

**INDUSTRY  
INSIGHTS**

WEBINAR

# President Biden's Federal Leasing Ban

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## **L. POE LEGGETTE** | Partner, BakerHostetler

Poe Leggette was recently recognized by the Independent Petroleum Association of America for “25 Years of Outstanding Legal Representation,” having saved independent oil and gas producers an estimated \$25 billion in costs from excessive regulation. He serves as BakerHostetler’s Energy Industry team leader, a team that was named in 2015 as Practice Group of the Year by Law360.

Addressing the intricate needs of oil and gas companies, Poe focuses his well-established practice on litigation and transactional work in the energy industry. His experience includes four principal areas of representation: onshore shale plays, federal and private mineral royalties, oil and gas companies operating on federal and Indian lands, and companies operating under federal leases in the Gulf of Mexico. Prior to entering private practice, Poe served as assistant solicitor for the U.S. Department of the Interior, advising the Bureau of Land Management (BLM) and the Minerals Management Service (MMS) on their onshore and offshore energy programs, as well as MMS’s Royalty Management Program on questions of royalty valuation.



## **MARK BARRON** | Partner, BakerHostetler

Mark is a Chambers-ranked energy lawyer who has guided some of the country’s largest producers of oil and gas through high-profile litigation, establishing himself as a “go-to” counselor for energy companies and trade associations developing advocacy responses to regulatory initiatives. Mark routinely assists clients to meet their day-to-day operational objectives by interacting with government decision-makers, developing strategic policy initiatives, crafting optimal business agreements, and litigating disputes.

A prolific author and speaker on topics affecting energy producers, Mark has testified before Congress and been featured or quoted in dozens of industry and mainstream media outlets on topics related to energy policy, hydraulic fracturing, and commercial development on public lands.

# Total Number of “Major” Final Rules Published 1997-2020

Calendar Year	Number of “Major” Final Rules	Administration Average
1997	61	Clinton: 66.25
1998	76	
1999	51	
2000	77	
2001	70	“W”: 65.825
2002	51	
2003	50	
2004	66	
2005	56	
2006	56	
2007	61	
2008	95	
2009	84	Obama: 73.5
2010	100	
2011	80	
2012	68	
2013	80	
2014	80	
2015	77	
2016	119	
2017	49	Trump: 63.75
2018	36	
2019	80	
2020	90	





*The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.*

U.S. Const. art. 4 § 3, cl. 2.



# Phases of Federal Oil & Gas Development

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- Land Use Planning
- Leasing
- Operational Authority

# Planning

## *Multiple Use & Sustained Yield Mandate Implied & Express Authority*

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### Conservation

“the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, **air and atmospheric**, water resource, and archeological values”

43 U.S.C. § 1732(a)(8)

### Resource Utilization

“the public lands be managed in a manner which recognizes the Nation’s need for **domestic sources of minerals**, food, timber, and fiber from the public lands”

43 U.S.C. § 1732(a)(12).



# Leasing

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## Mineral Leasing Act

“[t]o promote the mining of coal, phosphate, oil, oil shale, and sodium on the public domain.”

Act of Feb. 25, 1920, ch. 85, § 32, 41 Stat. 437.

## Mining & Mineral Policy Act of 1970

“in the national interest to foster and encourage private enterprise in,” among other endeavors, “the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs.”

30 U.S.C. § 21a.

# Implementation

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## Mineral Leasing Act

“[L]ease sales **shall** be held for each **State** where eligible lands are available **at least quarterly** and more frequently if the Secretary of the Interior determines such sales are necessary.”

30 U.S.C. § 226(b)(1)(A);

## BLM Regulations

“Each proper BLM State office shall hold sales at least quarterly if lands are available for competitive leasing.”

43 C.F.R. § 3120.1-2.

“Lands available for competitive leasing” include, but are not limited to, “Lands included in any expression of interest.”

43 C.F.R. § 3120.1-1(e).



# Western Energy Alliance v. Jewell

## No. 1:16-CV-00912 (D.N.M.)

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1. “workload priorities”
2. BLM’s decision to revise or update existing resource management plans
3. Snowstorms
4. public interest in attending the lease sale
5. BLM’s decision to change the location where the lease sale will be conducted
6. a lack of expressions of interest for lands in a particular field office (despite eligible lands being available in other places within the State)
7. BLM’s failure to include parcels from all States under a State Office’s jurisdiction in which eligible lands are available

## Instruction Mem. 2010-117

Instruction to “develop a sales schedule with an emphasis on rotating lease parcel review responsibilities among field offices throughout the year to balance the workload and to allow each field office to devote sufficient time and resources to implementing the parcel review process established in this IM.”





# Instruction Mem. 2018-034 (Jan. 31, 2018)

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- Eliminates rotational lease schedule
- Eliminates routine deferral for RMP revision
- NFLSS
- Sets six-month timeframe for parcel review

# *W. Energy All. v. Biden,* No. 21-cv-13 (D. Wyo.)

## 2021 LEASE SALES

**MARCH 23, 2021**

**\*The oil and gas lease sale scheduled for March 23, 2021 has been postponed.**

Please refer to the BLM e-Planning website for updated information on the sale and associated documents or to submit comments. [NEPA Number DOI-BLM-MT-2021-0001-EA](#)

## 2020 LEASE SALES

Updated:

### Project Description

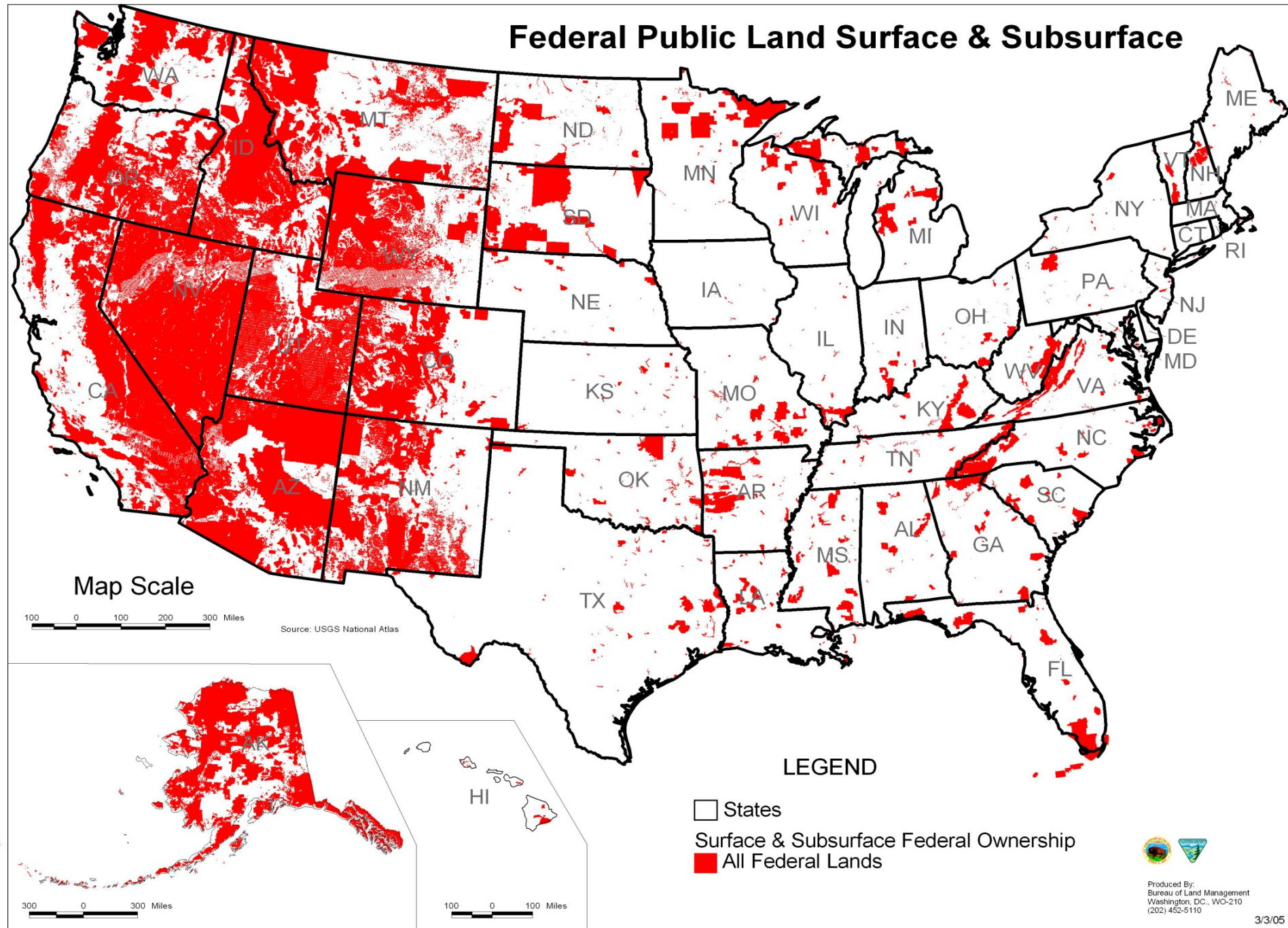
Interior moved to postpone the following scheduled March oil and gas lease sales. Bureau of Land Management (BLM) lease sales in Colorado, Montana, Utah, and Wyoming are postponed.

### Documents

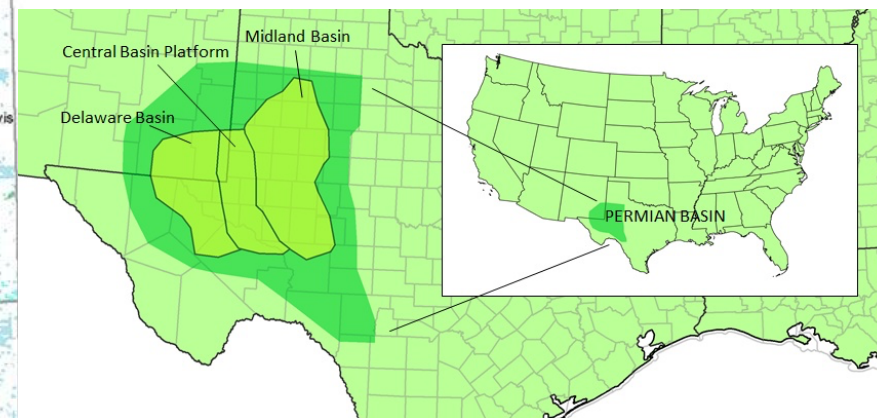
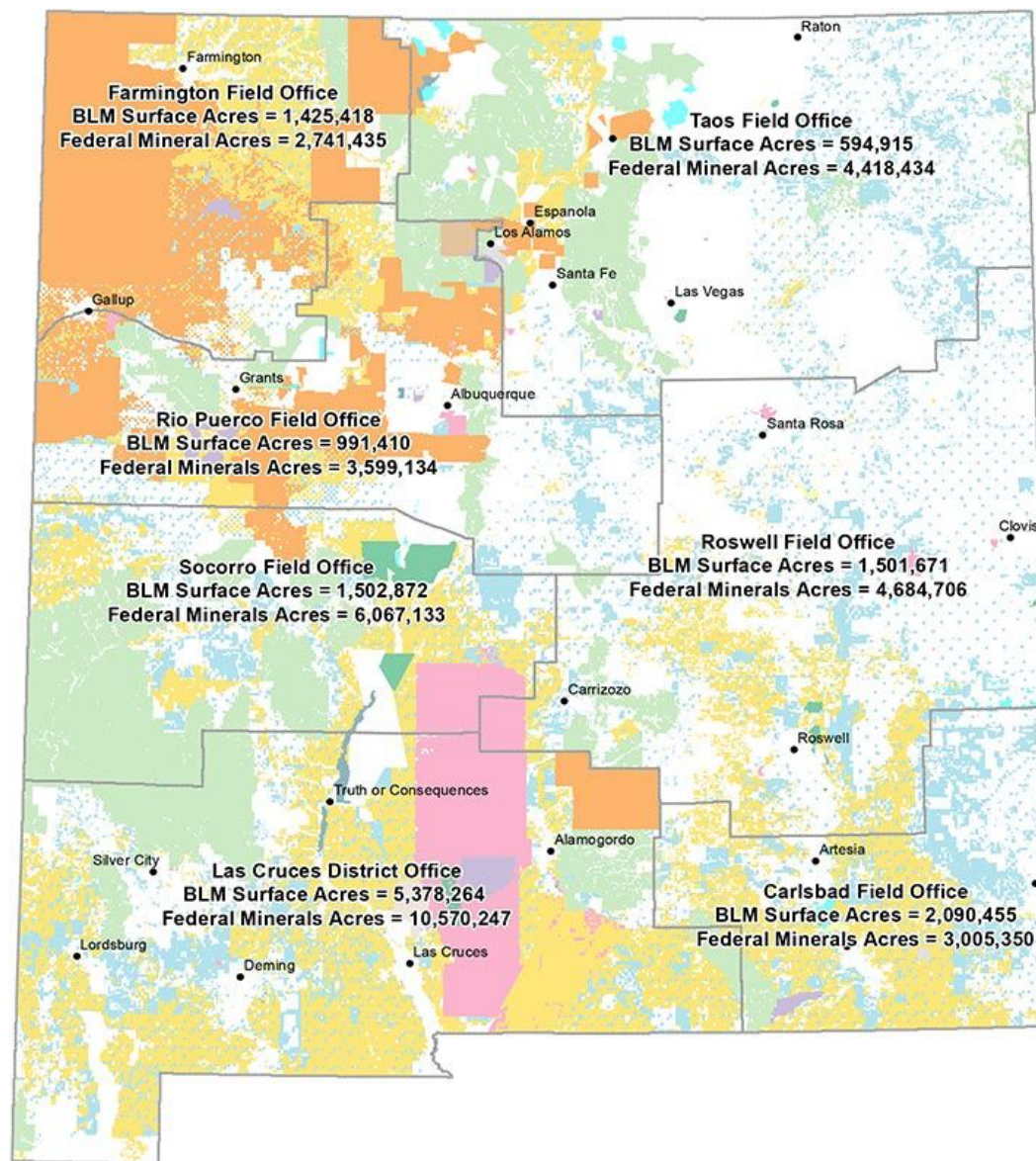
**Bureau of Land Management (BLM)** lease sales in Colorado, Montana, Utah, and Wyoming are postponed to confirm the adequacy of underlying environmental analysis.



# Federal Public Land Surface & Subsurface









# INDUSTRY INSIGHTS

WEBINAR

Join us for our next  
IPAA Industry Insights Webinar!

**Wednesday, March 17th  
11:00 AM CT**

**Critical Thinking for Equitable Energy  
with Dr. Scott W. Tinker**

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