gas development is excluded to protect resource values such as wilderness areas, wilderness study areas, or areas of critical environmental concern. Such lands may be open or closed based on legislative, regulatory, or policy requirements or criteria. Figure 1.1 shows when tribes have opportunities to be involved in RMP development to help guide where the BLM would allow oil and gas leasing.

Figure 1.1 Resource Management Planning Process with Opportunities for Tribal Participation



*Tribes may also sign on as cooperating agencies for the RMP. See section 1.2.

1.2 Tribal Consultation on Oil and Gas Allocations in RMPs

In accordance with federal law, the BLM provides tribes with opportunities to comment and participate in the development of RMPs during public scoping, public comment, and protest periods, and other times (see Figure 1.1). Tribes may also participate in RMP development as cooperating agencies (see [section I.E.2. of BLM Handbook H-1601-1—Land Use Planning Handbook](#)). Cooperating agency status affords the cooperator early involvement in the planning process and the opportunity to participate directly in identifying issues, collecting and analyzing data, developing alternatives, and evaluating effects, depending on the terms of the governing memorandum of understanding. See [Tribal Consultations for Oil and Gas Leasing Handbook](#) for more information.

The RMP development process gives tribes a critical opportunity to propose closures or restrictions regarding oil and gas operations. The BLM will evaluate such proposals in relation to other land uses and resources and include them in at least one of the alternatives in the RMP. The BLM may or may not implement proposed closures or restrictions, but it will exercise due diligence in protecting cultural resources.

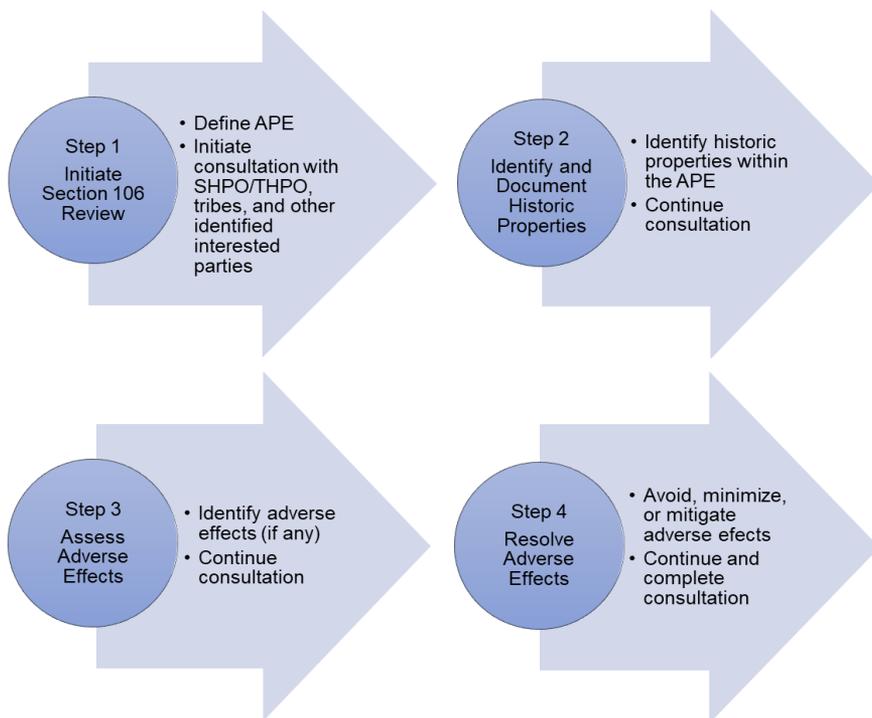
1.3 Cultural Resources Used to Support RMP Decisions

During RMP development, the BLM compiles, analyzes, synthesizes, and prioritizes available cultural resource data and literature, including past consultations, and strategizes how to accomplish needed inventories (see [BLM Manual 8110 - Identifying and Evaluating Cultural Resources](#)).

All authorizations for land and resource use, including applications for permit to drill (APDs), must comply with Section 106 of the National Historic Preservation Act (NHPA). Such actions must also be consistent with the objectives established in the governing RMP (see NHPA Sec. 106, 101(d)(6), 110(a)(2)(E); national BLM-Advisory Council and Historic Preservation-The National Conference of State Historic Preservation Officers Programmatic Agreement of 2012). Figure 1.2 outlines the Section 106 Process that the BLM follows for each federal undertaking.

Figure 1.2 The Section 106 Process

First ask, "Is this an undertaking?" If "yes," then:

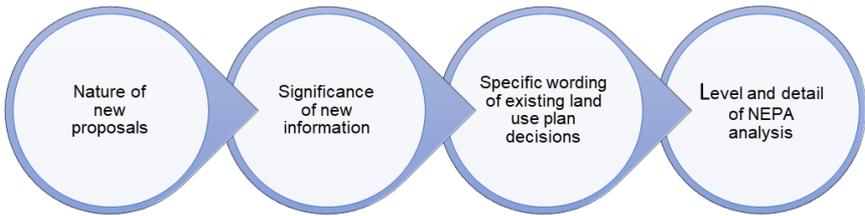


Area of Potential Effects

The area of potential effects (APE) is “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties” (36 CFR 800.16). The APE is influenced by the scale and nature of an undertaking. For an RMP, the APE is the “planning area,” i.e., all the lands under the jurisdiction of the field office developing the RMP. For an oil and gas lease sale, the APE is the area where leasing is proposed. Refer to the section 3.1 and the oil and gas leasing handbook for more about how to define the APE.

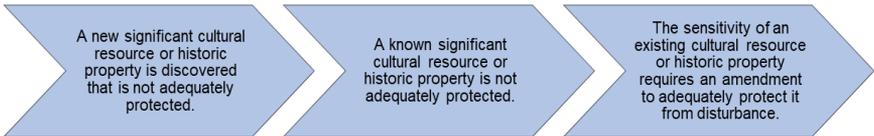
1.4 RMP Amendments

New information, updated analyses, or newly proposed resource uses or protections may require amending or revising an RMP and updating implementation decisions. The determination whether to amend or revise an RMP depends on the following factors:



1.5 When a Plan Amendment Should Be Considered for Cultural Resource Concerns

A tribe or the BLM may recommend initiating a plan amendment under the following circumstances:



If the field manager (FM) determines that the request for an amendment is warranted, the field office will initiate a plan amendment. If an amendment is warranted, but the agency is not able to initiate it due to lack of staff or funding, the agency will recommend that the parcels be deferred (see section 2.4 of the [Handbook](#)). If the request is not warranted, the FM submits a recommendation to forego the plan amendment to the BLM Colorado State Director, along with supporting documentation.

1.6 Information Needed from Tribes to Support Requests for an Amendment

In order to evaluate whether a plan amendment is warranted, the BLM requires a reason why and, at a minimum, the following documented information:

- Approximate location of the cultural resources/historic properties, consistent with federal guidance and policy
- Description of the current management of the area under the current RMP
- What is affecting the cultural resources/historic properties
- What additional protection for the cultural resources/historic

properties is being requested

- Reasons why additional protection for the cultural resources/historic properties is required and why an RMP amendment is warranted
- Cursory information on what the impacts of the additional protection might be
- Any additional information that would be helpful for the FM to review

This information should be compiled and sent to the appropriate FM and field office archaeologist (FOA) for review. During his or her review, the FM or FOA may request additional information from the tribe(s) and may request a field visit with the tribe(s) in order to help understand the impacts to the cultural resources/historic properties. The FM and the FOA consider the following criteria when reviewing proposed closures to protect cultural resources:

- Importance of the cultural resources to the tribe(s)
- Size or area of the affected cultural resources
- Uniqueness of the affected cultural resources
- Level of threat from other land uses to the affected cultural resources

Additionally, when an adverse effect (as defined per the NHPA) cannot be avoided, an agreement document as defined under NHPA (36 CFR 800.6) is developed to resolve any and all adverse effects on historic properties. See [*Tribal Consultations for Oil and Gas Leasing Handbook*](#) for more information.

2.0 Oil and Gas Leasing Process

2.1 Week 1



- Expressions of interest are submitted
- Lands are adjudicated - lands reviewed and parceled
- Preliminary parcel list sent to field office, and preliminary review begins

There is no tribal input at this step. During the first week, the state office parcels the expressions of interest (EOIs) through an administrative process. The BLM accepts EOIs for potential leasing through the National Fluids Lease Sale System. Once submitted, the public can view all EOIs submitted to the BLM and track their status. Information about BLM Colorado leasing can be accessed here:

<https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado>

2.2 Weeks 2-7



- 2-week public scoping period and notification to private surface owners
- Field office/district office/state office specialists coordinate to propose stipulations and deferrals (if applicable)
- Scoping comments used to identify issues, concerns, and potential impacts to guide detailed NEPA analysis
- Field office consults with state and local agencies and begins tribal consultation

The BLM reviews the parcels and attaches the appropriate stipulations, consistently with RMPs, to any lease that is offered. The FOA completes an existing literature review for known cultural resources in the proposed lease parcels. The BLM then writes consolidated tribal notification letters summarizing the known cultural resources, their NRHP eligibility and/or known tribal importance, as well as the stipulations for protecting cultural resources that apply to that lease parcel. The lead office or lead consolidated office (Table 2.1) sends the letters to the tribes. Tribes will receive a list of parcels with associated stipulations from the BLM during the second or third week. See inside back cover for a map of BLM field offices in Colorado.

Table 2.1 BLM Oil and Gas Offices

Lead Office	Consolidated Field Offices Include
Tres Rios	Western portion of Uncompahgre
White River	Kremmling; Little Snake
Colorado River Valley	Grand Junction; eastern portion of Uncompahgre (i.e., portion not covered by Tres Rios)
Royal Gorge	San Luis Valley

2.3 Weeks 8-9



- District office/state office review preliminary NEPA
- Tribes should send comments to BLM prior to public comment period

Tribes should submit comments on the oil and gas parcels by the end of week nine, prior to the public comment period (see next section). This could include a request to defer parcels that are in an area that needs additional protections. The additional protections could include lease notices, timing limitations, controlled surface use, no surface occupancy, or even a closure of lands to leasing. Refer to [Tribal Consultations for Oil and Gas Leasing Handbook](#) for definitions of the different types of protections.

If the tribes identify a lease with insufficient protections for a cultural resource, the tribes should identify the cultural resource, document the needed protections, and send that information to the FM and FOA. The BLM uses the least restrictive protections possible that meet the needs of the tribe. When submitting this information, the tribes need to identify two items: (1) which parcels the BLM should review and (2) what protections are needed for the parcels. Based on this information, BLM and the tribes can coordinate in more depth on the parcels and potentially defer them if they determine that more analysis or an RMP amendment is needed.

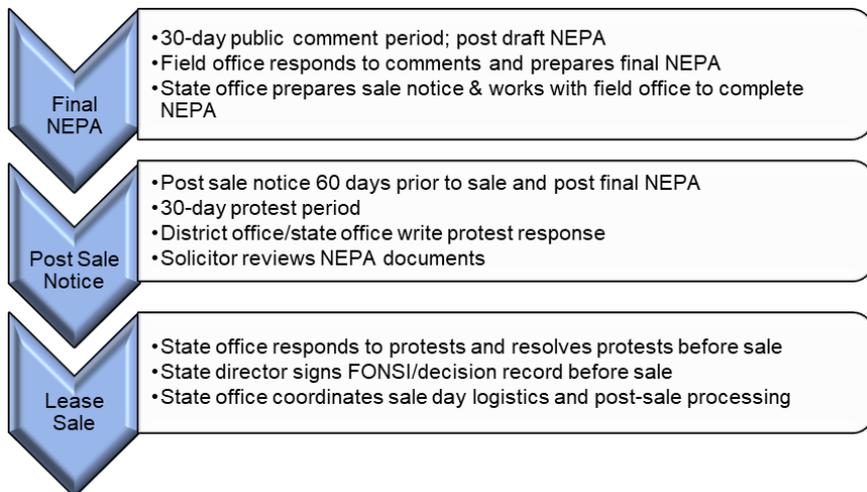
Deferral of Parcels

Deferring a parcel allows time to address concerns or specific issues. Deferred parcels could appear in a future sale once the issue or concern has been addressed. The only time a deferred parcel will not reappear in

a lease sale is if the BLM decides to close a land to leasing. The following summarizes BLM Colorado's deferral process:

- Field office notifies the BLM Colorado State Office that it is recommending deferral of a parcel or parcels and includes the reasons why.
- BLM Colorado State Office reviews deferral recommendation and completes the Washington Office deferral request memo.
- The deferral request memo is signed by the BLM Colorado State Director and forwarded to the BLM Washington Office for approval.
- Washington Office Deputy Director for Policy and Programs signs and approves request.
- BLM Colorado State Office removes the parcel(s) from the sale.

2.4 Weeks 10-30



If the tribes identify any concerns either before or after the 30-day public comment period, the BLM will reach out to them and discuss their needs. In general, this should include a discussion of the tribe's concerns, the cultural resources in the area, potential deferral of the parcel(s), and the final outcome of the discussion (e.g., RMP amendment for modifying the stipulations or closing the lands to leasing). The BLM will usually defer any parcels undergoing such discussions.

2.5 Split Estate Issues

Refer to [Tribal Consultations for Oil and Gas Leasing Handbook](#) for additional information on split estate.

3.0 Oil & Gas Development

Lease sales do not authorize any new construction or surface disturbance, nor do they obligate the BLM to approve any particular well pad design or location, associated facilities, or associated infrastructure. Approving the lease sale does, however, obligate the BLM to approve access to leased minerals somewhere within the lease area under reasonable conditions of approval. Once a lease has been issued, it is valid for 10 years if not “held by production” (i.e., the lease is not economically producing a minimum amount of oil or gas and is therefore not eligible for extension for that reason).

When the BLM receives a proposal to develop within a lease, the BLM evaluates the proposal for conformance with the governing RMP and consistency with past decisions, in accordance with National Environmental Policy Act (NEPA) requirements. The BLM also works with the operator to procure any additional, site-specific information needed to analyze the proposal’s potential impacts. This can help fulfill NEPA requirements for analyzing the impacts of subsequent APDs.

3.1 Onsite Reports and Tribal Consultation

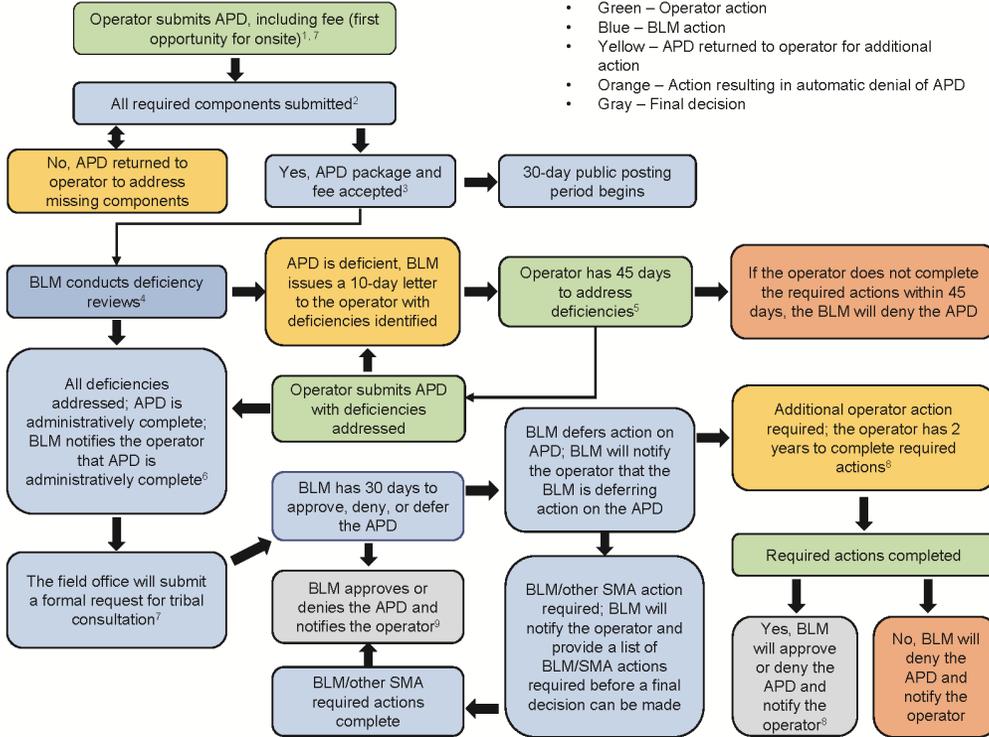
The purpose of tribal consultations is to identify Section 106 and 110 projects as they relate to the NHPA and that may have the potential to affect cultural resources within or adjacent to BLM-administered lands. These ongoing discussions give the tribes and the BLM the ability to identify areas of traditional, spiritual, and cultural land use. For example, BLM Colorado consults biannually with official tribal representatives from the three Ute Tribes, in addition to other consultations. This model has proved successful and could be used for consultations with other tribes as well.

At the APD stage, the APE is further defined at a scale smaller than an RMP or lease sale; however, it may still be landscape-driven and larger than the area of proposed disturbance. Inventories are generally completed according to the following guidelines with sufficient lead time to ensure that the cultural resources report is included in the APD package:

- A Class III inventory must include a minimum 10- or 40-acre square, centered on the drill hole, depending on the size of the well pad.

APD Processing Steps and Time Frames

10



Legend

- Green – Operator action
- Blue – BLM action
- Yellow – APD returned to operator for additional action
- Orange – Action resulting in automatic denial of APD
- Gray – Final decision

Notes

- The initial APD submission starts the pre-application clock.
- Required components include the following:
 - APD Form 3160-3
 - Well plat
 - Drilling plan
 - Surface use plan of operations
 - Operator certification
 - Bonding
- This is referred to as the APD Package Accepted Date (BLM accepts an APD package).
- BLM has 10 days to notify the operator of any deficiencies; deficiency reviews are broken into 4 categories:
 - Surface
 - Engineering
 - Geological
 - Adjudication
- If the operator fails to address deficiencies within 45 days, the BLM may return the APD to the operator. The operator may submit a request, in writing, to the BLM if additional time is needed to address deficiencies. Subsequent 10-day letters may be sent to the operator if additional deficiencies are identified.
- The administratively complete date is the end of the operator time and the beginning of BLM time.
- This is the start of formal consultation; however, tribes can comment throughout the process.
- If the operator cannot address all required actions within the 2-year time frame, the BLM will deny the APD.
- This is the final disposition of the APD, when the APD processing time clock stops (end of BLM and total time).

Figure 3.1 The BLM Application for Permit to Drill Process

- If there will be several well sites, block survey coverage should be considered.
- Access roads and other associated ROWs require a minimum corridor of 200 feet, unless otherwise determined.
- Tribes may request copies of survey reports.

Visual or audible effects (e.g., visual intrusions, vibrations, dust, noise from short-term construction activities or long-term infrastructure use, etc.) and other impacts such as odor may also exist and contribute to the APE. Additional inventories, perhaps a Class II (probabilistic survey), may be required to identify potential visual, audible, or atmospheric effects on historic properties. The FOA will determine and document the appropriate APE for those types of effects.

3.2 BLM's Role in Coordinating with Oil and Gas Operators

No drilling operations or related surface disturbing activities may be initiated without an APD approved by an authorized officer of the BLM, in consultation with the surface management agency. BLM-administered federal minerals sometimes occur under surface administered by the U.S. Forest Service. The Forest Service must approve the surface use plan of operations (SUPO) portion of the APD before the BLM can approve the APD.

An operator has two procedural options for securing approval to drill: the notice of staking (NOS) option and the APD option. By filing a NOS with BLM, the operator is formally requesting an onsite inspection prior to filing an APD. During or within seven days of the onsite inspection, all parties will jointly develop and provide a list of resource concerns for the operator to address in the APD. Operators are strongly encouraged to consult with the appropriate surface management agency as early as possible before filing an APD to identify local requirements and potential concerns.

Unless an onsite inspection was previously held under the NOS option, the onsite inspection is held after the filing of the APD. The onsite process can include single wells, multiple wells per pad, or in some cases many wells in a field. In cases where multiple APDs are involved, the operator may submit a master development plan (MDP). MDPs are useful for processing multiple APDs, planning for orderly development, and considering cumulative effects and mitigation. All wells within an MPD share a

common drilling plan, SUPO, and plans for future development and production.

3.3 BLM Colorado Oil and Gas APD Processes and Tribal Consultation

This section answers some questions about incorporating tribal consultation during BLM's consideration of proposed oil and gas leasing and development in Colorado.

When during the oil and gas planning process can the tribes participate?

- The most critical time for tribes to participate is during RMP development, when the BLM makes decisions about which areas are leasable (see also section 1.2).
- Tribes can give input at any point, from RMP development through leasing, exploration, and drilling.
- If tribes have site-specific concerns, it is best to share them during the APD development stage, i.e., *after* RMP and leasing decisions have already been made.

Are tribes invited to participate in the onsite process, and can they request a separate onsite if needed?

- Tribes can participate in the initial onsite inspection, but because the required timelines for onsites with the operator (within 10 days from receipt of the NOS/APD) are vastly different from those for tribal consultation (3-month minimum advance notification), this is not usually feasible.
- Tribes can request a separate onsite visit as part of the consultation process. They may prefer to wait for the results of the cultural survey to do so, unless a given proposal overlaps with a previous, adequate, cultural inventory. When a new survey is required, this will routinely occur after the initial onsite inspection.
- Tribes are encouraged to identify beforehand the geographic areas for which they would like to be notified of upcoming onsites. This will help the BLM when scheduling onsite meetings with the tribes.

At what point are notification letters sent to the tribes, and how should tribes respond? How is tribal input incorporated?

- The BLM sends letters to the tribes as soon as potentially adverse effects are identified during the NEPA team review, as a result of a given NOS or APD proposal, and at least 30 days before a given NEPA decision is scheduled. Letters are sent to the tribal chairpersons, and either letters or email copies (depending on the tribe's request during consultation) are sent to the tribal cultural person, NAGPRA representative, or THPO (see section 2.4 of [Tribal Consultations for Oil and Gas Leasing Handbook](#)).
- BLM routinely requests that the tribes respond or provide comments within 30 days following receipt of BLM's letter.
- The tribal representative may request additional information, additional time to respond, or to schedule an onsite visit. Tribes can respond in an official letter, or more informally over the phone or via email.
- Tribal comments are analyzed and incorporated in the environmental analysis. The FOA works with the field office and the tribes to ensure that all tribal concerns are addressed.

Is BLM tracking the most important areas of known or potential tribal concern? Is BLM using this information to reduce the number of letters to tribes?

- The FOA keeps records of government-to-government consultation between the field office and the tribes. Any known sites or areas of concern shared by the tribes during in-person consultation or via phone or email are documented (with the tribe's permission) and saved with the associated formal consultation letters in restricted folders.
- NEPA coordinators for the lease sale also keep a file of all formal consultation letters sent and received between the BLM and the tribes as part of the administrative record. Those records containing sensitive information are marked as such to distinguish them from other files that are available to the public under the Freedom of Information Act.

Proposals in known areas of tribal concern:

- If a proposed project is known to be in a highly controversial or sensitive area, BLM generally recommends that our specialists are notified prior to submission under either option so that operators do not complete unnecessary survey and staking work when a less sensitive area may be acceptable to all participants.
- BLM's standard procedure is to avoid all cultural sites.

Does BLM work with private landowners to gain permission for tribes to attend onsites on split estate projects?

- If BLM is conducting the onsite with the oil and gas operator, tribal representatives can participate and accompany the group (i.e., Colorado Oil and Gas Conservation Commission, Colorado Parks and Wildlife, BLM, operator, and private landowner) to the well location and any additional developments associated with that proposal.

What is BLM's "trigger" to know when proposed mitigation is acceptable to the tribes and BLM can proceed with consulting the State Historic Preservation Office (SHPO)? Would BLM consider offering an onsite (if not already conducted) to help resolve any issues?

- The BLM can facilitate tribal onsites/field visits of the proposed project area. Privately owned surface land would require the landowner's permission.
- For mitigation alternatives identified during the cultural analysis and consultation process, the BLM seeks agreement on resolution of adverse effects concurrently from the tribes and the SHPO. Such resolutions may be accounted for in an agreement document.

4.0 BLM Points of Contact

The BLM field offices in the table that follows lease federal fluid minerals on federal surface and subsurface in the State of Colorado. For the most current information, contact the BLM Colorado State Office:

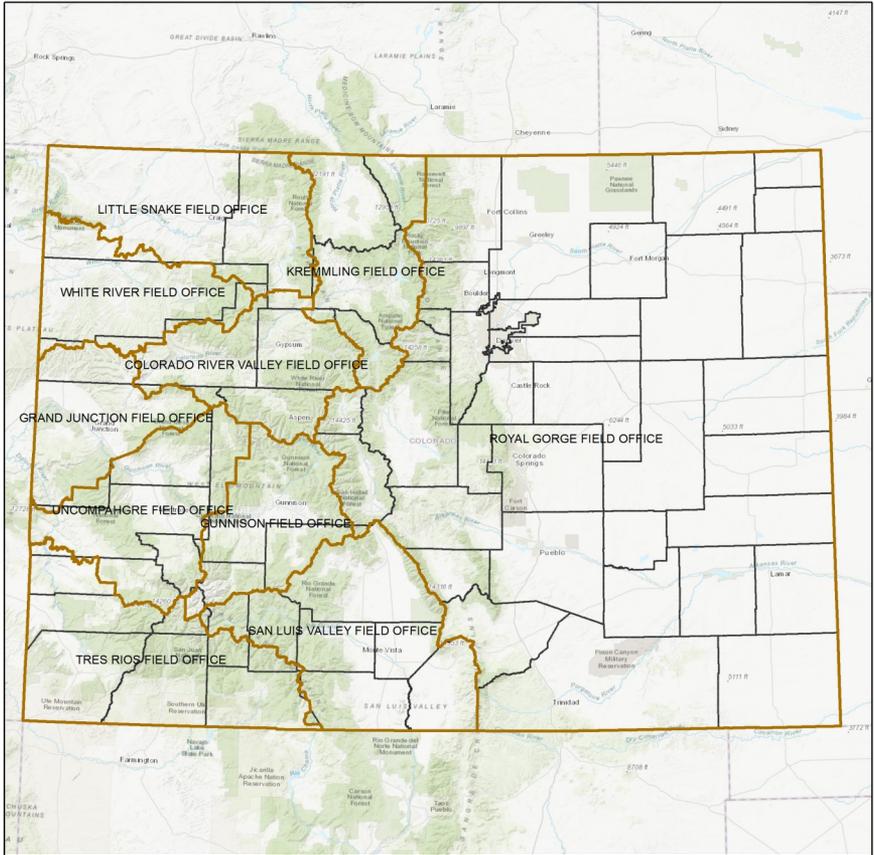
Bureau of Land Management
Colorado State Office
2850 Youngfield Street
Lakewood, CO 80215
(303) 239-3600

<https://www.blm.gov/office/colorado-state-office>

Office	Management Contact	Phone	Email	Archaeologist	Phone	Email
Royal Gorge* (Canon City)	Keith Berger	719-269-8515	kberger@blm.gov	Monica Weimer	719-269-8557	mwiemer@blm.gov
White River* (Meeker)	Kent Walter	970-878-3802	K1walter@blm.gov	Lukas Trout	970- 878-3809	ltrout@blm.gov
Little Snake (Craig)	Bruce Sillitoe	970-826-5089	Bsillitoe@blm.gov	Brian Naze	970- 826-5095	bnaze@blm.gov
Kremmling	William Mills	970-724-3001	wmills@blm.gov	Billy Wyatt	970-724-3038	bwyatt@blm.gov
Colorado River Valley* (Silt)	Larry Sandoval	970- 876-9002	lsandoval@blm.gov	Jon Brogan	970-876-9052	jbrogan@blm.gov
Grand Junction	Gregory Wolfgang	707-986-5402	gwolfgan@blm.gov	Natalie Clark	970- 244-3038	nfclark@blm.gov
Uncompahgre (Montrose)	Gregory Larson	970-240-5338	glarson@blm.gov	Shane Rumsey	970- 240-5303	srumsey@blm.gov
Tres Rios* (Dolores)	Connie Clementson	970-882-1150	cclementson@blm.gov	Brian Yaquinto	970-882-1132	byaquinto@blm.gov
Colorado State Office Denver	Peter Cowan, Branch Chief	303-239-3939	picowan@blm.gov	Not currently filled		

* Denotes lead or lead consolidated office

Bureau of Land Management Field Offices in the State of Colorado



-  BLM Colorado Field Office Boundaries
-  County Boundaries

**Bureau of Land Management
Colorado State Office
2850 Youngfield Street
Lakewood, CO 80215
(303) 239 3600**