



Western lands and energy newsletter

June 26, 2013

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I. Introduction

In the Energy Policy Act of 2005, 119 Stat 711, Congress attempted to address a longstanding dissatisfaction with the slow pace at which the Bureau of Land Management (BLM) processes applications for permit to drill (APDs). Adding subsection (p) to section 17 of the Mineral Lands Leasing Act of 1920, 30 U.S.C. § 226(p), Congress mandated prompt action by the BLM on “complete” applications.

The basics of the required timing may be summarized as follows: On day 1, an operator submits an APD. By day 11, BLM is to notify the operator either that the application is complete or that specified information is missing. If the application is complete on day 11, BLM has until day 41 to issue the permit or to give the operator a notice that BLM cannot approve the permit yet.

If the BLM issues the notice, then all illusions of speedy government action disappear. In the rare case, there may be some substantive bar to issuing the permit, such as a prohibition under the Endangered Species Act or a BLM finding that the operation will cause “undue degradation” of the public lands. In most cases, however, the delay is caused by the requirements of the National Environmental Policy Act (NEPA). In that circumstance, the law gives the operator up to two years to provide the Secretary with all information needed to complete NEPA review.

If, during the two years, the BLM has actually been working on the NEPA document, then the operator *might* be in a position to receive the permit within another 10 days. (If the reader is still counting, the operator is now at day 781.) But if BLM has not been working on the document, the statute imposes no limit on how much longer BLM can take. 30 U.S.C. § 226(p)(3)(B).

In response to recent criticism of BLM delay, the agency has explained that the vast majority of time in the APD approval process is spent by the BLM waiting on operators to submit information they should have submitted in the first place. One of the co-authors of this article

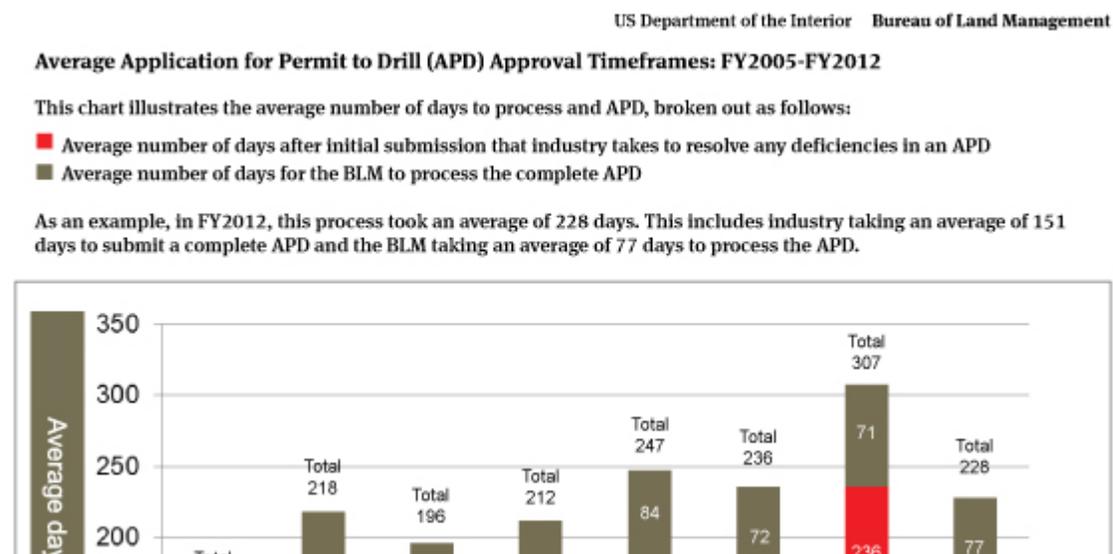
(Leggette) could not shake a sense of skepticism that operators would file APD after APD, year after year, with so little understanding of what the BLM's rules require. So he asked the other co-author (Zimmerman) to examine publicly available information to see whether it supported the BLM's assertions. Her report follows.

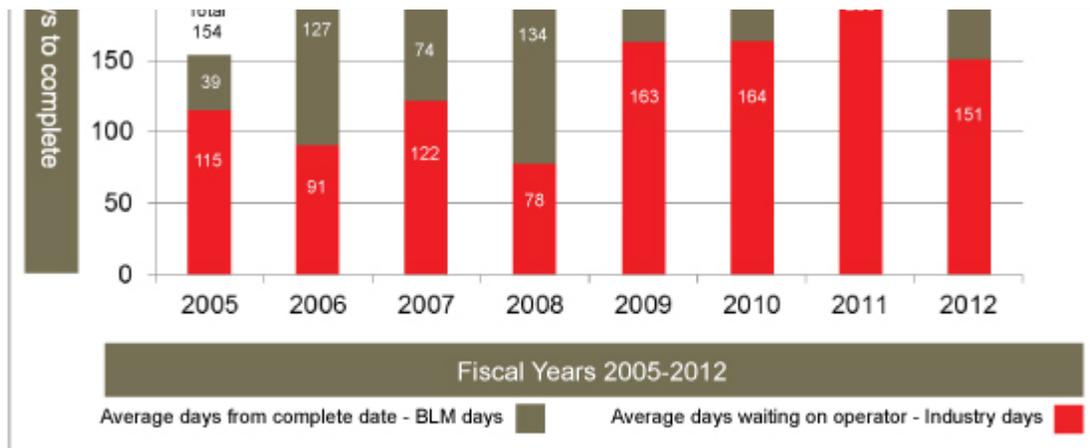
II. Methodology

How long does it take the BLM to process an APD on federal land? This seems like a simple question, especially for the Western states of Colorado, North Dakota, Utah, and Wyoming, where oil and gas activity is significant. However, the information needed to answer this question wasn't quite as accessible as I imagined. Eventually, through research, I unearthed a series of tables and a graph with statistics produced by the BLM. The graph, entitled "Average APD Approval Timeframes," measured the average number of days to process an APD per fiscal year (2005-2011).[1] The average time was divided into two parts: "Industry" days and "BLM" days. "Industry" days represent the time to *submit a complete APD* (*i.e.* the amount of time between receipt of an application by the field office and its completion), whereas "BLM" days depict the time to *process* that APD (*i.e.* the length of time between completion of the application and its approval).

Notably, BLM cited no source for any data in the graph. In an effort to better understand supporting data for this graph, I submitted a Freedom of Information Act (FOIA) request to the BLM coordinator in the Washington, DC office. I asked for the underlying data BLM used to construct the graph. For the BLM's convenience, I restricted the data requested to the states of interest for the last three years.[2]

Figure 1





Source: http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/statistics/apd_chart.print.html

III. Data

I received a response to my September request from the FOIA office in early November 2012.[3] The response included 455 pages of data in a PDF spreadsheet. The information in the response did not correspond with what I requested. Instead, the BLM responded with *all* data used to produce the graph, as opposed to the very specific information detailed in my request. The spreadsheet contained information regarding APDs approved in fiscal years 2011 and 2012 from 33 field offices across eleven states.[4] In addition to field office and state, for each APD the spreadsheet listed dates of receipt, admin (completion),[5] and disposition (approval), as well as the number of days from receipt to completion (admin), completion to approval (disposition), and receipt to approval. For each field office, BLM used this data to calculate an average number of days for each stage of the process. Finally, interspersed in the data were two summary charts. These charts compile the averages calculated by BLM. See Figure 2 and Figure 3. It appears that these charts were used to prepare the final graph I found online.

Figure 2

Average Processing Days for FY11

***Dates either missing, all zeros, or large*

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STATE	FIELD OFFICE	AVERAGE DAYS FROM RECEIPT TO APPROVAL	AVERAGE DAYS FROM APD COMPT TO APPROVAL	AVERAGE DAYS FROM RECEIPT TO APD COMPT

Alaska	Anchorage	N/A	N/A	N/A
California	Bakersfield	45.1	37.8	20.8
Colorado	Canon City	237.3	162.5	75.5
	Craig	106.7	12.3	103.6
	Durango	250.7	93.7	157.0
	Glenwood Springs	106.6	78.0	46.3
	Grand Junction	215.7	91.2	174.8
	Meeker	144.3	62.6	86.9
Eastern States	Jackson	228.0	0.0	228.0
	Milwaukee	N/A	N/A	N/A
Montana	Dickinson	117.4	3.8	114.3
	Great Falls	116.4	20.8	102.9
	Miles City	283.4	84.8	198.6
Nevada	Reno	423.0	276.0	147.0
New Mexico	Carlsbad	93.1	48.2	54.8
	Farmington	207.2	0.0	183.2
	Hobbs	107.2	64.3	62.2
	Rio Puerco	129.3	0.0	129.3
	Roswell	68.3	N/A	N/A
	Tulsa	155.1	53.7	101.4
Utah	Moab	579.3	178.0	491.8
	Price	214.6	55.7	139.9
	Salt Lake	30.3	0.0	25.5
	Vernal	404.4	319.5	88.2
Wyoming	Buffalo	808.5	48.1	848.6
	Casper	65.5	0.0	0.0
	Green River	105.7	52.1	60.5
	Kemmerer	574.5	215.3	59.1
	Lander	197.6	112.0	55.6
	Newcastle	92.4	1.4	59.1
	Pinedale	215.4	14.2	207.8
	Rawlins	543.7	N/A	N/A
	Worland	49.8	26.0	26.2

Source: FOIA Response (November 2012)

Figure 3

STATE	FIELD OFFICE	AVERAGE DAYS FROM RECEIPT TO APPROVAL		AVERAGE DAYS FROM APD COMPLT TO APPROVAL		AVERAGE DAYS FROM RECEIPT TO APD COMPLT	
Alaska	Anchorage	34.5		14.0		27.5	
California	Bakersfield	51.0		32.0		29.6	
Colorado	Canon City	211.4	(446.3)	110.3	(394.7)	156.6	
	Craig	110.2		27.1		83.1	
	Durango	136.0		88.5		43.5	
	Glenwood Springs	85.0		45.0		52.1	
	Grand Junction	112.9		39.1		83.8	
	Meeker	226.8	184.6	52.0			
Eastern States	Jackson	160.6		10.0		170.3	
	Milwaukee	359.0		121.0		238.0	
Montana	Dickinson	181.0		31.0		164.1	
	Great Falls	94.5		54.5		40.0	
	Miles City	137.3		26.8		113.1	
Nevada	Reno	146.5					
New Mexico	Carlsbad	90.9					
	Farmington	162.3					
	Hobbs	114.0					
	Rio Puerco	51.0					
	Roswell	127.2					
	Tulsa	188.1		56.5		76.5	
Utah	Moab	635.4					
	Price	215.4					
	Salt Lake	N/A		N/A		N/A	
	Vernal	288.5		199.1		77.6	
Wyoming	Buffalo	952.9					
	Casper	124.0					
	Green River	173.1		123.6		103.3	
	Kemmerer	518.7		490.9		27.8	
	Lander	233.5		122.2		58.6	
	Newcastle	77.7					

	NEWCASTLE	121.4				
	Pinedale	127.2				
	Rawlings	271.9				
	Worland	85.4		41.4		49.2

Source: FOIA Response (November 2012)

IV. Results

My first task was to convert the data from its PDF format into an Excel spreadsheet, so that I could sort through BLM's numbers and verify its calculations. I started by reviewing the summary charts and comparing them to the graph. I then assessed BLM's calculation of averages times. Finally, I reviewed the BLM's source numbers. In sum, and unfortunately, the data received was incomplete, inaccurate, and did not support the information provided to the public.

A. Chart comparison

BLM included a summary chart of its calculated averages for both fiscal years for which data was provided (2011 and 2012). Presumably, these averages would be reflected in the BLM graph. That presumption proved false. Using BLM's calculated averages for each field office, I calculated a straight average for each segment included on the graph for both years. I compared average days from Receipt to Approval to Total Days, Average Days from Receipt to APD Completion to Industry Days, and Average Days from APD Completion to Approval to BLM Days. None of the averages matched those on the graph. The graph is apparently skewed or the data was weighted in some undisclosed way, assuming that the graph is in fact a representation of the data sent in response to the FOIA request. "Industry days" for both years on the graph are much higher than my calculations. For example, BLM's graph shows industry days averaging 236. Using BLM's chart and calculating an average of what it lists as average days from receipt to completion (or "industry" days), the actual average is 139.6 days. There is no indication of how BLM added the extra 97 days. The remainder of the comparisons can be seen in the table below.

FISCAL YEAR	TOTAL (Days)		"INDUSTRY DAYS" (days)		"BLM DAYS" (days)	
	BLM calculations	My calculations	BLM calculations	My calculations	BLM calculations	My calculations
2011	307	213.44	236	139.6	71	72.8

2012	228	198.9	151	86.67	77	95.66
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Regrettably, it appears the BLM isn't evaluating these numbers for accuracy. Just a quick read-through reveals that it's impossible to have a negative number of days between receipt and approval. The BLM would also realize that for the Casper office in Wyoming to report an average of 65.5 days from receipt to approval but report 0 days between receipt to completion and completion to approval makes no sense. They note on the chart that there are "dates either missing, all zeros, or large" but this warning appears nowhere on the graph produced for the public. How are those numbers reflected in their chart? BLM provide no answers. The missing, zero, or large data may or may not be included in their graph. The lack of clarity makes it more difficult to follow the BLM's line of thought in the production of the APD Permitting Times graph.

It is within reason to believe that there is something I am missing; some missing element linking the data I received to the averages represented by the graph. Even so, this is the graph displayed to operators, organizations, and the public on BLM's website to provide an idea of what BLM believes are averages on permitting times. Given its public nature, these numbers *should* be checked for accuracy. This skewed data reinforces BLM's belief that they spend most time waiting on operators and refuting claims they are the weak link in the permitting process. By exaggerating "Industry" days, BLM deflects responsibility for slow processing. In addition, by indicating to operators, as well as to the public, that permitting times are longer than they actually are, the BLM provides their offices leeway in processing times. They would be able to show operators that they are permitting more quickly than the national average. These numbers are likely to be used in estimations for new rules and to battle existing criticisms. But if no one is reviewing these numbers to ensure that they reasonably reflect BLM's work, there is no way of knowing (accurately) how the process is working.

B. Inaccurate averages

Once it was clear that the two did not match up, I turned to examining the averages BLM calculated in search of a reason explaining the disconnect. As I sorted through the data in Excel, I calculated my own averages for each field office in both years. They did not match those determined by BLM. I sorted through the data in several field offices until I came across the Anchorage field office data from 2012. With only two APDs approved in that year, it was easy to identify the problem. One of the APDs processed that year took 14 days to be approved after the APD was considered complete. The other was approved the same day it was completed, therefore listing zero days between those dates. BLM calculated the average for the Anchorage field office to be 14 days, ignoring the one application that listed a 0 for that timeframe. An accurate average calculation would find the average here to be seven days, as 14 plus zero divided by two is seven. A response time that in this case would make BLM appear a model of efficiency. This inaccurate method of calculating averages, on both the operator and BLM side, is pervasive throughout the set of data provided by BLM. Unfortunately, this renders the BLM-calculated averages meaningless. I believe that this miscalculation is the result of a computer error. A computer program may very well ignore zeros in its calculations. However, providing unreliable data via FOIA request again demonstrates a lack of oversight or review of BLM's

information collection. It is unfair to pass this information (whether or not knowingly) along to the public as accurate.

C. Incomplete data

Hoping to get to the root of the problem, I re-examined the BLM data. Missing data turned out to be ubiquitous. For many entries, it meant only one missing data point, whether it was a date or a number of days, but for the entire FY2011 data, BLM did not include a column for the date of completion. It is unfathomable how BLM can provide the number of days considered "Industry" or "BLM" days when there is no date of completion to use in the calculation. Incomplete information such as this makes it impossible to verify that BLM is calculating processing time correctly. This displays a lack of consistency among the offices. Perhaps a specific set of protocols would help ensure all offices include all data considered of interest to the BLM.

In addition to missing data, I also uncovered what appears to be *impossible* data. Though infrequent, I came across entries that listed negative days between one stage of the process and another. It should not be possible for an APD to be approved before it is received if the proper regulatory process is being followed. There were also many instances where the number of days between completion, or even receipt, and approval was less than 30 days. Federal statutes mandate a 30-day public comment period between completion and approval.[6] If this data is accurate, then BLM is not meeting its legal requirements or is not submitting data as an accurate portrayal of the dates and timelines that do exist.

V. Summary

These issues reflect a greater problem within the tracking system. As a function of the government, the Bureau of Land Management represents the people's interests on public land. However, the way that BLM is currently tracking information makes it impossible for the people to understand how their interests are being pursued. The government has a responsibility to its citizens to make sure that what they publish is complete and accurate and without a comprehensive, uniform system one cannot expect the BLM to do so.

APDs are currently tracked in the Automated Fluid Management Support System (AFMSS). This national BLM database is not presently accessible to the public. Aside from the centralized system, data is collected and added to the database by individual field offices. It is possible that each office updates their information a little bit differently than another office. That being the case, BLM should require some kind of oversight to ensure consistent, uniform record-keeping, without which this data lacks consequence.

During a trip to North Dakota to visit the site of a recent oil boom, prior Secretary of the Interior, Ken Salazar, announced a "new automated tracking system" as part of initiatives by the Department to expedite energy development on public and Indian lands.[7] BLM expects this system to reduce processing time for permits by two-thirds as it will "track permit applications through the entire review process and quickly flag any missing or incomplete data..."[8] In the effort to improve communication between government and industry, this program should

result in more consistent standards and shorter timeframes. BLM expected this to be online by May 2013. This announcement follows a two-year pilot program, tested in several BLM field offices, designed to make the APD process more efficient.[9] As part of this program, the New Mexico offices established an online tracking system, potentially similar to that being described by Secretary Salazar.[10] Not only is the transparency of information a huge step up from the current system, but the information is presented more accurately than the data sent to us. Unfortunately, to date, this upgraded record-keeping approach is limited to the New Mexico office.

May has come and gone with no indication of this system being online. The new system is certainly a step in the right direction. Of course, there will be no way to determine if the new system reduces processing time because the numbers in the existing system are so unreliable, but this new system may allow for greater consistency and accountability. However, in addition to the automated tracking system, BLM must remember that oversight is a significant component of the process. Without verification of reasonable numbers, the same problems apparent in the current system may prove resilient. One recommendation is to make sure that raw data is provided to support such important claims as APD processing timelines. Public verification will allow for greater transparency between the government and its people.

VI. Conclusion

The United States has the resources and technology to become a significant exporter of oil and natural gas, to supply feedstock for a reviving industrial base, and to help reduce (as America has done over the last four years) the nation's emission of greenhouse gases. As many commentators have noted, however, the dramatic growth in oil and gas production has been achieved largely on privately owned lands. Permitting delays on federal lands create incentives for operators to avoid investments in federal oil and gas leases in favor of investments in private leases.

It will be impossible for the Department of the Interior to determine whether changes to expedite permitting on federal oil and gas leases are successful with the Department's currently broken yardstick. With today's level of information technology, mending the stick should not be a difficult task. Will the focus and commitment be applied to the task?

[1] The chart we reviewed at that time only went up to 2011, however since that time; BLM has revised the chart to include the 2012 numbers. The revised graph is shown in this paper. See Figure 1.

[2] Exact language from request:

Copies of documents used to create the chart reproduced below but only those documents containing information regarding the states Colorado, North Dakota, Utah, and Wyoming and concerning the years 2009, 2010, 2011. The chart below is located on Bureau of Land Management website [Bureau of Land Management](#)

[3] Bureau of Land Management. (2013) *FY 2012 Bureau Log generated by EFTS*. Retrieved from [BLM Bureau Log](#)

[4] The field offices included Anchorage from Alaska; Bakersfield from California; Canon City, Craig, Durango, Glenwood Springs, Grand Junction and Meeker from Colorado; Milwaukee and Jackson from the Eastern States; Dickinson, Great Falls and Miles City from Montana/North Dakota; Reno from Nevada, Carlsbad, Farmington, Hobbs, Rio Puerco, Roswell, and Tulsa from New Mexico; Moab, Price, Salt Lake and Vernal from Utah; and Buffalo, Casper, Green River, Kemmerer, Lander, Newcastle, Pinedale, Rawlins, and Worland from Wyoming.

[5] We were only provided the date of completion for applications that were approved in 2012.

[6] 30 U.S.C. § 226(p).

[7] "Secretary Salazar Visits North Dakota's Oil Boom; Unveils Initiatives to Accelerate Drilling Permits and Leases on Federal Lands." *Bureau of Land Management News Release*. 2012. Bureau of Land Management. Web. 3 April 2012. Available [BLM Press Release-Salazar](#) (Hereinafter "Press Release")

[8] Press release

[9] Bureau of Land Management. "Section 365 of the Energy Policy Act of 2005 Pilot Project to Improve Federal Permit Coordination: Bureau of Land Management Year Two Report." (BLM-WO-GI-08-007-3109). McLean, VA. (2008).

[10] "FY Approved APDs Listed" APD Tracking System. Bureau of Land Management. Available [BLM- FY 2007 Approved APDs](#)