United States Department of the Interior

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In Reply Refer to:
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Permanent Instruction Memorandum No. AZ-PIM-2022-001

To: Field Officials

From: State Director

Subject: Assessing 43 CFR 2920.8 Fees for Commercial Leases along the Lower Colorado River bordering Arizona and California

Program Area: Lands, Realty, and Cadastral Survey

Purpose: This Permanent Instruction Memorandum (PIM) provides supplemental guidance for assessing rental fees in accordance with 43 CFR 2920.8 for the commercial leases along the Lower Colorado River bordering Arizona and California, including both existing leases and any new leases that may be approved in the future. The purpose is to ensure that the Bureau of Land Management (BLM), Arizona Authorized Officer (AO) applies a consistent approach to the analysis and determination of the appropriate rental fee and cost reimbursable monitoring fee in accordance with § 2920.8. These commercial leases are situated on Bureau of Reclamation withdrawn lands administered by the BLM under Departmental Manual Part 613. The BLM manages these leases in accordance with the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701, et seq., its implementing regulations for Leases, Permits, and Easements at 43 CFR 2920, and PIM 2016-030 issued by the BLM Headquarters Office.

Policy/Action: All existing commercial leases along the Lower Colorado River will be revised to comply with the 43 CFR 2920 regulations upon lease renewal, amendment, or assignment. Consistent with 43 CFR 2920.8, the rental rate in the revised leases should be equivalent to at least the fair market value (FMV) of the rights authorized in the lease, which can be determined by an appraisal or by competitive bidding.

When assessing the rental fee for commercial leases along the Lower Colorado River, the BLM Arizona AO may take into consideration and may discount the cost reimbursable monitoring fees required to ensure public health and safety associated with the authorized land use which are unique to leasing land from the Federal government and not encountered

in private transactions.

The BLM Arizona AO will review and may readjust the rental fee every five years or earlier, as determined by the AO, to reflect current FMV for the use authorized.

Assessing Fees for Commercial Leases along the Lower Colorado River

The AO will request an appraisal from the Department of the Interior (DOI), Appraisal and Valuation Services Office (AVSO) to identify the FMV of the rights authorized prior to renewing, assigning, or amending existing leases or issuing new leases, and every five years, as determined by the AO.

To address the potential economic disparity between rents for commercial leases on Federal land compared to non-Federal land, the AO may account for the monitoring fees that lessees must pay in accordance with 43 CFR 2920.6 when determining the appropriate rental fee, provided that those fees are unique to leasing on Federal land. Per the AVSO, see Attachment 1, their appraisal process does not take these monitoring fees into account when determining the FMV.

When determining whether a rental fee adjustment is appropriate, the AO must apply the following criteria:

- Any proposed rental fee adjustment may only consider those fees directly related to the monitoring and/or administration of the lease as described in the lease cost recovery agreement. Consideration of any other fees in the adjustment must be approved by the State Director.
- Proposed rental fees can only be adjusted to account for fees related to monitoring or administration of the lease that are unique to leasing land from the Federal government and are not encountered, either directly or indirectly, in private transactions.
- The total amount that the lessee pays under the lease shall be at least the FMV for the use authorized in the lease, as determined by the AVSO.

A worksheet for calculating the rental fee adjustment is provided in Attachment 2. The worksheet for estimating the monitoring fees is provided in Attachment 3. These worksheets must be retained in the administrative record for the lease.

Administration of Funds

The monitoring fees approved for rental adjustment shall be based on actual costs incurred by the United States. Upon receipt, these funds shall be deposited into an account (L5440) with a unique work breakdown structure (WBS) code. The monitoring fees (§ 2805.16) approved for rental adjustment shall be kept in a separate account from the processing fees (§ 2804.14).

To ensure applicants do not pay less than FMV for the authorized use each lease year, the monitoring fees will not be refunded if the BLM adjusts the rental rate. Instead, for the following lease year, the BLM shall reduce the amount of the monitoring fees requested based

upon the estimated need and increase the amount of the adjusted rental fee to be deposited in the U.S. Treasury.

Timeframe: This policy will be effective immediately and will be implemented for all existing commercial leases upon lease renewal, amendment, or assignment. The conversion to the accounting processes in this PIM will be effective immediately.

Budget Impact: The PIM provides guidance to ensure BLM Arizona has the fiscal resources needed to provide for public health and safety while ensuring the lessees are not paying less than FMV.

Background: The BLM Headquarters Office issued PIM 2016-030 to address the findings in the DOI Office of Inspector General *FinalEvaluation Report - Review of BLM's Concession Management Practices* (C- EV-BLM-0013-2013; March 30, 2015). The PIM 2016-030 affirmed the requirement for lessees to pay not less than FMV but did not clarify the AO's authority to account for the costs imposed by 43 CFR 2920.6 when determining rent.

The commercial leases along the Lower Colorado River have unusually high monitoring costs to administer these leases due to the level of development and complexity of the properties. As these are Federal leases on withdrawn public land, with permanent and semi-permanent structures and high public visitation, the BLM is responsible for the administration and monitoring of these leases. The United States recoups its costs associated with monitoring these leases, including emergency services, through cost recovery. Lessees who are engaged in similar activities on private leaseholds may not be responsible for many (if not most) of the administration and monitoring costs paid by commercial lessees along the Lower Colorado River.

The BLM Arizona has developed this policy to address the potential economic disparities between BLM leases on public lands and private party leases, which may occur when the AVSO's appraisal do not account for the unusually high costs required to monitor and administer the commercial leases along the Lower Colorado River. In such situations, the AO may, consistent with the authority in § 2920.8(a) and the policies articulated in this PIM, adjust the rental rate to account for monitoring costs that are unique to leases issued by the BLM.

Manual/Handbook Section Affected: No Manuals/Handbooks are affected by this policy. However, this policy does supersede the policies and procedures established in the *BLM Colorado River District Commercial Recreation Lease Management Manual Implementation Guidelines* (2017), approved October 3, 2017.

Coordination: This PIM was developed in coordination with the BLM Arizona State Executive Leadership Team, the Headquarters Division of Lands, Realty, and Cadastral Survey (HQ-350), and the Office of the Solicitor.

Contact: For further information, contact Ms. Jennifer Whyte, Senior Realty Specialist, Division of Lands, Minerals, and Energy, Arizona State Office at jwhyte@blm.gov or 602-417-9200.

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3 Attachments:

1 - AVSO memo regarding Cost Recovery
2 - Worksheet to Assess Proposed Rental Rate Adjustment
3 - Worksheet for Assessing Category 6 Monitoring Costs